

Bank Secrecy Act – Hot Topics!



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Bank Secrecy Act Hot Topics

What Changed in 2014?

- **Guidance on Virtual Currency (1/31/14)**
- **Virtual Currency Rulings (10/28/14)**
- **Guidance on Marijuana-Related Businesses (2/14/14)**
- **Compliance Culture (8/11/14)**
- **Revised FFIEC BSA/AML Examination Manual (12/3/14)**
- **Consolidated Sanctions List Data Files (12/17/14)**
- **Proposed Changes – Customer Due Diligence**



VIRTUAL CURRENCY



Virtual & Digital Currency

- **Where did it come from?**
 - A software developer who – in 2008 - proposed an electronic payment system based on unique mathematical calculations.
- **Who prints it?**
 - No one. It's created digitally, by a community of people that anyone can join. An electronic "ledger" or "wallet" is maintained by all Bitcoin users.
- **What is it based on?**
 - Unlike U.S. Currency, based on gold or silver, bitcoin is based on mathematics. People around the world are using bitcoin software programs that follow a mathematical formula to produce bitcoins and facilitate transactions.
 - Lines of unique computer codes called "cryptographic hashes"



Virtual & Digital Currency

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▪ **Where does someone get Bitcoin?**

- Registered Bitcoin exchanges
- By “mining” bitcoins – running the software to solve the math problems from people wanting to buy/sell things using Bitcoins (requires a lot of power!)
- ATMs:

“From a reconfigured Hybrid ATM machine, customers can use cash, debit or credit cards to buy or sell bitcoin, instantly. Until now, buying and selling bitcoins was not an instant process. Selling them was slow and customers could expect to wait a week or more to get payment for sold bitcoins. Now, customers can sell their bitcoins right from this ATM machine and receive cash payment for the bitcoins. Compliance with Know Your Customer rules, anti-money laundering regulations, and secure data transfers make our bitcoin ATMs not only easy to use - but also compliant and very safe to use.”



What Changed in 2014?

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Guidance on Virtual Currency (1/31/14)

- **Is a Bitcoin miner considered an MSB?**
 - No, if:
 - Paying for goods and services, paying debts, making distributions to owners
 - Purchasing real or other virtual currency for payments or investments
 - Perhaps, if engaging in activity involving acceptance and transmission of real or virtual currency.
- **Is a Company that creates software to facilitate the purchase of virtual currency for its own investment considered an MSB?**
 - No, if:
 - Activities are limited to investing for company's own use.
 - Perhaps, if there is evidence of transfers to third parties at the request of the Company's owners, creditors, etc.
- **In both cases: watch account activity**

http://www.fincen.gov/news_room/rp/rulings/pdf/FIN-2014-R001.pdf

http://www.fincen.gov/news_room/rp/rulings/pdf/FIN-2014-R002.pdf



What Changed in 2014?

Virtual Currency Rulings (10/28/14)

- A Company that wants to establish a virtual currency payment system is considered an MSB because:
 - The Company would be engaged in exchanging virtual currency for real currency (a “convertible virtual currency payment system”);
 - The Company would set up a system to provide virtual currency-based payments to merchants in the US and Latin America;
 - Merchants would sign up with the company to use their virtual payment system, incorporate the Company’s software into its website and receive customer credit card payments. The Company would receive the actual payment and transfer the equivalent amount in Bitcoin to the merchant.

FinCEN guidance defines this Company as a “money transmitter” as well as an “exchanger” – a person engaged as a business in the exchange of virtual currency for real currency. The Company would be required to register as an MSB with FinCEN and follow the MSB requirements for risk assessment and an AML program.

http://www.fincen.gov/news_room/rp/rulings/html/FIN-2014-R012.html



FinCEN Guidance – BSA Expectations Regarding Marijuana Related Businesses



FinCEN: Marijuana

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The decision to open, close, or refuse any particular account or relationship should be made while considering a number of factors including the business's objectives, and an evaluation of the risks associated with offering a particular product or service.



FinCEN: Marijuana

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Credit Union responsibilities:

- Verifying the business is duly licensed and registered;
- Developing an understanding of the normal and expected activity for the business;
- Ongoing monitoring of publicly available sources for adverse information about the business and related parties;
- Ongoing monitoring for suspicious activity; and
- Refreshing information obtained as part of member due diligence on a periodic basis and commensurate with the risk.

http://www.fincen.gov/statutes_regs/guidance/pdf/FIN-2014-G001.pdf



FinCEN: Marijuana

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Adhere to the “Cole Memo Priorities”

- Prevent distribution of marijuana to minors;
- Prevent revenue from going to criminal enterprises;
- Prevent the diversion of marijuana from states where it is legal under state law in some form to other states;
- Prevent activity from being used as a cover for the trafficking of other illegal drugs or other illegal activity;
- Prevent violence and the use of firearms;
- Prevent of other adverse public health consequences associated with marijuana use;
- Prevent the growing of marijuana on public lands; and
- Prevent marijuana possession on federal property.



FinCEN: Marijuana

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Suspicious Activity Reports

- Marijuana Limited SAR Filing
- Marijuana Priority SAR Filing
- Marijuana Terminated SAR Filing



FinCEN: Marijuana

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Credit unions will review “red flags” to distinguish Priority SARs and perform additional due diligence.



COMPLIANCE CULTURE

Where do you stand?



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Compliance Culture

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FinCEN's latest guidance:

- On August 11, 2014 the Financial Crimes Enforcement Network issued Advisory FIN-2014-A007. The guidance was provided due to shortcomings in compliance due to a lack of involvement from institutions senior management and pointed to the poor culture of compliance which existed in part due to a lack of leadership to improve and strengthen organizational compliance with Bank Secrecy Act (BSA) obligations.
- http://www.fincen.gov/statutes_regs/guidance/pdf/FIN-2014-A007.pdf



What Changed in 2014?

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Compliance Culture (8/11/14)

- Leadership should be engaged and involved
- Compliance should not be compromised by revenue interests
- Information should be shared throughout the organization
- Leadership should provide adequate human and technological resources
- Program should be effective and tested by an independent and competent party
- Leadership and staff should understand how their BSA reports are used



Compliance Culture

Board of Directors, executive and senior management should actively support, understand and be engaged in compliance efforts.

- FinCEN notes that if a compliance program is going to be effective it has to have demonstrated support from leadership and states, “in addition to supporting a culture of compliance, an appropriate understanding of BSA/AML obligations and compliance will help an organization’s leadership make informed decisions with regard to the allocation of resources.” FinCEN defines the leadership of a credit union as: Board of Directors, executive and senior management, and management.



Compliance Culture

Managing and mitigating BSA deficiencies and risks should not be compromised by revenue interests.

- The new FinCEN guidance directs that compliance staff should be empowered to implement the credit union’s BSA compliance program and have the authority and autonomy to work independently and take appropriate actions to address and mitigate the credit union’s BSA/AML risks.



Compliance Culture

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Relevant information should be shared throughout the credit union.

- Operating departments and employees should work together throughout the credit union to share information with compliance staff to help combat and prevent fraud that can negatively impact the credit union.



Compliance Culture

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Adequate human and technological resources should be devoted to compliance functions.

- In FinCEN's guidance they note that "the failure of an institution's leaders to devote sufficient staff to the BSA/AML compliance function may lead to other failures." Credit union leaders are urged to ensure that there is enough devoted staff to effectively manage the credit union compliance program.



Compliance Culture

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Credit union leadership and staff should understand the purpose of BSA efforts and reporting.

- In addition to have staffing resources sufficient to manage the credit unions compliance program; FinCEN also requires that credit union leadership and staff be trained to understand the importance of compliance with BSA and its importance to safeguarding our nation.



FFIEC BSA Examination Manual - 2014

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What Changed in 2014?

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Revised FFIEC BSA/AML Examination Manual (12/3/14)

Financial Regulators Release 2014 Bank Secrecy Act/Anti-Money Laundering Examination Manual

The Federal Financial Institutions Examination Council (FFIEC) recently released the revised Bank Secrecy Act/Anti-Money Laundering (BSA/AML) Examination Manual. The revisions clarify supervisory expectations and incorporate regulatory changes since the manual's 2010 update. The revisions incorporate feedback from the banking industry and examination staff.

http://www.ffiec.gov/bsa_aml_infobase/documents/InteragencyStatement_2014.pdf

The manual will online here: http://www.ffiec.gov/bsa_aml_infobase/default.htm



What Changed in 2014?

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Revised FFIEC BSA/AML Examination Manual (12/3/14)

Significant updates include:

- **SARs** – new e-filing requirements (certain critical fields), SAR filing for continuing activity (guidance), disclosing SARs and sharing with affiliates.
 - A credit union or its agent may reveal the existence of a SAR to fulfill responsibilities consistent with the BSA – provided that doesn't involve notifying the subject of the SAR.
 - A credit union that has filed a SAR may share the SAR with an affiliate, provided the affiliate is subject to a SAR regulation.
- **CTRs** – new e-filing requirements, guidance for aggregating business transactions.
 - Cases where multiple business share a common owner, presume that separately incorporate entities are independent persons and not trigger aggregation.
 - However, if these business are NOT operating separately or independently of one another or their common owner, you can aggregate. (business staffed by same employees and at same address, accounts used of one business used to pay expenses of another business or pay personal expenses of the owner).



What Changed in 2014?

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Revised FFIEC BSA/AML Examination Manual (12/3/14)

Significant updates include:

- **Foreign Correspondent Account Recordkeeping** – new section on Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 reporting requirements.
- **Foreign Bank and Financial Accounts (FBAR)** – electronically filing requirement for Report of FBARs.
- **International Transportation of Currency or Monetary Instruments Reporting (CMIR)** – reporting requirements for monetary instruments in excess of \$10,000 coming in or going out of the US. Bank personnel to foreign office.
- **Correspondent Accounts (Foreign)** – risk mitigation guidance was increased, including US bank policy and procedure recommendations.



What Changed in 2014?

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Revised FFIEC BSA/AML Examination Manual (12/3/14)

Significant updates include:

- **Bulk Shipments of Currency** – now incorporates FinCEN's guidance for common carriers of currency, including armored car services and clarifying monitoring and reporting obligations.
- **Automated Clearing House Transactions (ACH)** – International ACH transaction operating rules included, along with NACHA reference. Third-party service providers defined further.
- **Prepaid Access** – replaced the “Electronic Cash” section and expanded risk factors and risk mitigation (appropriate due diligence on third-party service provider, CDD on purchaser, procedures for monitoring unusual activity patterns).
- **Third-Party Payment Processors** – FinCEN guidance on BSA/AML risks associated with third-party processors included.



What Changed in 2014?

Revised FFIEC BSA/AML Examination Manual (12/3/14)

Significant updates include:

- **Embassy, Foreign Consulate, and Foreign Mission Accounts** – guidance added on accepting accounts from foreign embassies, consulates, and missions.
- **Nonbank Financial Institutions** – added new FinCEN regulations for MSBs related to foreign-located persons engaging in MSB activities, prepaid access programs and virtual currency administrators and exchangers.
- **Appendix T: BSA E-Filing** – guidance for examiners on BSA e-filing system.



Consolidated Sanctions List



What Changed in 2014?

Consolidated Sanctions List Data Files (12/17/14)

Release of Consolidated Non-SDN Data Files and Upgrade to Sanctions List Search

In order to make it easier to comply with OFAC's sanctions regulations, the office is now offering all of its non-SDN sanctions lists (including the Non-SDN Palestinian Legislative Council List "NS-PLC List," the Part 561 List, the Non-SDN Iran Sanctions Act List "NS-ISA List," the Foreign Sanctions Evaders List "FSE List," and the Sectoral Sanctions Identifications List "SSI List,") in a consolidated set of data files "the Consolidated Sanctions List." These consolidated files comply with all of OFAC's existing data standards. While the consolidated sanctions list data files are not part of OFAC's list of Specially Designated Nationals and Blocked Persons "the SDN List," some of the records in these consolidated files may also appear on the SDN List.

<http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/consolidated.aspx>



What Changed in 2014?

Consolidated Sanctions List Data Files (12/17/14)



Sanctions List Search

This Sanctions List Search application ("Sanctions List Search") is designed to facilitate the use of the Specially Designated Nationals and Blocked Persons list ("SDN List") and all other non-SDN lists, including the Foreign Sanctions Evaders List, the Non-SDN Iran Sanctions Act List, the Part 561 list, the Sectoral Sanctions Identifications List and the Non-SDN Palestinian Legislative Council List. Given the number of lists that now reside in the Sanctions List Search tool, it is strongly recommended that users pay close attention to the program codes associated with each returned record. These program codes indicate how a true hit on a returned value should be treated. The Sanctions List Search tool uses approximate string matching to identify possible matches between word or character strings as entered into Sanctions List Search, and any name or name component as it appears on the SDN List and/or the various non-SDN lists. Sanctions List Search has a slider-bar that may be used to set a threshold (i.e., a confidence rating) for the closeness of any potential match returned as a result of a user's search. Sanctions List Search will detect certain misspellings or other incorrectly entered text, and will return near or proximate matches, based on the confidence rating set by the user via the slider-bar. OFAC does not provide recommendations with regard to the appropriateness of any specific confidence rating. Sanctions List Search is one tool offered to assist users in utilizing the SDN List and/or the various non-SDN lists; use of Sanctions List Search is not a substitute for undertaking appropriate due diligence. The use of Sanctions List Search does not limit any criminal or civil liability for any act undertaken as a result of, or in reliance on, such use.

[Download the SDN List](#)

[Visit The OFAC Website](#)

[Download the Consolidated Non-SDN List](#)

[Program Code Key](#)

Lookup

Type:	All	Address:	
Name:		City:	
ID #:		State/Province:	
Program:	All	Country:	All
	561List	List:	All
	BALKANS		
	BELARUS		
Minimum Name Score:	100		

Search Reset



What's Ahead in 2015?

What Changed (so far) in 2015?

- **New, Advanced Format for the SDN and Blocked Persons List (1/5/15)**
 - New metadata including specific labels for name parts that go beyond the standard, "Last name, First name" style of current sanctions lists. Allows for unique name parts to be used, labeled and properly ordered based on the nomenclature rules of a specific culture, language, or region.
 - Supports language scripts beyond the standard Latin script used in many sanctions lists. Now possible for sanctions targets to be provided to users in their original script (e.g., Arabic) and other non-Latin script translations.
 - Provides a data dictionary of all valid look-up values in the header of the file. Including a data dictionary with the underlying data makes it easier for list users to construct databases that contain identifiers and other information that match the data in OFAC's systems. When new look-up values are introduced to a sanctions list, this data dictionary is automatically updated.

<http://www.treasury.gov/press-center/press-releases/Pages/j19734.aspx>



PROPOSED Changes – Customer Due Diligence



What's Ahead in 2015?

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Proposed Changes for 2015:

– Customer Due Diligence Requirements (8/4/14)

The U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) today issued a Notice of Proposed Rulemaking (NPRM) to amend existing Bank Secrecy Act (BSA) regulations to help prevent the use of anonymous companies to engage in or launder the proceeds of illegal activity in the U.S. financial sector. The proposed rule would clarify and strengthen customer due diligence obligations of banks and other financial institutions (including brokers or dealers in securities, mutual funds, futures commission merchants, and introducing brokers in commodities). The proposed amendments would add a new requirement that these entities know and verify the identities of the real people (also known as beneficial owners) who own, control, and profit from the companies they service.

<http://www.treasury.gov/press-center/press-releases/Pages/jl2595.aspx>

http://www.fincen.gov/statutes_regs/files/CDD-NPRM-Final.pdf



What's Ahead in 2015?

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Proposed Changes for 2015:

- [Comments were due – October 3, 2014](#)
- Clarify and strengthen CDD obligations – identifying and verifying the identity of customers, identifying and verifying the identity of “beneficial owners” of legal entity customers, understanding the nature and purpose of customer relationships; and conduct ongoing monitoring to maintain and update customer information and identify and report suspicious transactions
- Explicit requirement to establish and maintain written CDD procedures to identify and verify “beneficial owners” of “legal entity customers.”



What's Ahead in 2015?

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II. CERTIFICATION OF BENEFICIAL OWNER(S)

Persons opening an account on behalf of a legal entity must provide the following information:

a. Name of Person Opening Account: _____

b. Name of Legal Entity for Which the Account is Being Opened: _____

c. The following information for each individual, if any, who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25 percent or more of the equity interests of the legal entity listed above:

(If no individual meets this definition, please write "Not Applicable.")

Name	Date of Birth	Address	For U.S. Persons: Social Security Number	For Foreign Persons: Passport Number and Country of Issuance, or other similar identification number ¹

d. The following information for any individual with significant responsibility for managing the legal entity listed above, such as:

- An executive officer or senior manager (e.g., Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, Treasurer); or
- Any other individual who regularly performs similar functions.

(If appropriate, an individual listed under section (c) above may also be listed in this section.)

Name	Date of Birth	Address	For U.S. Persons: Social Security Number	For Foreign Persons: Passport Number and Country of Issuance, or other similar identification number ¹

I, _____ (name of person opening account), hereby certify, to the best of my knowledge, that the information provided above is complete and correct.

Signature: _____ Date: _____

¹In lieu of a passport number, foreign persons may also provide an alien identification card number, or number and country of issuance of any other government issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

ILLINOIS CODE 890-02-C



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QUESTIONS??



Contact Information

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