





Helping Credit Unions
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Bank Secrecy Act for Directors

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Agenda



- What is the Bank Secrecy Act?
- How to have a successful BSA Compliance Program?
- OFAC responsibilities.
- Penalties for non-compliance.

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What is the Bank Secrecy Act?

The Bank Secrecy Act (or Currency and Foreign Transactions Reporting Act) is a series of Federal Laws to assist the government and law enforcement in the detection and prevention of money laundering.

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BSA Laws

What Laws?

- Bank Secrecy Act of **1970** (Currency and Foreign Transactions Reporting Act)
- Money Laundering Control Act of **1986**
- Anti-Drug Abuse Act of **1988**
- Annunzio-Wylie Anti-Money Laundering Act (**1992**)
- Money Laundering Suppression Act (**1994**)
- Money Laundering and Financial Crimes Strategy Act (**1998**)
- USA Patriot Act of **2001** – Title III
- NCUA Rules and Regulation Part 748.2
- Financial Recordkeeping and Reporting of Currency and Foreign Transactions rules




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Purpose

What is the purpose of the BSA Laws?

- To help identify the source, volume and movement of currency and other monetary instruments transported or transmitted into or out of the U.S. or deposited into financial institutions
- To aid in the investigation of money laundering, tax evasion, international terrorism and other criminal activity




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Purpose

BSA..... Purpose

TERRORIST ASSETS REPORT
Calendar Year 2014
Twenty-third Annual Report to the Congress on
Assets in the United States
Relating to Terrorist Countries
and International Terrorism Program Designees



Office of Foreign Assets Control
U.S. Department of the Treasury



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.** It 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.**



Compliance Culture

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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

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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.




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Compliance Culture

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.




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Compliance Culture

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.**




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Compliance Culture

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

- In addition to having staffing resources sufficient to manage the credit union's 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.



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Money Laundering

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Money Laundering

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BSA Violations

Michigan Man Sentenced for Narcotics Trafficking

On Sept. 3, 2014, in Detroit, Michigan, Steven Duane Dent was sentenced to 240 months in prison and 10 years supervised release. Dent pleaded guilty to conspiracy to distribute cocaine. According to court documents, Dent was charged in March 2010, with conspiring with others to distribute at least 5 kilograms of cocaine and at least 100 grams of heroin. In addition to the narcotics charges, **Dent was also charged with money laundering based on his purchase of 54 money orders using the proceeds of drug sales. These purchases totaled more than \$98,000.** Dent was charged with conducting these transactions in an effort to conceal and disguise the true nature of the funds and in a manner that would avoid the transaction reporting requirements under federal law.



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Compliance Program

How is your credit union going to comply with these laws?

An effective BSA/AML Compliance Program includes:


- **Internal Controls** – policies, procedures, reports, records of transactions.
- **Independent testing**
- **BSA Officer**
- **Training**
- **Member/Customer Identification Program**

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Compliance Program

- Directors are responsible for ensuring that their credit unions have a written BSA compliance program that is tailored to its level of risk.
 - Written policies, procedures and processes
- Must be written, approved by the board of directors and noted in the board minutes.



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Internal Controls



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Internal Controls

"The board of directors, acting through senior management, is ultimately responsible for ensuring that the bank maintains an effective BSA/AML internal control structure, including suspicious activity monitoring and reporting."

- Risk Assessment
- SAR Reporting
- Recordkeeping and Reporting Requirements
 - SARs
 - CTRs
- Policies and Procedures

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Internal Controls - Risk Assessment

- The credit union's risk assessment should identify and measure the degree of risk for each of the following:
 - Products & services; Members; and Geographic locations
- Identify degree of Risk (low, medium, high)
 - High Intensity Drug Trafficking Areas (HIDTAs)
 - 2015 Report to Congress - 11 counties in Michigan (Genesee, Macomb, Oakland, Saginaw, Washtenaw, Muskegon, Wayne, Allegan, Kalamazoo, Kent and Van Buren)
- Identify steps that have been taken to mitigate risk
- Should evolve as new products and services are introduced or changed, expansions occur through mergers, and/or field of membership enlarges
- Recommended every 12 to 18 months






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Internal Controls – Suspicious Activity Reports (SARs)

- Credit unions are **required** to file a SAR with respect to the following:
 - Criminal violations involving insider abuse in any amount
 - Criminal violations aggregating \$5,000 or more when a suspect can be identified
 - Criminal violations aggregating \$25,000 or more regardless of a potential suspect

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Internal Controls – (SARs)

- Credit unions are **required** to file a SAR with respect to the following (cont'd):
 - Transactions conducted or attempted by, at or through a credit union aggregating \$5,000 or more, if the credit union knows, suspects or has reason to suspect that the transaction:
 - May involve potential money laundering or other illegal activity
 - Is designed to evade the BSA or its implementing regulations
 - Has no business or apparent lawful purpose, or is not the type of transaction that the particular member would normally be expected to engage in, and the credit union knows of no reasonable explanation for the transaction



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Internal Controls – SAR Safe Harbor

- Credit union directors, officers, employees and agents that report a suspicious transaction to the appropriate authorities (including supporting documentation) are granted a safe harbor from any civil liability under any law or regulation, regardless of whether such reports are filed pursuant to the SAR instructions.
 - This safe harbor applies to SARs filed within the required reporting thresholds as well as those filed voluntarily on any activity below the threshold



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Internal Controls – SAR Reporting

- SARs must be filed no later than 30 calendar days from the date of the initial detection of the suspicious activity
 - 60 calendar days if no suspect can be identified
- Board must be notified that SARs have been filed
- NO disclosure to anyone involved in the transaction that a SAR has been filed
 - May inform FinCen, law enforcement or federal banking agencies
 - May share the SAR, or any information that would reveal the existence of the SAR, with an affiliate, provided the affiliate is subject to a SAR regulation
- **Must be filed electronically**



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Internal Controls – Currency Transaction Report (CTR)

- Must be filed for each deposit, withdrawal, payment, transfer or other transaction involving currency (cash) of **more than \$10,000**
- Multiple transactions by or on behalf of one person in one business day: consolidate the transactions and report them as one if the total exceeds \$10,000
- Must be filed within 15 days after the date of the transaction



Independent Testing



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Independent Testing

- Must be “independent”: internal auditor, outside auditor, consultants, or other qualified parties.
- Conducted every 12 to 18 months.
- Independent tester should report to the Board directly (or designated Board committee).
- Testing should assist the Board and Management in identifying areas of weakness or areas where there is a need for enhancements or stronger controls.



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BSA Compliance Officer



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Compliance Program

BSA Officer

- Board must designate a BSA Compliance Officer.
- Board must ensure that the BSA Officer has sufficient authority and resources to administer and effective program based on risk profile.
- BSA Officer is responsible for coordinating and monitoring day-to-day BSA/AML Compliance and monitoring all aspects of the program generally, along with adherence to the BSA and implementing regulations.
- BSA Officer should have credit union and BSA expertise.

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BSA Training



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Compliance Program

BSA Training

- All staff, tailored to their specific responsibilities
- Should be ongoing, as regulations and staff change (new hire orientation)
- Should include regulatory requirements and the credit union's internal policies, procedures and processes
- Inform Board and senior management of changes to the BSA and the implementing regulations
- Document training program
 - Materials, dates and attendance records



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Member Identification Program



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Compliance Program

Member Identification Program – USA Patriot Act


- Uniting and
- Strengthening
- America by
- Providing
- Appropriate
- Tools
- Required to
- Intercept and
- Obstruct
- Terrorism



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Compliance Program

- **Customer/Member Identification Program (CIP/MIP)**
 - MIP must provide for required identifying information that must be obtained for account opening.
 - Verify the identity of any person seeking to open an account (documentary vs. non-documentary).
 - All information used to verify the person's identity must be recorded and maintained.
 - Each new member's name must be screened against any government list of known or suspected terrorists.
 - Member Identification Program must be approved by the credit union's Board of Directors.



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Office of Foreign Assets Control (OFAC)




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OFAC

Office of Foreign Assets Control (OFAC)

- Division of the US Treasury
- OFAC Risk Assessment
- OFAC Compliance Program
- Compare OFAC List to membership
- Check new members before opening an account
- On-us checks?
- Independent testing
- Designated employee for OFAC Compliance Program
- Training



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OFAC





OFAC regulations require the following:

- Block accounts and other property of specified countries, entities and individuals
- Prohibit or reject unlicensed trade and financial transactions with specified countries, entities and individuals
- Reporting blocked and prohibited transactions to OFAC




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Bank Secrecy Act (BSA) Penalties







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Penalties for BSA Violations

Credit Union Penalties

- Cease and Desist Order
- Loss of charter
- Criminal money penalties up to the greater of \$1 million or twice the value of the transaction
- Civil money penalties
 - Negligence a fine up to \$500
 - Practice of negligence – an additional fine of \$50,000 per occurrence




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Penalties for BSA Violations

Individual Penalties

- Removal and bar from banking
- Criminal fine of up to \$250,000, five years in prison, or both for **willful violations of the BSA and for structuring transactions to evade BSA reporting requirements**
- Criminal fine of up to \$500,000, ten years in prison, or both for **violating BSA and any other U.S. law or engaging in a pattern of criminal activity**
- Civil money penalties




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BSA Violations

North Dade Community Development FCU

(\$4 million in assets – 5 employees)


- \$300,000 Civil Money Penalty
- Revenue from money service businesses (MSBs) constituted 90% of their annual revenue.
- From 2009 through 2014, North Dade had significant deficiencies in all aspects of its AML program, **including its internal controls, independent testing, training, and failure to designate an appropriate BSA compliance officer.**



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Resources

- MCUL: www.mcul.org (InfoSight)
- NCUA: www.ncua.gov
- CUNA: www.cuna.org
- NASCUS: www.nascus.org
- FinCEN: www.fincen.gov
- IRS Detroit Computing Center: (800) 800-2877
- FinCEN's Financial Institutions Terrorist Hotline to report terrorist activity against the U.S.: 1-866-556-3974
- FinCEN's BSA/AML Examination Manual: www.ffiec.gov/bsa_aml_infobase/pages_manual/manual_online.htm
- FBI: www.fbi.gov
- OFAC: www.treas.gov/ofac
- [Interagency Statement](#)



Contact Information

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- **Questions?**

- **Contact Information:**

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