



BSA/AML/OFAC UPDATE

Presented by:

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Agenda

- What is BSA
- What is new
- BSA Compliance
- BSA/AML Details
- OFAC Details
- Penalties & Fines
- Questions



What is BSA

- In 1970, Congress passed the Currency and Foreign Transactions Reporting Act (Bank Secrecy Act)
- Other statutes that require financial institutions to obtain and retain certain records, as well as report certain transactions to the federal government.
- These include:
 - *Money Laundering Control Act*
 - *Anti-Drug Abuse Act*
 - *USA Patriot Act, Title III*
 - *Anti-Money Laundering Act of 2020*



BSA Requirements

- Banks, credit unions, thrifts, non-bank financial institutions, securities dealers, and money services businesses are required to perform anti-money laundering checks and keep specific records of events that could signal money laundering
- Appropriate information must be collected for transactions:
 - *Records of cash purchases of negotiable instruments*
 - *File reports on cash transactions over \$10,000*
 - *Report suspicious activity that might signify money laundering, tax evasion or other criminal activity*



Goals of BSA

- The purpose is 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
- Safeguard the financial industry from threats of money laundering and illicit finance
- Ensure a recordkeeping and reporting system to prevent, deter, investigate and prosecute financial crime
- Aid in the investigation of money laundering, tax evasion, international terrorism, or other illegal activity



What is New

- Anti-Money Laundering Act of 2020
 - *New beneficial ownership requirements*
 - *Increased BSA/AML penalties*
 - *Mandatory Treasury Dept review of CTR and SAR requirements*
 - *New whistleblower programs*
- Updates to Examination Manual
 - *Mostly clarification of existing items*



BSA Compliance Program

- Establish and maintain a BSA compliance program
 - *BSA Compliance Officer*
 - *Internal Controls*
 - *Education and Training*
 - *Independent Testing*



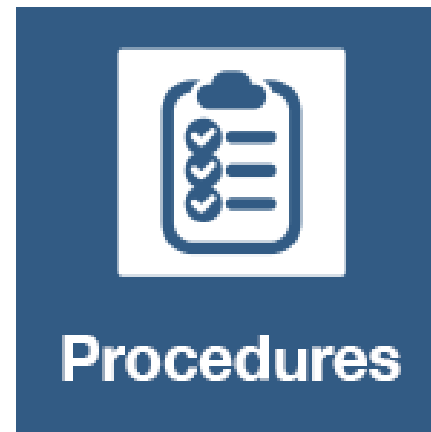
BSA Compliance Officer

- Responsible for BSA compliance on a day-to-day basis
- Must be approved by board of directors
- Reports to board
- Must be provided adequate authority to do his/her job



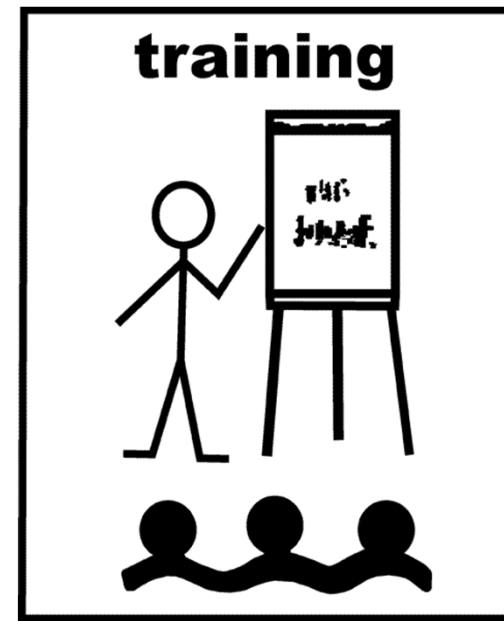
Internal Controls

- Required by the BSA
- Consists of policies, procedures, and processes to ensure systematic compliance with BSA



Training

- Regular ongoing training is required
 - *All staff whose duties require knowledge of the BSA*
 - *Board of Directors and other volunteers*
 - *BSA compliance officer*



Independent Testing

- Required by the BSA
- Should be completed every 12 to 18 months



Risk Assessments

- Assessing the risk profile is required to implement adequate risk management processes
- Determine and review risk categories (products, services, members, entities, geography, transactions, etc.)
- Detail the analysis; update on ongoing basis
- Should be reported to and approved by board of directors



Member Identification Program

- Must be included in written BSA Compliance Program
- Enables CU to form reasonable belief that it knows true identity of member
- Must include procedures that specify the identifying information obtained
- Include reasonable and practical risk-based procedures for verifying identity of member
- Compare identity to government lists



Member Identification Program

- Information required
 - *Name*
 - *Address*
 - *Date of birth*
 - *Identification number*
- Verification of identity
- Who must provide this information
- Retain for 5 years



Member Due Diligence

- Strong BSA/AML compliance program includes comprehensive CDD policies, procedures, and processes for all members, particularly those that present a higher risk for money laundering and terrorist financing
- The objective is to predict **with relative certainty** they types of transactions a member is likely to engage in
- Helps evaluate BSA risk of individual members



Member Due Diligence

- Policies, procedures, and processes should aid in
 - *Detecting and reporting unusual or suspicious transactions*
 - *Avoid criminal exposure from persons who use or attempt to use CU products and services for illicit purposes*
 - *Adhering to safe and sound practices*
- This is an ongoing process – account opening throughout entire relationship



Enhanced Due Diligence

- If CU determines that a member is higher risk, it requires closer monitoring and may require additional due diligence information to be collected, both at account opening and throughout relationship



Money Services Businesses

- Determine if any MSBs have accounts
 - *Check casher*
 - *Issue or sell traveler's checks/money orders*
 - *Money transmitter*
 - *Provider/seller of prepaid access*
 - *U.S. Postal Service*
 - *Dealer in foreign exchange*
- Assess risk and take appropriate steps to mitigate the risk
- Due diligence expectations



Beneficial Ownership

- Design procedures to identify and verify beneficial owners of legal entities account holders
 - *Legal entities created by filing public documents with Secretary of State (corporations, LLCs)*
- Beneficial owners
 - *Control prong – single individual with significant responsibility to control, manage, or direct a legal entity. One must be identified.*
 - *Ownership prong – individual who owns 25% or more of equity interest in a legal entity. Up to 4 could be identified.*



Beneficial Ownership

- Must have written procedures detailing identifying info to be obtained for each beneficial owner
 - *Name*
 - *Date of birth*
 - *Address*
 - *Identification number*
- Policies should also address
 - *Circumstances when the CU should not open an account*
 - *Terms under which an account may be used while CU attempts to verify identity of beneficial owner(s)*
 - *When an account should be closed after verification attempts have failed*
 - *When a SAR should be filed*



Currency Transaction Reporting

- Whenever a non-exempt member deposits or withdraws currency in excess of \$10,000, a CTR will be submitted by 15th day following transaction
- Multiple currency transactions totaling more than \$10,000 are aggregated
- Acceptable form of identification should be obtained from person completing transaction
- Retain copies 5 years after filing



CTR Exemptions

- CU may exempt member from CTR reporting if certain criteria are met. No CTR need be filed if transaction involves an exempt person acting within the scope of exemption. CU must exercise due diligence when ascertaining whether member requesting exemption is eligible.
- CU may elect not to grant CTREs. If so, BSA/AML Policy should so state.



CTR Exemptions

- Must file Designation of Exempt Person (DOEP) one time within 30 days of first exempted transaction
- BSA Compliance Officer should review and approve
- Should also be reviewed at least once per year (document this)



Suspicious Activity Reporting

- This is the cornerstone of the BSA reporting system
- Procedures should be in place to ensure that suspicious financial transactions are reported on a SAR to FinCEN
- Board should be notified of SAR filings



Suspicious Activity Reporting

- Required for criminal violations
 - *Involving insider abuse in any amount*
 - *Aggregating \$5,000 or more when suspect can be identified*
 - *Aggregating \$25,000 or more regardless of a potential suspect*



Suspicious Activity Reporting

- Required for
 - *Transactions conducted or attempted, aggregating \$5,000 or more if it is suspected that*
 - May involve potential money laundering or other illegal activity
 - Is designed to evade BSA
 - Has no business purpose or is not a normal transaction for member and there is no reasonable explanation
- Required to be filed within 30 days
 - *60 days if no suspect identified*



Suspicious Activity Reporting

- FinCEN and NCUA also recommend SARS for
 - *Suspected identity theft*
 - *Structuring transactions*
 - *Suspected elder abuse*
 - *Check fraud*
 - *Computer intrusion*
 - *Credit/debit card fraud*
 - *Wire transfer fraud*
 - *Mortgage loan fraud*
 - *Embezzlement*
 - *Terrorist financing*



Information Sharing – 314(a)

- The Patriot Act requires information be provided about specific accounts or transactions in response to requests from FinCEN
- Search for
 - *Current accounts*
 - *Accounts maintained in preceding 12 months*
 - *Transactions conducted outside of or on behalf of account in preceding 12 months*
 - *Must search within 14 days*
 - *Requests generally every 2 weeks*



Information Sharing – 314(a)

- Report to FinCEN if a match
- No negative reporting
- Maintain adequate procedures to protect security and confidentiality of request
- Maintain documentation of search



Information Sharing – 314(b)

- Encouraged to share with other financial institutions and associations of them
- Protected from civil liability
- Must notify FinCEN if going to participate
 - *Effective for one year*
 - *Designate point of contact*
 - *Be sure other FI also has notified FinCEN*
 - *Maintain security and confidentiality of information*



Purchase and Sale of Monetary Instruments

- Track and record info when currency portion of transaction or aggregation of transactions is between \$3,000 and \$10,000, inclusive
 - *Travelers checks, cashiers checks, money orders, bonds, etc.*
- Specific requirements
 - *Document name and account number, date, type of instrument, serial numbers, and dollar amount*



Purchase and Sale of Monetary Instruments

- Specific requirements if non-member involved
 - *Include address, social security or alien ID number, date of birth, and date of purchase*
 - *Policy should state if non-member transactions not allowed*
 - *Maintain a log – either per office or centralized*
 - *BSA Compliance officer should review logs regularly*



Funds Transfers

- Collect and retain certain info for wire transactions of \$3,000 or more
- Specific requirements
 - *Dual controls over wire transfers – both incoming and outgoing*
 - *OFAC verifications on all non-members, financial institutions, and foreign countries*
 - *Logs should be kept and reviewed*



Office of Foreign Assets Control

- Specific requirements
 - *New accounts should be scanned prior to establishing the account*
 - *All current members should be scanned regularly*
 - *Software generally used for scans*



OFAC

- Specific requirements
 - *If match, not permitted to engage in financial transactions in the U.S.*
 - *Sometimes false positive; can be resolved*
 - *Obligated to block or freeze funds if match and report to OFAC within 10 business days*
 - *Blocked accounts should be segregated into an interest-bearing account until delisted, rescinded, or released by OFAC*



OFAC

- Also report annually to OFAC by Sep 30 as of Jun 30
- Full and accurate records of each rejected transaction must be retained for 5 years
- Records of blocked property must be retained while blocked and 5 years after



OFAC Program

- An effective, written OFAC program should be maintained commensurate with risk profile
 - *Identify high risk areas*
 - *Provide for appropriate internal controls*
 - *Establish independent testing for compliance*
 - *Designate a responsible employee*
 - *Create training program for employees and board of directors*



OFAC Risk Assessment

- Completed annually, reviewed and approved by board of directors
- Address all areas in which OFAC compliance is needed and how it is implemented
- Appropriate policies, procedures and processes should be developed to address risk areas



BSA Penalties & Fines

- Money laundering can result in 20 years in prison and a fine up to \$500,000
- Property involved in transaction subject to forfeiture
- CUs can lose charter
- Employees' risk being removed and barred
- Person who willfully violates BSA subject to fine of up to \$250,000 and/or 5 years in prison
- Repeat offenders subject to additional penalties of 3X profit gained or loss avoided, or 2X maximum allowable penalty for violation, whichever is greater
- Person who commits violation while, violating another U.S. law or engaging in a pattern of criminal activity subject to fine up to \$500,000 and/or 10 years in prison
- CUs that violate certain BSA provisions face criminal money penalties up, to \$1M or 2X value of transaction



OFAC Penalties & Fines

- Criminal penalties of up to \$1M and/or 20 years in prison
- Civil penalties of up to \$55,000 for each violation





Thank you for being here!



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Dan is the President of Mahalak Consulting Co. He spent most of his career at Cindrich, Mahalak, & Co., a CPA firm that provided audit, compliance, accounting, and consulting services to credit unions and their subsidiaries. He joined the firm in 1980 upon graduation from Eastern Michigan University and became a partner in 1988. Mahalak Consulting Co. provides professional services in the following areas:

- Strategic Planning
- Regulatory Matters
- Mergers & Acquisitions
- Budgets/Financial Plans
- Restoration Plans
- Accounting Assistance/Advice
- Virtual CFO Services
- Policy/Procedure Assistance
- Executive Search
- Fraud/Embezzlement Investigations
- CUSO Consulting
- Education & Training
- Speaking Engagements

Throughout his career, Dan worked in all phases of the CPA practice. He was involved in all audit activities, staff training and development, and a wide range of consulting projects. He was responsible for thousands of credit union audits. His extensive experience allows him to provide clients with unique insights into any problems, issues, or challenges they are facing. Credit unions have been his focus throughout his career. He understands the business, the challenges it faces, and the successes and failures that have occurred.

Dan continues to work with credit unions in an advisory capacity. He has been a frequent speaker on topics related to the credit union industry on both a local and national level; and has written articles for several credit union publications.

