Introduction to the Bank Secrecy Act (BSA 101)

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Key Takeaways

• After this webinar, participants should be able to understand why the Bank Secrecy Act exists
• Identify the requirements of a Bank Secrecy Act Compliance Program
• Understand how each employee has a role to play in a successful BSA Compliance Program
• Understand Examiner Expectations for their financial institution
Agenda

• What is the Bank Secrecy Act?
• USA PATRIOT Act
• Office of Foreign Asset Control Compliance (OFAC)
• Penalties for non-compliance
• BSA Program Requirements
• Who is responsible for BSA compliance in your organization
• Training
• Identifying Suspicious Activity
• Manual Report Review vs Monitoring Systems
• BSA Examinations
What is the Bank Secrecy Act or BSA?

• The Bank Secrecy Act is a law that was implemented in 1970 as a means to detect and prevent the movement of illicit funds through the legitimate banking system.

• These funds were primarily the proceeds of illegal narcotic activity and tax evasion.

• Over the years there have been many changes and additions to the scope of law governing the Bank Secrecy Act.

• Since 2001, the Bank Secrecy Act has been heavily focused on identifying and preventing the proliferation of terrorist financing.

• The full text for the Bank Secrecy Act is codified under 31 CFR Chapter X.
Evolution of the Bank Secrecy Act

• 1970 Bank Secrecy Act Passed
• 1986 - Money Laundering Control Act
• 1990 – Financial Crimes Enforcement Network or FinCEN Created to oversee implementation of the Bank Secrecy Act
• 1992-Money Laundering Suppression Act created suspicious activity reporting requirement
• 1995 - Funds Transfer Regulation- Currency Transaction Report Revised
• 1998-National Anti-Money Laundering Strategy Established
• 2001 Money Laundering Abatement Act
• 2001-USA Patriot Act
• 2013-New FinCEN filing forms for reporting
What does the BSA really mean to you?

• The BSA has two major provisions, Reporting and Record Keeping

  • Reporting: Requires that certain information be reported to FinCEN
    • Currency Transaction Reporting (CTR)-FinCEN form 112
    • Suspicious Activity Reporting (SAR)-FinCEN form 111
    • Designation of Exempt Person (DOEP) FinCEN form 110
    • Transportation of Currency or Monetary Instruments out of the US (CMIR) FinCEN form 105
    • Foreign Bank and Financial Account Report (FBAR) FinCEN form 114
    • Registration of Money Service Business (RMSB) FinCEN form 107
    • Report of greater than $10,000. received in Trade or Business-FinCEN form 8300

  • Record Keeping: Requires all BSA related documentation be retained for five (5) years.
Reporting: What are you reporting?

• When it comes to reporting, you are trying to identify potential money laundering activity that is considered an offense under the Bank Secrecy Act. This activity can occur in many formats such as:
  • Deposits made directly to your credit union
  • Transfers between accounts within your credit union or to other financial institutions
  • Currency exchanges
  • Fraud
  • Bank Wires
  • Monetary Instrument Purchases
  • Electronic Funds Transfers
Money Laundering

Money Laundering has three phases or characteristics:

- **Placement**
  - Funneling illegal cash in a financial institution or in the general retail economy
- **Layering**
  - Separating the proceeds from the real source of cash through complex financial transactions
- **Integration**
  - Providing an apparently legitimate explanation for the illicit funds
The Cycle of Money Laundering
Reporting-Which forms are you most likely to use at your institution?

• Currency Transaction Report (CTR): Used to report cash transactions that amount to more than $10,000 in a single business day.
  • Deposits and Withdrawals are aggregated separately for reporting purposes.
  • You do not add deposits and withdrawals for Currency Transaction Reporting.

  • Example 1: Joe deposits $7000 in cash to the joint checking account in the morning, his wife deposits $3500 in cash into the joint checking account in the afternoon totaling $10,500 in deposits for the day. This is reportable on a CTR.

  • Example 2: Sally deposits $7000 in cash into her savings account and withdraws $5000 from her money market on the same day. This is **not** reportable on a CTR.
Reporting-Which forms are you most likely to use at your institution?

• Suspicious Activity Report (SAR): Used to report suspicious activity, transactions, or behavior that is observed at your institution.
  • A SAR is required to be filed for suspicious activity that involves a dollar amount in excess of $5000 where a suspect can be identified or in excess of $25,000 when a suspect is unknown.
  • A SAR must be filed when a suspect is a credit union insider regardless of whether there is a monetary value involved in the suspicious activity.
  • An insider is considered an employee, officer, volunteer or director.
Reporting-Which forms are you most likely to use at your institution?

• Designation of Exempt Persons (DOEP): Filed with FinCEN for entities that your financial institution elects to grant a waiver from Currency Transaction Reporting.
  • Must meet certain eligibility requirements for exemption to be granted
  • Eligibility must be reviewed no less than annually to retain exemption

Exemption from Currency Transaction Reporting does not exempt an entity from Suspicious Activity Reporting.
Reporting-Rules for BSA Reporting

• There are certain rules for BSA reporting that must be adhered to:

  • All BSA forms must be filed electronically through FinCEN’s BSA E-filing System and are subject to strict submission timelines:
    • Currency Transaction Reporting (CTR)-FinCEN form 112
      • Must file within 15 Calendar Days from date reportable transaction
    • Suspicious Activity Reporting (SAR)-FinCEN form 111
      • For activity between $5000-$24,999 and all insiders must be filed within 30 Calendar days of determining suspicious activity did occur.
      • Activity in excess of $25,000 with an unknown suspect must be filed within Calendar 60 days of determining suspicious activity did occur.
    • Designation of Exempt Person (DOEP) FinCEN form 110
      • Must be filed within 30 Calendar days after the first reportable currency transaction
FinCEN E-Filing
Record Keeping

• Record Keeping: Requires that all documentation related to the Bank Secrecy Act be retained for 5 years. Examples of documents to be retained include:
  • Account opening documents
    • Membership Applications, supporting documents
  • CTRs & SARs with supporting documents
  • Purchase of Monetary Instruments $3000 or greater, this includes Money Orders, Cashier’s Checks and Travelers Checks.
  • Monetary Instrument Log (MIL) to be completed each time a member purchases a Monetary Instrument with cash $3000 or greater either manually or electronically.
  • Transactions over $100.00
    • Checks, Deposit /Withdrawal Slips
  • Loan Records
    • Records of Loans in excess of $10,000
    • Purpose of Loans
Record Keeping

• There is a special Record Keeping provision known as the *BSA Travel Rule*.

• Requires that the credit union collect, forward and retain certain information surrounding covered transactions.

• Wire Transfers over $3000
  • Name & Address of BOTH the Remitter and the Beneficiary
  • Amount of Transaction ($3000 or greater)
  • Date of transmittal
USA PATRIOT Act-Customer Identification Program

• The USA PATRIOT Act outlined new requirements for identifying the persons and entities that open accounts.

• Under Section 326 the Act, your credit union is required to collect specific information to allow the credit union to reasonably identify the individual or entity. This is known as the *Know Your Customer rule or KYC*.

• The information that must be collected is as follows:
  • Name
  • Identification Number (SSN, TIN, EIN, or ITIN)
  • Date of Birth
  • Residential Address (APO, FPO and DPO’s are treated as residential addresses)
USA PATRIOT Act-Section 314 Law
Enforcement Information Sharing

• Section 314 helps law enforcement identify, disrupt, and prevent terrorist acts and money laundering activities by encouraging further cooperation among law enforcement, regulators, and financial institutions to share information regarding those suspected of being involved in terrorism or money laundering.

• 314(a) requires financial institutions to compare a confidential list of individuals and entities against certain records and report back to FinCEN all positive matches in the ongoing fight against money laundering and terrorism.
USA PATRIOT Act-Section 314(b) Financial Institution Information Sharing

• Section 314(b) allows financial institutions that have registered with FinCEN to share information with each other under the protection of the USA PATRIOT Act in order to obtain additional information regarding those suspected of being involved in terrorism financing or money laundering.
Office of Foreign Asset Control (OFAC) Compliance

• While OFAC Compliance is not a provision of the Bank Secrecy Act, it is an integral part of the BSA Compliance Program. Individuals and entities engaged in activities that are governed by the Bank Secrecy Act are tracked on the list maintained by the United States Treasury’s Office of Foreign Asset Control. The list contains the names of:
  • Specially Designated Nationals (SDNs)
  • Specially Designated Terrorists (SDTs)
  • Specially Designated Narcotics Traffickers (SDNTs)
  • Sanctioned Countries and Entities

Screening for these named parties should be integrated into your institution’s Compliance Program to avoid potential fines and penalties.
Penalties for Non-Compliance of the Bank Secrecy Act

- There are different types of non-compliance and each has a penalty that is either civil and/or criminal.

  - Negligence ($500): Failure to report large currency transactions or late filings of CTR’s
  - Willful Violation ($25,000-$100,000): Can be assessed against the credit union and any employee, officer, or director found to be involved in the violation
  - Pattern of Negligent Behavior ($50,000): If the credit union engages in a pattern of negligence of any of the provisions of the BSA it may be assessed an additional penalty not to exceed $50,000

- Criminal Penalties:
  - False Statements: May be fined up to $10,000 or imprisoned for up to 5 years
  - Any person who willfully violates any provision of the BSA can be fined up to $500,000 and imprisoned for up to 10 years.
Penalties for Non-Compliance

• Violation of International Money Laundering Laws: If the credit union is found to be in violation, it can be assessed a penalty of $1,000,000 per violation. (HSBC, Standard Chartered, Bank of America)

• Do you remember Riggs Bank?? They didn’t survive their BSA fines and were taken over by PNC Bank...
Penalties for Non-Compliance of OFAC Restrictions

• OFAC Penalties are assigned based on the program that was violated and can be as high as:
  • Civil money penalties
    • $250,000 for an individual
    • $1 Million for a corporation
  • Criminal Penalties
    • 10 – 20 years

• Keep in mind that OFAC penalties are levied per violation.
BSA Program Requirements

• The Federal Financial Institution Examination Council (FFIEC) publishes the BSA Guidelines that financial institutions must follow in the implementation of their Bank Secrecy Act Programs.

• Each of the Federal Regulatory Agencies, including NCUA develop their supervisory guidelines based on the provisions established by the FFIEC.

• There are seven (7) components of a BSA/AML Program as outlined by the FFIEC.
BSA Program Requirements

- Written Program approved by the Board of Directors
- Responsible Individual (BSA Officer)
  - Appropriate proficiency
  - Reports to Senior Management
  - Access to Board or Committee of the Board
- Written Risk Assessment
  - Customized for your credit union
  - Reviewed Annually
- Policy & Procedures
- Internal Controls
- Independent Testing
- Training
Who is responsible for BSA Compliance?

• The FFIEC states that the Board of Directors is ultimately responsible for the Bank Secrecy Act Compliance of the credit union.

• Does that mean that the Board members are filling out CTR’s or filing SAR’s? Of course not.

• The Board is responsible for ensuring that all of the program requirements are met. This includes but is not limited to:
  • Ensuring adequate Budgetary resources
  • Qualified Staff
  • Ensuring independent testing is completed annually
  • Reviewing Risk Assessments
  • Participating in annual Training
Who is responsible for BSA Compliance

• The Board needs the employees of the credit union, from the newest teller to the CEO and everyone in between to ensure compliance with the Bank Secrecy Act on a day to day basis.

• A successful BSA program isn’t possible without the participation of everyone in the credit union. The BSA Officer can’t be everywhere and see everything.

• This is why BSA training is so important to an organization and is listed as a Program requirement by the FFIEC.
Poll Question #1

• Does your credit union have full time staff for BSA compliance?

  • YES
  • NO
Training

• BSA training is a crucial component of all successful BSA programs.
  • Training should occur no less than annually or more frequently if feasible for your organization
  • The Board of Directors and Volunteers must receive training on an annual basis.
  • Staff training should be tailored to the functions of the parties receiving training and include a comprehension assessment.
    • For Example: BSA/AML for Operations
      BSA/AML for Lenders
      BSA/AML for Teller/Member Service
      BSA/AML for Managers/Directors
Identifying Suspicious Activity

• One of the most important requirements of BSA is the reporting of suspicious activity…but what is suspicious?
• Would you recognize activity that is suspicious?
• Did you know that there are certain crimes that are suspicious, but you would never suspect that they fall under the Bank Secrecy Act?
• Can you spot the illegal marijuana grower?
• Can you spot the human trafficker?
• What might be terrorist financing?
Identifying Suspicious Activity

- **Identity Theft**
  - SSN discrepancies
  - Address discrepancies
  - Credit Report discrepancies
  - Recent and significant increase in the number of inquiries on Credit Report/ChexSystems (Shopping for Financial Institutions)
  - Accounts on credit report/ChexSystems closed for abuse
  - Documents appear to have been altered or fake
  - Address, SSN or phone same as other members
  - Member cannot provide verification of information
Identifying Suspicious Activity

- Multiple Deposits or Withdrawals of cash just under reporting threshold of $10,000
- Cash in straps
- Cash that smells musty or of marijuana
- Cash with ragged edges
- Large Cash deposits after visits to a Safe Deposit Box.
- Unverifiable information on Membership or Loan Application
- Repeat Return Deposit Items (Maker’s Own)
  - Indicative of Check Kiting
Identifying Suspicious Activity

• Converting cash: small bills to large or large to small
• Persons who seem to know too much about BSA regulations
• Hurried, Nervous or Evasive persons
• Persons who offer you something (bribe) to bend the rules for them.
• Employee theft
  • Monetary
  • Physical Property
  • Information (also known as Intellectual Property)
• Falsification of documents
• Approving loans with knowledge of false information, fake or inflated collateral
Identifying Suspicious Activity

• Employee willfully fails to follow appropriate procedures or Management instructs employee not to follow procedures for transaction processing such as but not limited to:
  • Account Opening
  • Loan Approval
  • Transaction Processing
  • Large Currency Transaction Reporting
  • Record Keeping
Identifying Suspicious Activity

• Can you spot Elder Financial Exploitation?

  • Closing of Certificates or accounts without regard to penalties
  • A caregiver or other individual shows excessive interest in the elder’s finances or assets, does not allow the elder to speak for himself, or is reluctant to leave the elder’s side during conversations.
  • The elder shows an unusual degree of fear or submissiveness toward a caregiver, or expresses a fear of eviction or nursing home placement if money is not given to a caretaker,
  • A new caretaker, relative, or friend suddenly begins conducting financial transactions on behalf of the elder without proper documentation
Identifying Suspicious Activity

• How about Mortgage fraud?
  • Asset fraud
    • Temporary deposits to inflate a members bank account followed by requests for Verification of Deposits (VOD)
  • Employment and Income Fraud
  • Identity Theft
  • Appraisal Fraud
  • Occupancy Fraud
Poll Question #2

• Which one of these People would you consider suspicious?
  • A
  • B
  • C
  • D
  • E (all of the above)
Enforcement Actions

• North Dade Community Development Federal Credit Union in Miami Gardens, Florida for significant Bank Secrecy Act (BSA) violations.
  • Maintained accounts for MSB’s outside of the field of membership
  • Failure to report CTR’s and SAR’s
  • Conducted transactions totaling over $2Bn for foreign MSB’s

• The Credit Union failed to comply with Section 314(a) of the USA Patriot Act. 314(a) is the section of the USA PATRIOT Act that requires financial institutions to search their records for individuals or entities identified by law enforcement as suspects in ongoing investigations.

• Civil Money Penalty: $300,000
Enforcement Actions

• Caesars Palace, Casino

• BSA violations, systemic and severe of AML compliance deficiencies.
  • Allowed anonymous gambling for wealthy clients
  • Allowed gamers to use associate’s accounts to avoid identification
  • Failure to file CTR’s and SAR’s

• Fines: $9.5 Mil for willful and repeated violations of the Bank Secrecy Act.
  • $8 Mil for FinCEN
  • $1.5 Mil to the Nevada State Regulator
Enforcement Actions

• PayPal, Inc.
PayPal Settles Potential Civil Liability for apparent violations of multiple sanctions programs
Trade sanctions against Iran, Sudan, and Cuba
Fines: $7.7 million for 486 transaction violations
Enforcement Actions

• Bank of Mingo, West Virginia
  • Civil Money Penalty for Serious BSA Violations
    • For willfully violating the Bank Secrecy Act
    • Failure to file CTR’s and SAR’s on over $9Mil in structured transactions
    • Failure to monitor high risk customers/accounts
    • Failure to implement and maintain effective AML program
  • Penalty: $4.5 million
  • The Manager of that branch was convicted for knowingly making false statement to federal law enforcement agents during an investigation of that scheme to evade BSA reporting requirements.
Prohibition Orders

• Middle Tennessee Federal Credit Union in Cookeville, TN
  • Former CU Employee
    • Convicted of Credit Union Embezzlement.

• Sentence
  • Forbidden to participate in the affairs of a Federally regulated or insured institution
  • 27 months in prison
  • Restitution order of $370,044.23
Prohibition Orders

• Rancho Federal Credit Union in Downey, California
  • Former Employee
    • Convicted for multiple charges of Elder Theft and forgery.

• Sentence
  • Forbidden to participate in the affairs of a Federally regulated or insured institution
  • Place on probation for 3 years
  • 40 days in Los Angeles County Jail
  • $21,400 Restitution to victim
Poll Question #3

Does your credit union use BSA transaction monitoring software?

• YES
• NO
Manual Review vs BSA Monitoring Systems

Manual
• Numerous Reports to review across multiple delivery channels
• Must review reports everyday
• Manual account review
• Limited to only what the eye can see

Monitoring System
• Rules/algorithms review data across multiple delivery channels
  • Provides user with results
• Customizable
• Tracks output
• Tracks user activity
• Meets BSA recordkeeping rule
Manual Review vs BSA Monitoring Systems

• The most important thing to remember is that whichever system you use, be it manual or automated, it must fit your organization.
• You must be able to demonstrate the effectiveness of your method of detection and reporting.
• You must be able to demonstrate effective record keeping.
• You must have your method documented in your Policy & Procedures.
• If you are using an automated system, you must be able to demonstrate your proficiency and understanding of the use of the system.
Examiner Expectations

- The FFIEC BSA/AML Examination Manual provides a template for your BSA examination.

- There are two types of examination:
  - Core Examination
    - Smaller Institutions
    - Institutions with less complex BSA risks
  - Expanded Examination
    - Larger Institutions
    - Institutions with complex BSA risk
Examiner Expectations

• Regardless of whether you are subject to a Core examination or Expanded examination, your Examiner expects your BSA Program to include certain elements:
  • Comprehensive Risk Assessment tailored to your credit union
  • Documented Training for your Board and Staff
  • Evidence of compliance with the requirements of CIP
  • Evidence of compliance with OFAC rules
  • Up to date Policy & Procedures
    • Even if you don’t offer a high risk product such as Correspondent Accounts, you are expected to acknowledge the risk.
  • Evidence of 314(a) compliance
  • Method of cash transaction monitoring
  • Suspicious activity monitoring methodology
Useful Links

• FFIEC BSA/AML Examination Manual:  https://www.ffiec.gov/bsa_aml_infobase
• Financial Crime Enforcement Network (FinCEN): www.fincen.gov
• Office of Foreign Asset Control (OFAC): www.treasury.gov/ofac
• BSA E-Filing: http://bsaefiling.fincen.treas.gov
• www.ncua.gov
Questions?
If you have any questions regarding the presentation you have just seen you may contact me directly.

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