

# Bank Secrecy Act Expectations in a Cannabis Environment

Presented By

**Lindsey Becker, CRCM**

*Senior Manager Compliance & Internal Audit  
Financial Institutions Group*



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## Agenda

- BSA/AML overview
- BSA/AML policy
- Member Identification Program
- Member Due Diligence
- Monetary instruments
- Currency Transaction Reports (CTRs)
- CTR exemptions
- Suspicious Activity Reports (SARs)
- Information Sharing
- Funds transfers
- OFAC
- MSBs/POATMs/Cash Intensive
- PEPs
- NRAs
- MRBs, Hemp
- Regulatory updates
- Top 5 BSA Violations



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# BSA/AML Overview


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## BSA/AML Overview

- BSA was enacted in 1970
- The USA PATRIOT Act of 2001 is an anti-terrorism law enacted in the wake of 9/11
- OFAC enforces economic and trade sanctions
- Goal: Assess the adequacy of a credit union's BSA/AML compliance program
  - Determine whether an effective program for compliance with the BSA and all its implementing regulations has been developed and maintained

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## BSA/AML Overview

- NCUA Supervisory Priorities
  - BSA
  - Fair Lending
  - Servicemembers Civil Relief Act
  - Fair Credit Reporting Act
  - Overdraft Programs
- NCUA found violations of consumer compliance rules in 15% of credit unions. The compliance section of exam reports often only mentions BSA

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## Board Oversight

- The Board is ultimately responsible for ensuring the credit union maintains an effective BSA/AML internal control structure, including suspicious activity monitoring and reporting.

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## Board Responsibilities

- Culture of compliance
- Approve the BSA program
- Approve the Risk Assessment
- Appoint BSA Officer
- Ensure the BSA Officer has necessary resources
- Review Suspicious Activity SAR activity

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## Penalties for Noncompliance

- Cease and desist orders
- Various civil and criminal penalties, including:
  - Up to \$250,000 fine or five years in prison
  - Up to \$1 million
- Penalties against individuals

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## Pillars of BSA

- The program must provide for the following minimum requirements (7 BSA Pillars):
  1. System of internal controls to ensure ongoing compliance
  2. Independent testing of BSA/AML compliance
  3. Designate an individual(s) responsible for day-to-day BSA and OFAC compliance
  4. Training for appropriate personnel
  5. A Member Identification Program (MIP) with risk-based procedures to properly identify members.
  6. Risk-based procedures for conducting ongoing member due diligence.
  7. Procedures to address other BSA reporting and recordkeeping requirements.

## BSA/AML Compliance: Internal Controls

- Risk-based CDD/MDD processes
- CIP/MIP
- Currency Transaction Reports CTRs
- Suspicious Activity Reports SARs
- Section 314(a) and 314(b) information sharing
- Monetary instrument recordkeeping
- Funds transfer recordkeeping
- Keep Board informed

## BSA Staffing

- Increasingly an issue
- Staff of one?
- Multiple responsibilities?
- Work automated software only?
- Impact of burnout

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## Independent Testing

- Independent testing/audit should be conducted by the internal audit department, outside auditors, consultants, or other qualified independent parties
- Every 12 - 18 months
- Report goes to the Board or a designated committee
- Examiners closely scrutinize the report

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## BSA Officer

- The Board must designate a qualified individual to serve as the BSA compliance officer
  - Coordinating and monitoring
  - Fully knowledgeable
  - Line of communication to regularly apprise the Board and senior management of ongoing BSA compliance

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## Training

- All personnel and the Board must receive annual BSA training
- Should be tailored to staff responsibilities – different BSA roles.
- BSA staff, fraud, and branch staff – in depth understanding
  - Certifications, extra training on procedures and specific requirements, hands-on training
- Board must receive training so it can sufficiently provide BSA oversight

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## Member Identification Program

- A BSA/AML compliance program must include a Member Identification Program with risk-based procedures that enable the institution to form a reasonable belief that it knows the true identity of its member.
- Procedures must be based on the assessment of relevant risks including: the types of accounts maintained by the credit union, the methods of opening accounts, the types of identifying information available and the credit union's size, location, and member base.
- The MIP must contain account-opening procedures detailing the identifying information to obtain from each member.

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## Risk-Based Program

- Must have a BSA risk assessment; update annually or sooner if:
  - New products and services are put into place
  - Open/close an office
- Take into account membership, products, services, geographic location
- Make sure the following areas have been addressed:
 

• BSA/AML	• DOEP	• MSBs
• SAR	• Information sharing 314(a) & (b)	• MRBs, hemp, CBD oil
• OFAC	• CDD	• POATMs
• Purchase and sale of monetary instruments	• CTR	• NRAs
• Wire transfers	• Beneficial ownership certification	• PEPs
• CIP		

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## Procedures for BSA Reporting and Recordkeeping


- The BSA/AML compliance program must include procedures to address other BSA reporting and recordkeeping requirements set forth in regulations issued by the Treasury Department including, among others, beneficial ownership, foreign correspondent banking, and currency transaction reporting requirements.
- Federal agencies will evaluate member due diligence and other BSA reporting and recordkeeping requirements as a part of the internal controls component of the bank's BSA/AML compliance program.

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## BSA/AML Risk Areas

- A high number of CTRs and SARs
- Community charters increase the risk for money laundering
- Money Service Businesses (MSBs)
- Marijuana Related Businesses (MRBs)
- Branches located in an HIDTA or HIFCA
- Average number of incoming and outgoing domestic and international wire transfers in a month
  - Where the wires come from/go to matters.
- Staff turnover
  - Where has it occurred?
  - How much has occurred?

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# BSA/AML Policy Information


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## Pillars of BSA Compliance

- Just the starting point
  - Examiners focus on effective implementation of policies, practices, and procedures.
  - Credit unions must ensure risk assessments are effective and tailored to their products, services, members, and markets.

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## BSA/AML Policy

- Know your members
  - A credit union must know what funds flow through it
- Board has a fiduciary responsibility beyond supervising management; it must ensure there is an effective compliance program.
- Board is directly responsible for compliance failures
- Ensure proper record retention
  - Not less than 5 years

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## CIP/MIP

- Identify and verify
- Obtain before opening an account:
  - Name
  - Date of birth
  - Address
  - ID (only required to document the number and expiration date) \*COVID-19 limitation; there may be accounts opened that had an expired ID.

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## Member Due Diligence (MDD) Plan

- Predict transactions a member will most likely conduct
- Questions to member at account opening
- Assists with identifying potentially suspicious activity
- Assess risk and assign a risk rating
- Watch for any MSBs, MRBs, or POATMs
  - These types of accounts are considered to have the potential to be high risk

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## Beneficial Ownership

- Intent of the Beneficial Ownership Rule is to assist authorities in counteracting money laundering, tax evasion, and other financial crimes. FinCEN requires all financial institutions to begin collecting the required information for new accounts opened no later than May 11, 2018.
  - Must establish and maintain written procedures that are reasonably designed to **identify and verify beneficial owner(s) of legal entity member** and include such procedures in the AML compliance program
  - Define in policies, procedures, and processes how beneficial ownership information will be used to meet other regulatory requirements

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## Purchase and Sale of Monetary Instruments

- Must record information for monetary instruments between \$3,000 and \$10,000
- Keep for 5 years

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## CTRs

- Deposit, withdrawal, payment, transfer, or other transaction involving currency
- Greater than \$10,000
- Multiple transactions – aggregate
- Monitoring by software and/or BSA Officer
- Filed electronically within 15 days
- Credit union may exempt a member

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## CTR Exemptions

- Member may be exempted from CTR reporting if certain criteria are met
- No CTR will be filed for a transaction involving an exempt person acting within the scope of their exemption
- Must exercise due diligence in ascertaining whether any member requesting an exemption is eligible
- May elect not to grant exemptions. If so, BSA/AML policy should reflect this decision.

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## SARs

- File a SAR for identified crime or suspected crime
- If COVID-19 related, be sure to note this in Field #2s
- Must identify, research, and report suspicious activity
- Automated system detects possible suspicious activity

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## SAR Confidentiality

- Notify the Board or appointed Committee of SAR filings monthly
- SARs are confidential
- Required to be filed within 30 days of the determination date if the subject is known, 60 days if unknown
- Disclosure of a SAR is a felony
- Civil penalties of up to \$100,000 for each violation and criminal penalties of up to \$250,000 and/or imprisonment up to 5 years.
- If you become aware of an unauthorized disclosure of a SAR or your credit union receives a subpoena or other request for a SAR from other than an authorized government authority or self-regulatory organization, contact FinCEN's Office of Chief Counsel immediately at (703) 905-3570

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## SAR Specific Requirements

- Dual control over processing
- Documenting why a SAR was not filed if suspicious activity is noted
- Monitoring systems used to identify unusual activity
- Identifying who will report and monitor suspicious activity
- Specific procedures detailing how transaction activity will be monitored
- Procedures for closing an account if necessary
- Procedures for notifying the Board monthly and how much information will be given (make sure this is documented in the Board minutes)

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## Information Sharing 314(a) and 314(b)

- The PATRIOT Act and regulations allow credit unions to provide information about specific accounts or transactions in response to requests from FinCEN and to share information with other financial institutions
- Section 314(a): Information sharing between law enforcement and financial institutions **(Required)**
- Section 314(b): Voluntary information sharing **(Optional)**

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## Information Sharing: Specific Requirements

- Need to appoint a designated contact person to receive FinCEN requests
- Upon FinCEN's request, this person will search credit union records for a specified individual or entity
- Two employees on Call Report will receive FinCEN emails when search is required; usually every other Tuesday
- If an individual or entity is found, an "X" will be placed on FinCEN form indicating a match was found
- Must have tracking process in place to assure all searches are completed. Recommend using the activity log on FinCEN's website.

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## OFAC Compliance

- OFAC prohibits financial transactions or trade with certain countries, entities, and individuals.
- Applies to all financial institutions
- Scan against the OFAC list
  - Members and nonmembers receiving credit union funds
  - Countries and entities transmitting funds to the credit union

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## OFAC Specific Requirements

- All new members should be scanned prior to establishing the account
- All current member accounts should be scanned regularly (monthly at the very least, preferably nightly)
- OFAC lists
  - SDN
  - Non-SDN list (new combined list)
- Software generally used for scans

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## OFAC: Funds (Wire) Transfers

- Credit unions are required to comply with the recordkeeping requirements issued by the US Treasury and the Board of Governors of the Federal Reserve System
  - Requires collection and retention of certain information for transactions of \$3,000 or more

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## OFAC: Funds Transfers Specific Requirements

- Dual controls over incoming and outgoing wires
- OFAC verifications on all non-members, financial institutions, and foreign countries
- Logs should be maintained in order to comply with regulations to retrieve information by referencing the name of the originator
- Wire logs should be reviewed by the BSA Compliance Officer on a monthly basis to monitor for suspicious activity
- If credit union originates transfer, keep name, address, amount, date, financial institution ID, beneficiary's name, address, and account number

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## OFAC Risk Areas

- Large number of NRAs
- Branch located in a HIDTA or HIFCA
- Staff turnover
- OFAC Risk Assessment

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## Money Service Businesses (MSBs)

- Credit unions are seeing an increase in the number of MSBs seeking accounts
- If maintaining account relationships with or considering offering accounts to MSBs, the BSA compliance program must include effective policies, procedures, and processes to mitigate the associated risks:
  - Properly identify member accounts as MSBs
  - Assess potential risk posed by the member relationship
  - Conduct adequate and ongoing due diligence of the MSB relationship
  - Ensure MSB accounts are appropriately included in the suspicious activity monitoring and reporting systems

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## Privately Owned ATMs

- ATMs not owned by a regulated financial institution
- Often associated with cash-intensive businesses (i.e., convenience stores, bars, restaurants, grocery stores, check cashing establishments)
- Credit union should identify all POATMs and conduct periodic onsite visits, annual due diligence, and inquire on the source of funds used to replenish the ATM

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## Money Service Businesses

- Cash-intensive businesses are conducting legitimate business; however, some aspects of these businesses may be susceptible to money laundering or terrorist financing. Common examples include, but are not limited to, the following:
  - Convenience stores
  - Restaurants
  - Retail stores
  - Liquor stores
  - Cigarette distributors
  - Privately owned automated teller machines (ATM)
  - Vending machine operators
- Keep in mind the initial cash-generating amounts may not appear to be illicit. However, the volume of currency generated compared to similar businesses may uncover unusual activity.

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## Non-Resident Aliens (NRA)

- Any individual who is not a US citizen or US national
- NRAs must pay taxes on income they earn in the US
- No Social Security Number. NRAs use Form W-8BEN which certifies foreign status regarding tax withholding on income
- Be cognizant of expiration dates
- Review Social Security Numbers periodically for all zeros or 123-45-6789

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## Politically Exposed Persons

- A “politically exposed person” (PEP) is a foreign individual who is or has been entrusted with a prominent public function, as well as their immediate family members and close associates. These individuals may present a higher risk as their funds may be the proceeds of corrupt acts or other illicit activity.
  - Not all PEPs are high risk.
  - PEPs are not the same as “senior foreign political figures” (SFPF) as defined under the BSA private banking regulation.
  - The CDD level should be commensurate with the risks of the PEP relationship.

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## Marijuana Related Businesses (MRB)

- Credit unions across the country are starting to bank money from MRBs - Deposits and Loans
- Ok to bank as long as the requirements set out by FinCEN are followed, meaning all transactions are reported to the government
- Credit unions are exploring; however, they're worried about the large amounts of cash walking in the door. Often times armored car services are arranged to transport cash directly to the Federal Reserve Bank.

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## MRB Statistics

- 2022 – 784 financial institutions across the US filing for marijuana related businesses (MRB) clients.
- Numbers have risen as more financial institutions are open to banking MRBs.
- Some have dropped due to hemp being legalized
- FinCEN tracks FIs based on SARs filed
- Each state has a regulatory agency that regulates MRBs.
- Hemp is regulated by the USDA.

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## Marijuana Related Businesses (MRB)

- Many key risk factors to be considered
- Ability to complete the enhanced compliance required and key partner or vendor relationships can be difficult
- Often times credit unions have to hire additional staff for the increased scrutiny
- Even for credit unions that have decided not to bank marijuana money, they need to make sure no existing members are quietly funneling marijuana through their accounts
- Credit unions should have a policy indicating if it chooses to offer accounts for MRBs

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## SAFE Banking Act

- Prohibits regulators from penalizing a depository institution for providing banking services to a **legitimate** cannabis-related business.
- Prohibited penalties include terminating or limiting the deposit insurance or share insurance solely because the institution provides financial services to a **legitimate** cannabis-related business and prohibiting or otherwise discouraging a depository institution from offering financial services to such a business.
- Senate banking committee recently held first-ever hearing on allowing cannabis industry to access traditional banking.

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## Hemp

- Banking hemp requires updated policies and procedures specific to hemp – these need to consider the Farm Bill and Agriculture Improvement Act of 2018 along with state mandates
- Live hemp plants or viable hemp seeds
- Need hemp grower registration – plant, grow, cultivate, or harvest
- Hemp processor license required to process and handle
- Examiners will want to see the grower/customer and the Credit Union have done their due diligence. (onsite visits, test for the marijuana levels to ensure not crossing over to actual marijuana.)

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## Hemp Updates

- NCUA Hemp Guidance 2020
  - Builds on 2019 NCUA Regulatory Alert 19-RA-02
- USDA published final hemp rule on 1/19/21
- FinCEN's *Joint Statement on the Provision of Financial Services to Customers Engaged in Hemp-Related Businesses*
- NCUA examinations can cover hemp
- "NCUA encourages credit unions to thoughtfully consider whether they are able to safely and properly serve hemp-related businesses."
- CU BOD must be involved in decision to serve hemp businesses
- CUs can lend to hemp businesses
- NCUA maintains no list of CUs serving hemp businesses
- Not required to automatically file SAR

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## Hemp Risks

- Two examples of risk:
  - Hemp is not hemp, but rather marijuana
  - The hemp company has not followed proper licensing protocol.
- Result:
  - Not knowing your member (Compliance risk)
  - Failure to file SAR on MRB (Compliance risk)
  - Also, potential reputational and strategic risk

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## Ways to Reduce Risk for Hemp Business

- Obtain buy-in from all stakeholders (Board, management, business lines, etc.)
- Develop a service plan
- Share your plan with your regulator
- Know hemp and marijuana state laws
- Perform a risk assessment
- Monitor the industry via news and social media

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## BSA Regulatory Updates

- Highlights of the AML Act include the following:
  - Improves information sharing and coordination among regulatory and law enforcement agencies that administer AML/CFT requirements.
  - Reinforces a risk-based approach for compliance
  - Modernizes CFT/AML laws and clarifies FinCEN's authority to regulate virtual currency.
  - Encourages technological advancements by financial institutions to effectively combat terrorist financing and money laundering activity.
  - Will expand FinCEN responsibilities including a beneficial ownership database requirement.

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## BSA Regulatory Updates

**January 2021** – FinCEN and other federal banking agencies issued frequently asked questions and answers related to SARs. This was done to help credit unions comply with SAR reporting requirements and focus resources on producing the most value for law enforcement.

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## BSA Regulatory Updates

**June 2022** – Advisory on Elder Financial Exploitation. FinCEN urging financial institutions to detect, prevent and report suspicious financial transactions. This alert is due to the rising trend of EFE targeting older adults.

Many older adults and victims to EFE go unidentified and unreported. This additional guidance and awareness was issued to set reminders to financial institutions that they play a critical role in helping identify, prevent, and report EE.

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## BSA Regulatory Updates

### **February 2023** – Nationwide Surge on Mail Theft-Related Check Fraud

Alert on financial institutions on increase of check fraud schemes targeting US Mail.

Largest source of illicit proceeds in the US and a top AML national priority.

Criminals increasingly targeting US Mail since COVID to commit check fraud. Stealing SS payments and unemployment benefit checks to steal personal information.

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## BSA Regulatory Updates

### March 2023 – Initial Beneficial Ownership Information Reporting Guidance

New reporting requirements set for January 1, 2024 Small Businesses and beneficial ownership reporting requirements.

Corporations, LLCs, and other entities will be required to report information about their beneficial owners – the persons that own or control the company.

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## Top 5 BSA Violations in Credit Unions

- Top 5 BSA Violations cited by NCUA/State Examiners:

1. 314a – Records search not completed within 14 days of FinCEN request.
2. No or inadequate training for appropriate personnel.
3. No or inadequate system of internal controls.
4. No or inadequate independent testing.
5. SAR/CTR related violations

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## Insufficient Staff to Handle BSA Case Alerts

- CommunityBank of Texas \$9m penalty for failing to file hundreds of SARs for approximately \$100m of suspicious activity
- Three analysts reviewing 100 alerts a day
- CDD via internal staff instead of the customer
- Exemptions to case alerts
- Closed case alerts without analyzing conduct or providing adequate reason to close the alert

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## Understaffed BSA Department

- Outsourced 76% of BSA functions
- Backlog of 90,000 alerts
- Failed to file thousands of SARs

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## BSA Program Growth did not keep pace with Bank Growth

- USAA Bank \$140m Penalty
- Bank grew but the BSA/AML program did not keep up.
- Substantial growth 2016-2021, membership and product types expanded, but the BSA/AML program did not match the size and risks involved.

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## Elder Financial Exploitation

- FinCEN Advisory on EFE
- Illegal or improper use of an older adult's funds, property, or assets
- 72,000 EFE SARs in 2021
  - Compared to 62,000 in 2020
  - Dollar value of EFE SARs increased from \$2.6b in 2019 to \$3.4b in 2020. Largest increase since 2013
- Advisory highlights new EFE typologies and red flags since the first advisory in 2011
- CUs should perform EDD when appropriate and identify when members are EFE perpetrators, facilitators, or victims of EFE

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## Acronyms

<b>AML</b>	Anti-money laundering	<b>HIFCA</b>	High Intensity Financial Crimes Area
<b>BSA</b>	Bank Secrecy Act	<b>MSB</b>	Money services business
<b>CDD</b>	Customer (Member) due diligence	<b>MRB</b>	Marijuana-related business
<b>CIP</b>	Customer (Member) identification program	<b>NRA</b>	Non-resident alien
<b>CTR</b>	Currency Transaction Report	<b>OFAC</b>	Office of Foreign Assets Control
<b>DOEP</b>	Designation of Exempt Person	<b>PEP</b>	Politically exposed person
<b>FFIEC</b>	Federal Financial Institutions Examination Council	<b>POATM</b>	Privately-owned ATM
<b>FinCEN</b>	Financial Crimes Enforcement Network	<b>SAR</b>	Suspicious Activity Report
<b>HIDTA</b>	High Intensity Drug Trafficking Area	<b>SDN</b>	Specially designated national

## Resource Materials

- FFIEC publishes the BSA/AML Examination Manual, violations, and FAQs
  - BSA/AML InfoBase section at [www.ffiec.gov](http://www.ffiec.gov)
- FinCEN routinely publishes BSA updates and rulings
  - [www.fincen.gov/financialinstitutions](http://www.fincen.gov/financialinstitutions)
- OFAC section of the Department of Treasury website can be researched for additional guidance and FAQs
  - [www.treasury.gov](http://www.treasury.gov).



**Lindsey Becker, CRCM**  
Senior Manager, Internal Audit and Compliance  
Cell: (810) 210-4446  
becker@doeren.com

**Credit Union Service Offerings**

- External financial audit
- Regulatory compliance audit
- BSA/Marijuana banking
- ACH
- IT assurance
  - Controls reviews
  - Vulnerability assessments
  - Penetration testing
- Mergers & consolidations
- ALL validation/TDR accounting
- Internal audit outsourcing/ co-sourcing
- Real estate/Commercial loan reviews
- Enterprise risk management systems
- Tax

Thank You!



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