

Bank Secrecy Act Fundamentals With A Marijuana Twist

Presented By

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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
- 2020-21 regulatory updates
- COVID 19 updates
- Top 5 BSA Violations



BSA/AML Overview

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

BSA/AML Overview

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

Board Responsibilities

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

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

Pillars of BSA

- The program was updated in August 2020 and 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 processes
- CIP
- CTRs
- SARs
- Section 314(a) and 314(b) information sharing
- Monetary instrument recordkeeping
- Funds transfer recordkeeping
- Keep Board informed

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

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

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

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.

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

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.

BSA/AML Risk Areas

- A high number of CTRs and SARs
- Community charters increase the risk for money laundering
- MSBs
- 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?



BSA/AML Policy Information

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.

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

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.

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

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

Purchase and Sale of Monetary Instruments

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

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

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.

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

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

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)

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)

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.

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

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

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

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

OFAC Risk Areas

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

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

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

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.

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

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.

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.

MRB Statistics

- 2019 – 559 banks and 180 CUs
- 2020 – 515 banks and 169 CUs
- Drop coincides with 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.

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 union should have a policy indicating if it chooses to offer accounts for MRBs

SAFE Banking Act of 2021

- **Passed House in April 19, 2021**
- 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.

Hemp

- Banking hemp requires updated policies and procedures specific to hemp – these need to consider the 2018 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.)

Hemp Updates

- NCUA Hemp Guidance 2020
 - 17 Question and Answers
 - 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

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

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

COVID-19

- FinCEN published notices on March 16, April 3, and May 18, 2020 related to COVID-19 activity. Refer to www.fincen.gov/coronavirus for the latest information.
- Financial institutions were to continue following a risk-based approach
- Credit unions should maintain adequate staff and resources to ensure BSA compliance
- SARs: Encouraged financial institutions to enter “COVID19” in SAR field #2 if related to COVID-19

BSA Regulatory Updates 2020-2021

November 2020 – NCUA signed a joint fact sheet on due diligence requirements for non-profit organizations (NPOs) and charities. It provides directive to credit unions on how to apply a risk-based approach to NPOs and charities on member due diligence requirements.

The following information is not required by the CDD rule; however, it may be useful to determine the risk profile:

- Purpose and nature of the NPO, which includes objectives, mission, activities, etc.
- The geographic locations the organization serves.
- The organization's structure, including management, internal controls and any key stakeholders.
- State incorporation, registration requirements, IRS tax-exempt status, and required reports by any regulatory agencies.
- Audits, self-assessments and financial statements.
- General information on the donor base as well as the funding sources.
- General information on beneficiaries.
- If there are affiliations with other groups, government bodies or other NPOs.

BSA regulatory updates 2020-2021

December 2020 – The NCUA Board approved a proposed rule that allows exemptions from SAR filing requirements. This would allow NCUA to grant relief to credit unions that develop innovative BSA solutions. If the exemption involves FinCEN regulations, NCUA will seek FinCEN agreement.

The AML Act of 2020 was passed as part of the National Defense Authorization Act. It is the largest reform to BSA/AML regulations since the 2001 with the Patriot Act. NCUA, FinCEN and other federal banking agencies are implementing the AML Act criteria.

BSA Regulatory Updates 2020-2021

- 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.

BSA Regulatory Updates 2020-2021

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.

BSA Regulatory Updates 2020-2021

April 2021 – The OCC, FRB and FDIC with NCUA and FinCEN, issued a statement to clarify the Model Risk Management guidance (MRMG) for BSA/AML requirements. The NCUA also signed a Request for Information (RFI) to seek feedback from credit unions on the Supervisory Guidance on Model Risk Management (MRMG).

COVID-19

- Special COVID-19 form available to communicate with FinCEN
- Update your BSA risk assessment considering COVID-19
 - Monitor spikes in large cash withdrawals
 - Growing use of digital services by those not using it previously
- FinCEN announcement provides higher risk
 - Fraudsters exploiting fears of the pandemic selling sham cures, impersonating government officials, creating fraudulent charities
- Establish priorities – sanctions, fraud, then AML

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

Acronyms

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

Resource Materials

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



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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!