Regulatory Policy & Programs Division

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Issues Covered

- Financial Crimes Enforcement Network
- Introduction to the BSA
- Overview of the Regulations
- Risk-Based Programs
- Outreach Activity
- Questions
The mission of the Financial Crimes Enforcement Network is to safeguard the financial system from the abuses of financial crime, including terrorist financing, money laundering, and other illicit activity.
Financial Crimes Enforcement Network

- We achieve this mission by:
  - Administering the Bank Secrecy Act;
  - Supporting law enforcement, intelligence, and regulatory agencies through sharing and analysis of financial intelligence;
  - Building global cooperation with our counterpart financial intelligence units;
  - Networking people, ideas, and information.
What is the Bank Secrecy Act?

- The BSA is the US's primary prevention and detection mechanism for money laundering and terrorist financing
What does the Bank Secrecy Act do?

- Requires financial institutions, as defined by the regulations, to establish written anti-money laundering programs, maintain certain records and file certain reports that have a high degree of usefulness in criminal, tax, and regulatory proceedings.
Bank Secrecy Act – Historical Time Line

1970 – Congress enacts the Bank Secrecy Act
1986 – Money Laundering Control Act criminalizes money laundering and prohibits structuring
1990 – FinCEN created
1994 – FinCEN given the responsibility to administer the BSA
1996 – Depository institutions begin filing SARs
2001 – Congress enacts the USA PATRIOT Act
Bank Secrecy Act Regulations

- Banks, Thrifts, Credit Unions
- Casinos/Card Clubs
- Money Services Businesses
- Operators of Credit Card Systems
- Dealers in Precious Metals, Stones, Jewels
- Securities Broker/Dealers
- Futures Commission Merchants/Introducing Brokers
- Mutual Funds
- Insurance Companies
Other Financial Industries That May Become Subject to BSA Rules

- Unregistered Investment Companies (UICs)
- Commodity Trading Advisors (CTAs)
- Registered Investment Advisers (RIAs)
- Businesses Engaged in Vehicle Sales
- Travel Agencies
- Persons Involved in Real Estate Closings and Settlements
- Loan or Finance Companies
Regulatory Partners

- Federal Deposit Insurance Corporation (FDIC)
- Federal Reserve Board (FRB)
- Office of the Comptroller of the Currency (OCC)
- Office of Thrift Supervision (OTS)
- National Credit Union Administration (NCUA)
- Securities and Exchange Commission (SEC)
- Commodity Futures Trading Commission (CFTC)
- Internal Revenue Service – SBSE (Small Business/Self Employed)
Coordination with and Support to our International Counterparts

- International cooperation is critical
- FinCEN is the financial intelligence unit of the US and a member of the Egmont Group.
- Periodic meetings with the Financial Action Task Force Representatives.
- Participation in international conferences
- Presentations and briefings for visiting foreign delegations
Insurance Company Requirements

- The rules for insurance companies are different than most others issued to this point
- Little change from the proposed rules
- Real-life money laundering that has occurred in the past and is highlighted in the AML rule
- Date published: November 3, 2005
- Effective date: December 5, 2005
- Applicability date: May 2, 2006
Insurance Company Requirements

- Covered products
- Role of agents & brokers
- Anti-Money Laundering Programs
- Suspicious Activity Reporting
- Overview of Reporting & Record keeping Requirements
- Information Sharing
Who is regulated?

Insurance companies doing business within the US that issue or underwrite any “covered product”
Covered Products

- Permanent life insurance with cash value
- Annuities – fixed and variable
- Other products with cash value or investment features
Products Not Covered

- Group policies
- Annuity of a tax exempt entity
- Term life policies
- Property, casualty, health, title policies
- Reinsurance and retrocession contracts
Role of Agents and Brokers

An insurance company’s AML program must take into account its agents and brokers.

- Captive
- Independent
- Broker
AML Program Design

Program must be reasonably designed to prevent the company from being used to facilitate money laundering or financing terrorist activities.

Based on your institution’s assessment of its risks.
Risk-Based Approach

Each institution must determine where its risk lies. They may use certain information such as...

- Location
- Size
- Customer Base
- Types of Activity
- Volume of Business
Elements of an AML Program

- Development of internal policies, procedures and controls
- Designation of a compliance officer
- On-going employee training
- Independent audit function to test AML program
AML Programs

- Must be in writing
- Must be approved by senior management
- Must be made available to FinCEN or any other authorized regulatory agency upon request
Policies should be based on the company’s assessment of the money laundering and terrorist financing risks associated with its covered products.
Designation of a Compliance Officer

- One person or committee
- Expertise in BSA requirements and money laundering risks
- Full responsibility and authority to develop and enforce internal policies and procedures
Compliance Officer Responsibility

- Program is implemented effectively
- Agents and brokers are complying
- Program is kept current
- Appropriate people are periodically trained and updated
On-going Employee Training

- Appropriate employees and agents must know the requirements of the company’s AML program
- Identify red flags associated with their products
- Periodic training and updating
Training of Agents and Brokers

Insurance companies must train agents and brokers directly or verify that they are trained by another insurance company or other competent third party.
Independent Audit Function

- Test AML program on periodic basis to ensure the program is functioning as design
- Audit should be performed by outside consultant, auditor, or company employee not otherwise involved in administering the program
Reporting Requirements

- Form 8300 – Report of cash payments over $10,000 received in trade or business
- Suspicious Activity Report – Insurance companies temporarily use SAR-Securities Futures
- Proposed Form SAR-IC
The company is required to file a SAR if:

- The suspicious activity is conducted or attempted by, at or through an insurance company
- The transaction (or an aggregate of transactions) involves $5,000
Suspicious Activity Reports

SARs are required if the company knows, suspects or has reason to suspect that the transaction or pattern of transactions:

- Involves funds derived from illegal activity intended to violate or evade federal law or regulation or avoid any transaction reporting requirements;
- Is designed to avoid the requirements of the BSA;
- Has no business or apparent lawful purpose and the company knows of no other reasonable explanation;
- Involves the company to facilitate criminal activity.
Suspicious Activity Reports

- File a SAR within 30 days of initial detection or, if no suspect can be identified, take up to an additional 30 days to ascertain the identity of the suspect

- SARs must be filed within 60 days

- Maintain records, including supporting documents, for 5 years
Filing a Joint Suspicious Activity Report

- To avoid duplication of SARs, financial institutions may file a joint SAR when involved in a common or related transaction and each institution has information about the transaction.

- Financial institutions may share information with each other so long as sharing the information does not notify the subject of the SAR.
Quality of SAR Data

- Consider the following when completing a SAR
  - Provide a detailed description of the suspicious activity (narrative should not state “see attached”)
  - Identify “who,” “what,” “when,” “where,” “why,” and “how”
  - Chronology should be complete
  - Note any actions (taken or planned) by the insurance company, including any internal investigative numbers used by the bank to maintain the SAR records
  - Include contact information for any person at the insurance company with additional information about the suspicious activity
Quality of SAR Data

- It is essential that the Suspicious Activity Report is filed with accurate and complete information.

- If the financial institution needs to add data or correct data on a SAR previously filed, submit a new SAR, noting the date of the previous SAR, with the “amended report” box checked.
Voluntarily Reporting Suspicious Activity

- Financial institutions may voluntarily file Suspicious Activity Reports for activities that are not required to be reported.

- Voluntary SARs receive the same safe harbor protection and privacy safeguards as those required by the rule.
Section 314(b) of the USA PATRIOT Act

- Allows voluntary sharing of data between financial institutions limited to money laundering and terrorism
  - File notice with FinCEN
  - Provides safe harbor from liability for disclosure
Benefits of E-Filing

- Streamlined BSA information submission process
  - Faster submissions – 2 days vs. up to 10 days
  - Cost effective – both parties
- Faster routing of acknowledgement back to the financial institution
- Free enrollment
- Reduction in filing errors – automated form validation
- Highest security – more secure than mailing forms or tapes
First Steps To Enroll

- Click “BSA E-Filing” link from FinCEN’s webpage:
  - www.fincen.gov
- Review “Getting Started”
- Assign a Supervisory User (SU) to represent your institution
- Obtain a digital certificate
- Register on the system
BSA E-Filing Forms Available

- 7 of 12 forms can be e-filed today
  - CTR (Currency Transaction Report)
  - CTRC (Currency Transaction Reports by Casinos)
  - SAR-DI (SAR for Depository Institutions)
  - SAR-C (SAR for Casinos & Card Clubs)
  - SAR-MSB (SAR for MSBs)
  - SAR-SF (SAR for Securities and Futures Industries)
  - DEP (Designation of Exempt Person)
FinCEN Authority Under the BSA

- Investigate Alleged Violations
- Issue Letters
  - Caution
  - Warning
- Seek
  - Injunction
- Impose Civil Money Penalties
- Refer apparent criminal violations to Justice Department
Delegated Examination Authority

- Currently in discussions with the federal banking agencies, the IRS and the SEC
- SEC has examination jurisdiction over companies that offer annuities
- Who will examine insurance company subsidiaries of a bank?
- IRS is the “default” examination authority when an industry does not have a federal regulatory regime
Potential Factors for Referral

- Lack of an adequate AML program
- Failure to implement AML program
- Systemic breakdown of internal controls/ lack of adherence to policy and procedures
- AML program continues to be deficient or violations continue to occur after the institution becomes aware of problems
Potential Factors for Referral

- Failure to keep records
- Participation in suspicious activities by insiders
- Aiding customers in structuring transactions to evade reporting/recordkeeping requirements
Two Key Terms to Remember

- Reasonable
- Risk-Based
  - No checklist is provided
  - Companies must take into account their specific risk factors and develop an AML program accordingly
Outreach Activities

- Working with States, trade associations and larger individual insurance companies
- Developing an education program and informational brochure
- Maintaining a list of common questions to update our frequently asked questions and answers
- We intend to make our staff available for as many outreach events as resources allow
Information and Guidance

- FinCEN’s Website
  - www.fincen.gov
- FinCEN’s Regulatory Helpline
  - 1-800-949-2732
- FinCEN’s Hotline
  - 1-866-556-3974
Questions???
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