
INTRODUCTION

This Federal Financial Institutions Examination Council (FFIEC) *Bank Secrecy Act (BSA)/Anti-Money Laundering (AML) Examination Manual* provides guidance to examiners for carrying out BSA/AML and Office of Foreign Assets Control (OFAC) examinations. An effective BSA/AML compliance program requires sound risk management; therefore, the manual also provides guidance on identifying and controlling risks associated with money laundering and terrorist financing. The manual contains an overview of BSA/AML compliance program requirements, BSA/AML risks and risk management expectations, industry sound practices, and examination procedures. The development of this manual was a collaborative effort of the federal and state banking agencies¹ and the Financial Crimes Enforcement Network (FinCEN), a bureau of the U.S. Department of the Treasury, to ensure consistency in the application of the BSA/AML requirements. In addition, OFAC assisted in the development of the sections of the manual that relate to OFAC reviews. For more guidance, refer to Appendix A (“BSA Laws and Regulations”), Appendix B (“BSA/AML Directives”), and Appendix C (“BSA/AML References”).

Structure of Manual

In order to effectively apply resources and ensure compliance with BSA requirements, the manual is structured to allow examiners to tailor the BSA/AML examination scope and procedures to the specific risk profile of the banking organization. The manual consists of the following sections:

- Introduction.
- Core Examination Overview and Procedures for Assessing the BSA/AML Compliance Program.
- Core Examination Overview and Procedures for Regulatory Requirements and Related Topics.
- Expanded Examination Overview and Procedures for Consolidated and Other Types of BSA/AML Compliance Program Structures.
- Expanded Examination Overview and Procedures for Products and Services.
- Expanded Examination Overview and Procedures for Persons and Entities.
- Appendixes.

The core and expanded overview sections provide narrative guidance and background information on each topic; each overview is followed by examination procedures. The “Core

¹ The FFIEC was established in March 1979 to prescribe uniform principles, standards, and report forms and to promote uniformity in the supervision of financial institutions. The Council has six voting members: the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Consumer Financial Protection Bureau, and the State Liaison Committee. The Council’s activities are supported by interagency task forces and by an advisory State Liaison Committee, composed of five representatives of state agencies that supervise financial institutions.

Examination Overview and Procedures for Assessing the BSA/AML Compliance Program” and the “Core Examination Overview and Procedures for Regulatory Requirements and Related Topics” (core) sections serve as a platform for the BSA/AML examination and, for the most part, address legal and regulatory requirements of the BSA/AML compliance program. The “Scoping and Planning” and the “BSA/AML Risk Assessment” sections help the examiner develop an appropriate examination plan based on the risk profile of the bank. There may be instances where a topic is covered in both the core and expanded sections (e.g., funds transfers and foreign correspondent banking). In such instances, the core overview and examination procedures address the BSA requirements while the expanded overview and examination procedures address the AML risks of the specific activity.

At a minimum, examiners should use the following examination procedures included within the “Core Examination Overview and Procedures for Assessing the BSA/AML Compliance Program” section of this manual to ensure that the bank has an adequate BSA/AML compliance program commensurate with its risk profile:

- Scoping and Planning (refer to page 11).
- BSA/AML Risk Assessment (refer to page 18).
- BSA/AML Compliance Program (refer to page 28).
- Developing Conclusions and Finalizing the Examination (refer to page 40).

While OFAC regulations are not part of the BSA, the core sections include overview and examination procedures for examining a bank’s policies, procedures, and processes for ensuring compliance with OFAC sanctions. As part of the scoping and planning procedures, examiners must review the bank’s OFAC risk assessment and independent testing to determine the extent to which a review of the bank’s OFAC compliance program should be conducted during the examination. Refer to core examination procedures, “Office of Foreign Assets Control,” page 152, for further guidance.

The expanded sections address specific lines of business, products, customers, or entities that may present unique challenges and exposures for which banks should institute appropriate policies, procedures, and processes. Absent appropriate controls, these lines of business, products, customers, or entities could elevate BSA/AML risks. In addition, the expanded section provides guidance on BSA/AML compliance program structures and management.

Not all of the core and expanded examination procedures are likely to be applicable to every banking organization. The specific examination procedures that need to be performed depend on the BSA/AML risk profile of the banking organization, the quality and quantity of independent testing, the financial institution’s history of BSA/AML compliance, and other relevant factors.

Background

In 1970, Congress passed the Currency and Foreign Transactions Reporting Act commonly known as the Bank Secrecy Act,² which established requirements for record keeping and reporting by private individuals, banks,³ and other financial institutions. The BSA was designed to help identify the source, volume, and movement of currency and other monetary instruments transported or transmitted into or out of the United States or deposited in financial institutions. The statute sought to achieve that objective by requiring individuals, banks, and other financial institutions to file currency reports with the U.S. Department of the Treasury (U.S. Treasury), properly identify persons conducting transactions, and maintain a paper trail by keeping appropriate records of financial transactions. These records enable law enforcement and regulatory agencies to pursue investigations of criminal, tax, and regulatory violations, if warranted, and provide evidence useful in prosecuting money laundering and other financial crimes.

The Money Laundering Control Act of 1986 augmented the BSA's effectiveness by adding the interrelated sections 8(s) and 21 to the Federal Deposit Insurance Act (FDIA) and section 206(q) of the Federal Credit Union Act (FCUA), which sections apply equally to banks of all charters.⁴ The Money Laundering Control Act of 1986 precludes circumvention of the BSA requirements by imposing criminal liability on a person or financial institution that knowingly assists in the laundering of money, or that structures transactions to avoid reporting them. The 1986 statute directed banks to establish and maintain procedures reasonably designed to ensure and monitor compliance with the reporting and recordkeeping requirements of the BSA. As a result, on January 27, 1987, all federal banking agencies issued essentially similar regulations requiring banks to develop programs for BSA compliance.

The 1992 Annunzio–Wylie Anti-Money Laundering Act strengthened the sanctions for BSA violations and the role of the U.S. Treasury. Two years later, Congress passed the Money Laundering Suppression Act of 1994 (MLSA), which further addressed the U.S. Treasury's role in combating money laundering.

In April 1996, a Suspicious Activity Report (SAR) was developed to be used by all banking organizations in the United States. A banking organization is required to file a SAR whenever it detects a known or suspected criminal violation of federal law or a suspicious transaction related to money laundering activity or a violation of the BSA.

In response to the September 11, 2001, terrorist attacks, Congress passed the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act). Title III of the USA PATRIOT Act is the

² 31 USC 5311 *et seq.*, 12 USC 1829b, and 1951 – 1959. Also refer to 12 USC 1818(s) (federally insured depository institutions) and 12 USC 1786(q) (federally insured credit unions).

³ Under the BSA, as implemented by 31 CFR 1010.100 (formerly 31 CFR 103.11), the term “bank” includes each agent, agency, branch, or office within the United States of commercial banks, savings and loan associations, thrift institutions, credit unions, and foreign banks. The term “bank” is used throughout the manual generically to refer to the financial institution being examined.

⁴ 12 USC 1818(s), 12 USC 1829(b), and 12 USC 1786(q), respectively.

International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001. The USA PATRIOT Act is arguably the single most significant AML law that Congress has enacted since the BSA itself. Among other things, the USA PATRIOT Act criminalized the financing of terrorism and augmented the existing BSA framework by strengthening customer identification procedures; prohibiting financial institutions from engaging in business with foreign shell banks; requiring financial institutions to have due diligence procedures and, in some cases, enhanced due diligence (EDD) procedures for foreign correspondent and private banking accounts; and improving information sharing between financial institutions and the U.S. government. The USA PATRIOT Act and its implementing regulations also:

- Expanded the AML program requirements to all financial institutions.⁵ Refer to Appendix D (“Statutory Definition of Financial Institution”) for further clarification.
- Increased the civil and criminal penalties for money laundering.
- Provided the Secretary of the Treasury with the authority to impose “special measures” on jurisdictions, institutions, or transactions that are of “primary money-laundering concern.”
- Facilitated records access and required banks to respond to regulatory requests for information within 120 hours.
- Required federal banking agencies to consider a bank’s AML record when reviewing bank mergers, acquisitions, and other applications for business combinations.

Role of Government Agencies in the BSA

Certain government agencies play a critical role in implementing BSA regulations, developing examination guidance, ensuring compliance with the BSA, and enforcing the BSA. These agencies include the U.S. Treasury, FinCEN, and the federal banking agencies (Board of Governors of the Federal Reserve System (Federal Reserve), Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration (NCUA), and Office of the Comptroller of the Currency (OCC). Internationally there are various multilateral government bodies that support the fight against money laundering and terrorist financing. Refer to Appendix E (“International Organizations”) for additional information.

U.S. Treasury

The BSA authorizes the Secretary of the Treasury to require financial institutions to establish AML programs, file certain reports, and keep certain records of transactions. Certain BSA provisions have been extended to cover not only traditional depository institutions, such as banks, savings associations, and credit unions, but also nonbank financial institutions, such as

⁵ The USA PATRIOT Act expanded the AML program requirement to all financial institutions as that term is defined in 31 USC 5312(a)(2). However, as of the publication of this manual, only certain types of financial institutions are subject to final rules implementing the AML program requirements of 31 USC 5318(h)(1) as established by the USA PATRIOT Act. Those financial institutions that are not currently subject to a final AML program rule are temporarily exempted from the USA PATRIOT Act requirements to establish an AML program, as set forth in 31 CFR 1010.205 (formerly 31 CFR 103.170).

money services businesses, casinos, brokers/dealers in securities, futures commission merchants, mutual funds, insurance companies, and operators of credit card systems.

FinCEN

FinCEN, a bureau of the U.S. Treasury, is the delegated administrator of the BSA. In this capacity, FinCEN issues regulations and interpretive guidance, provides outreach to regulated industries, supports the examination functions performed by federal banking agencies, and pursues civil enforcement actions when warranted. FinCEN relies on the federal banking agencies to examine banks within their respective jurisdictions for compliance with the BSA. FinCEN's other significant responsibilities include providing investigative case support to law enforcement, identifying and communicating financial crime trends and patterns, and fostering international cooperation with its counterparts worldwide.

Federal Banking Agencies

The federal banking agencies are responsible for the oversight of the various banking entities operating in the United States, including foreign branch offices of U.S. banks. The federal banking agencies are charged with chartering (NCUA and OCC), insuring (FDIC and NCUA), regulating, and supervising banks.⁶ 12 USC 1818(s)(2) and 1786(q) require that the appropriate federal banking agency include a review of the BSA compliance program at each examination of an insured depository institution. The federal banking agencies may use their authority, as granted under section 8 of the FDIA or section 206 of the FCUA, to enforce compliance with appropriate banking rules and regulations, including compliance with the BSA.

The federal banking agencies require each bank under their supervision to establish and maintain a BSA compliance program.⁷ In accordance with the USA PATRIOT Act, FinCEN's regulations require certain financial institutions to establish an AML compliance program that guards against money laundering and terrorist financing and ensures compliance with the BSA and its implementing regulations. When the USA PATRIOT Act was passed, banks under the supervision of a federal banking agency were already required by law to establish and maintain a BSA compliance program that, among other things, requires the bank to identify and report suspicious activity promptly. For this reason, 31 CFR 1020.210 states that a bank regulated by a federal banking agency is deemed to have satisfied the AML program requirements of the USA PATRIOT Act if the bank develops and maintains a BSA compliance program that complies with the regulation of its federal functional regulator⁸ governing such programs. This manual refers to the BSA compliance program requirements for each federal banking agency as the "BSA/AML compliance program."

⁶ The Federal Reserve and FDIC may collaborate with state banking agencies on the examination, oversight, and enforcement of BSA/AML for state-chartered banks.

⁷ Refer to 12 CFR 208.63, 12 CFR 211.5(m) and 12 CFR 211.24(j) (Federal Reserve); 12 CFR 326.8 (FDIC); 12 CFR 748.2 (NCUA); 12 CFR 21.21(OCC).

⁸ Federal functional regulator means: Federal Reserve, FDIC, NCUA, OCC, Securities and Exchange Commission or U.S. Commodity Futures Trading Commission.

Banks should take reasonable and prudent steps to combat money laundering and terrorist financing and to minimize their vulnerability to the risk associated with such activities. Some banking organizations have damaged their reputations and have been required to pay civil money penalties for failing to implement adequate controls within their organization resulting in noncompliance with the BSA. In addition, due to the AML assessment required as part of the application process, BSA/AML concerns can have an impact on the bank's strategic plan. For this reason, the federal banking agencies' and FinCEN's commitment to provide guidance that assists banks in complying with the BSA remains a high supervisory priority.

The federal banking agencies work to ensure that the organizations they supervise understand the importance of having an effective BSA/AML compliance program in place. Management must be vigilant in this area, especially as business grows and new products and services are introduced. An evaluation of the bank's BSA/AML compliance program and its compliance with the regulatory requirements of the BSA has been an integral part of the supervision process for years. Refer to Appendix A ("BSA Laws and Regulations") for further information.

As part of a strong BSA/AML compliance program, the federal banking agencies seek to ensure that a bank has policies, procedures, and processes to identify and report suspicious transactions to law enforcement. The agencies' supervisory processes assess whether banks have established the appropriate policies, procedures, and processes based on their BSA/AML risk to identify and report suspicious activity and that they provide sufficient detail in reports to law enforcement agencies to make the reports useful for investigating suspicious transactions that are reported. Refer to Appendixes B ("BSA/AML Directives") and C ("BSA/AML References") for guidance.

On July 19, 2007, the federal banking agencies issued a statement setting forth the agencies' policy for enforcing specific anti-money laundering requirements of the BSA. The purpose of the *Interagency Statement on Enforcement of Bank Secrecy Act/Anti-Money Laundering Requirements* (Interagency Enforcement Statement) is to provide greater consistency among the agencies in enforcement decisions in BSA matters and to offer insight into the considerations that form the basis of those decisions.⁹

OFAC

OFAC administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries, terrorists, international narcotics traffickers, and those engaged in activities related to the proliferation of weapons of mass destruction. OFAC acts under the President's wartime and national emergency powers, as well as under authority granted by specific legislation, to impose controls on transactions and freeze assets under U.S. jurisdiction. Many of the sanctions are based on United Nations and other international mandates, are multilateral in scope, and involve close cooperation with allied governments.

⁹ Refer to Appendix R ("Enforcement Guidance") for additional information.

OFAC requirements are separate and distinct from the BSA, but both OFAC and the BSA share a common national security goal. For this reason, many financial institutions view compliance with OFAC sanctions as related to BSA compliance obligations; supervisory examination for BSA compliance is logically connected to the examination of a financial institution's compliance with OFAC sanctions. Refer to the core overview and examination procedures, "Office of Foreign Assets Control," pages 142 and 152, respectively, for guidance.

Money Laundering and Terrorist Financing

The BSA is intended to safeguard the U.S. financial system and the financial institutions that make up that system from the abuses of financial crime, including money laundering, terrorist financing, and other illicit financial transactions. Money laundering and terrorist financing are financial crimes with potentially devastating social and financial effects. From the profits of the narcotics trafficker to the assets looted from government coffers by dishonest foreign officials, criminal proceeds have the power to corrupt and ultimately destabilize communities or entire economies. Terrorist networks are able to facilitate their activities if they have financial means and access to the financial system. In both money laundering and terrorist financing, criminals can exploit loopholes and other weaknesses in the legitimate financial system to launder criminal proceeds, finance terrorism, or conduct other illegal activities, and, ultimately, hide the actual purpose of their activity.

Banking organizations must develop, implement, and maintain effective AML programs that address the ever-changing strategies of money launderers and terrorists who attempt to gain access to the U.S. financial system. A sound BSA/AML compliance program is critical in deterring and preventing these types of activities at, or through, banks and other financial institutions. Refer to Appendix F ("Money Laundering and Terrorist Financing Red Flags") for examples of suspicious activities that may indicate money laundering or terrorist financing.

Money Laundering

Money laundering is the criminal practice of processing ill-gotten gains, or "dirty" money, through a series of transactions; in this way the funds are "cleaned" so that they appear to be proceeds from legal activities. Money laundering generally does not involve currency at every stage of the laundering process. Although money laundering is a diverse and often complex process, it basically involves three independent steps that can occur simultaneously:

Placement. The first and most vulnerable stage of laundering money is placement. The goal is to introduce the unlawful proceeds into the financial system without attracting the attention of financial institutions or law enforcement. Placement techniques include structuring currency deposits in amounts to evade reporting requirements or commingling currency deposits of legal and illegal enterprises. An example may include: dividing large amounts of currency into less-conspicuous smaller sums that are deposited directly into a bank account, depositing a refund check from a canceled vacation package or insurance policy, or purchasing a series of monetary instruments (e.g., cashier's checks or money orders) that are then collected and deposited into accounts at another location or financial institution. Refer to Appendix G ("Structuring") for additional guidance.

Layering. The second stage of the money laundering process is layering, which involves moving funds around the financial system, often in a complex series of transactions to create confusion and complicate the paper trail. Examples of layering include exchanging monetary instruments for larger or smaller amounts, or wiring or transferring funds to and through numerous accounts in one or more financial institutions.

Integration. The ultimate goal of the money laundering process is integration. Once the funds are in the financial system and insulated through the layering stage, the integration stage is used to create the appearance of legality through additional transactions. These transactions further shield the criminal from a recorded connection to the funds by providing a plausible explanation for the source of the funds. Examples include the purchase and resale of real estate, investment securities, foreign trusts, or other assets.

Terrorist Financing

The motivation behind terrorist financing is ideological as opposed to profit-seeking, which is generally the motivation for most crimes associated with money laundering. Terrorism is intended to intimidate a population or to compel a government or an international organization to do or abstain from doing any specific act through the threat of violence. An effective financial infrastructure is critical to terrorist operations. Terrorist groups develop sources of funding that are relatively mobile to ensure that funds can be used to obtain material and other logistical items needed to commit terrorist acts. Thus, money laundering is often a vital component of terrorist financing.

Terrorists generally finance their activities through both unlawful and legitimate sources. Unlawful activities, such as extortion, kidnapping, and narcotics trafficking, have been found to be a major source of funding. Other observed activities include smuggling, fraud, theft, robbery, identity theft, use of conflict diamonds,¹⁰ and improper use of charitable or relief funds. In the last case, donors may have no knowledge that their donations have been diverted to support terrorist causes.

Other legitimate sources have also been found to provide terrorist organizations with funding; these legitimate funding sources are a key difference between terrorist financiers and traditional criminal organizations. In addition to charitable donations, legitimate sources include foreign government sponsors, business ownership, and personal employment.

Although the motivation differs between traditional money launderers and terrorist financiers, the actual methods used to fund terrorist operations can be the same as or similar to those methods used by other criminals that launder funds. For example, terrorist financiers use currency smuggling, structured deposits or withdrawals from bank accounts; purchases of various types of monetary instruments; credit, debit, or prepaid cards; and funds transfers. There is also evidence that some forms of informal banking (e.g., “hawala”¹¹) have played a

¹⁰ Conflict diamonds originate from areas controlled by forces or factions opposed to legitimate and internationally recognized governments and are used to fund military action in opposition to those governments, or in contravention of the decisions of the [United Nations Security Council](#).

¹¹ “Hawala” refers to one specific type of informal value transfer system. FinCEN describes hawala as “a method of monetary value transmission that is used in some parts of the world to conduct remittances, most often by persons who seek to legitimately send money to family members in their home country. It has also

role in moving terrorist funds. Transactions through hawalas are difficult to detect given the lack of documentation, their size, and the nature of the transactions involved. Funding for terrorist attacks does not always require large sums of money, and the associated transactions may not be complex.

Criminal Penalties for Money Laundering, Terrorist Financing, and Violations of the BSA

Penalties for money laundering and terrorist financing can be severe. A person convicted of money laundering can face up to 20 years in prison and a fine of up to \$500,000.¹² Any property involved in a transaction or traceable to the proceeds of the criminal activity, including property such as loan collateral, personal property, and, under certain conditions, entire bank accounts (even if some of the money in the account is legitimate), may be subject to forfeiture. Pursuant to various statutes, banks and individuals may incur criminal and civil liability for violating AML and terrorist financing laws. For instance, pursuant to 18 USC 1956 and 1957, the U.S. Department of Justice may bring criminal actions for money laundering that may include criminal fines, imprisonment, and forfeiture actions.¹³ In addition, banks risk losing their charters, and bank employees risk being removed and barred from banking.

Moreover, there are criminal penalties for willful violations of the BSA and its implementing regulations under 31 USC 5322 and for structuring transactions to evade BSA reporting requirements under 31 USC 5324(d). For example, a person, including a bank employee, willfully violating the BSA or its implementing regulations is subject to a criminal fine of up to \$250,000 or five years in prison, or both.¹⁴ A person who commits such a violation while violating another U.S. law, or engaging in a pattern of criminal activity, is subject to a fine of up to \$500,000 or ten years in prison, or both.¹⁵ A bank that violates certain BSA provisions, including 31 USC 5318(i) or (j), or special measures imposed under 31 USC 5318A, faces criminal money penalties up to the greater of \$1 million or twice the value of the transaction.¹⁶

Civil Penalties for Violations of the BSA

Pursuant to 12 USC 1818(i) and 1786(k), and 31 USC 5321, the federal banking agencies and FinCEN, respectively, can bring civil money penalty actions for violations of the BSA. Moreover, in addition to criminal and civil money penalty actions taken against them, individuals may be removed from banking pursuant to 12 USC 1818(e)(2) for a violation of

been noted that hawala, and other such systems, are possibly being used as conduits for terrorist financing or other illegal activity.” For additional information and guidance on hawalas and FinCEN’s report to Congress in accordance with section 359 of the USA PATRIOT Act, refer to www.fincen.gov.

¹² 18 USC 1956.

¹³ 18 USC 981 and 982.

¹⁴ 31 USC 5322(a).

¹⁵ *Id.*

¹⁶ *Id.*

the AML laws under Title 31 of the U.S. Code, as long as the violation was not inadvertent or unintentional. All of these actions are publicly available.