

CCBN BSA/AML 2020:

What's on Your Next BSA/AML Exam?

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Agenda

- Current U.S. AML/CFT Regime Landscape
- Current Trends in Innovation
- Examination “Secret Sauce”
- BSA Hot Topic: Banking Marijuana-Related Businesses

Current US AML/CFT Regime Landscape

- Opportunities exist to modernize the U.S. AML/CFT regime through legislation, regulation, guidance, technology, and information sharing. Examples include, but are not limited to:
 - Regulatory Reform
 - Innovation
 - Information Sharing

Current US AML/CFT Regime Landscape

Regulatory Reform:

- U.S. Congress, in a bipartisan manner, has been considering AML reform and developing proposed legislation such as:
 - ILLICIT CASH Act (S.2563)
 - COUNTER Act (H.R. 2514)
 - Corporate Transparency Act (H.R. 2513)

Current US AML/CFT Regime Landscape

Innovation:

- OCC, along with the other federal banking agencies (FBAs) and FinCEN, understands the use of evolving technology is a critical component in addressing the effectiveness of the U.S. BSA/AML regime.
 - December 2018: Joint Statement on Innovation
 - October 2018: Joint Statement on Resource Sharing
- OCC's Office of Innovation was created in 2016 to implement an agency framework to support responsible innovation in the federal banking system.

Current US AML/CFT Regime Landscape

Information Sharing:

- Federal Financial Institutions Examination Council (FFIEC) members and FinCEN, with industry input, are working to revise the FFIEC BSA/AML Examination Manual for examiners.
- FBAs are working to increase transparency through publishing additional guidance.

Current Trends in Innovation

- A majority of our larger institutions (midsize and large banks) are implementing or considering the use of one or more of the following:
 - Data analytics
 - Process automation
 - Artificial intelligence/machine learning (AI/ML) technology solutions
- Most of the banks are in the exploratory/discovery stage or in preliminary implementation.
- Several banks are already using data analytics and/or process automation.

Examination “Secret Sauce”

- Examiners use the same reference and source material as you and your auditors
- Examiners are open to discussions, so don't hesitate to communicate
- What would help you during the exam process?
- What are your stories?

Elements of a BSA / AML Exam

- The federal banking agencies require each bank to:
- Establish and maintain a BSA/AML compliance program
- Establish an BSA/AML compliance program that guards against money laundering and terrorist financing and ensures compliance with the BSA and its implementing regulations.
- Compliance Culture - Understand the importance of having an effective BSA/AML compliance program in place.

Elements of a BSA / AML Exam

FFIEC EXAMINATION MANUAL

- Guiding Document for Examinations
- Updated Periodically
- Last updated in 2014, with Customer Due Diligence and Beneficial Ownership updates in 2018
- You need this manual!

<https://bsaaml.ffiec.gov/manual>

FFIEC BSA/AML Examination Manual

Updated version of the exam manual provided key changes:

- Suspicious Activity Reporting (SAR)
- Currency Transaction Reporting (CTR)
- Foreign Correspondent Account Recordkeeping, Reporting & Due Diligence
- Foreign Bank and Financial Accounts Reporting
- International Transportation of Currency or Monetary Instruments Reporting
- Correspondent Accounts
- Automated Clearinghouse Transactions (ACH)
- Prepaid Access
- Third-Party Payment Processors
- Embassy, foreign Consulate and Foreign Mission Accounts
- Nonbank Financial Institutions
- Appendix T: BSA E-Filing System

Common Examination Findings

Some common causes of BSA internal control and other weaknesses, which often result in pillar violations, include:

- BSA/AML program has not kept pace with the bank's growth and risk profile (mergers/acquisitions).
- Difficulty in finding and retaining qualified BSA/AML Officers and support staff.
- Insufficient resources/training dedicated to BSA compliance.
- Inadequate customer due diligence and ongoing high-risk customer monitoring.
- Failures to identify, monitor, and/or report suspicious activity.
- Issues with transaction monitoring systems – meaningful alerts are not produced, or system conversion problems when implementing new software.

Common Examination Findings

- The apparent pillar violation that is most frequently cited at examination is for an **Inadequate System of Internal Controls for BSA Compliance**.
- Other apparent violations commonly cited include:
 - **Failure to File SARs**
 - **Untimely SAR Filings**
 - **Failure to File CTRs**
 - **Untimely CTR Filings**

Examination Focus – Risk

- Exams continue to be risk-focused.
- Examiners closely reviewing BSA/AML Risk Assessment.
 - What is the bank's risk profile for BSA/AML?
 - Is the risk assessment generally adequate?
 - Do you sufficiently identify products, services, customer base, geographies?
 - Do you recognize and identify your control weaknesses?
 - Do you assess the appropriate levels of inherent and residual risk?
 - What is your process for completing the risk assessment?
How do you ensure that new products/services/activities are captured?
- The inability to provide qualitative and quantitative data in the risk assessment questions your understanding of the volume and risk of the activities in the bank.

Examination Focus – Independent Audit

- Review of the audit findings, scope, workpapers.
 - Does the audit identify and risk assess all areas appropriately?
 - Do they conduct adequate procedures in relation to the risk and activity volume for a given area?
 - Do the auditors have the skill set related to your bank's risk and your bank's BSA/AML tools?
 - Are workpapers comprehensive?
 - Did the auditors complete all of the review as stated in the scope?
 - Are findings weaknesses that are previously known to management?
 - What are management's corrective actions relating to audit and are they timely and sufficient?

Examination Focus – BSA Officer

- Review of BSA Officer Adequacy
 - Do they have the skill set related to your bank's specific BSA/AML risks?
 - Do they have knowledge and experience with your bank's model?
 - Do they have the time and resources to conduct the job?
 - Are other job duties excessive in relation to their work load and the risk of the bank?
 - Are other personnel adequate in number, training, and skill set?

Examination Focus – Training

- Review of Training Adequacy
 - Does it cover specific job duties?
 - Is it a minimum of annually?
 - Does it include fraud training?
 - Does it include OFAC training?
 - Is all training computer-based?
 - Is the training appropriate for the risk profile, products, services, and customer base of the bank?
 - Does training cover bank specific policies, procedures and processes?

Regulatory Responses to Deficiencies

- Findings – Best Practices
- Supervisory Recommendations
- Apparent Violations (untimely CTR/SAR, etc.)
- Apparent Pillar Violations (excessive exceptions)
- Board Resolution
- Memorandum of Understanding
- Consent Order

BSA Hot Topic

- Providing products and services to marijuana-related businesses (MRBs)

Banking Marijuana-Related Businesses

- Regulators recognize the importance of ensuring public access to financial services for consumers and businesses.
- The decision to open, close, or decline a particular account or relationship is made by the institution, and should be based on:
 - The business objectives of the bank;
 - An evaluation of associated risks posed by the relationship on a case-by-case basis; and
 - Implementation of controls to manage the relationship commensurate with the risks.

Outstanding Guidance

- The Department of Justice – Cole Memo dated 2/14/14
 - Provided guidance to federal prosecutors concerning marijuana enforcement under the Controlled Substance Act. **Rescinded by Attorney General on January 4, 2018**
- Financial Crimes Enforcement Network (FinCEN)
 - FIN-2014-G001: Clarifies BSA expectations for banks seeking to provide financial services to marijuana-related businesses.
- Regulators look to assess whether banks' have adequate BSA/AML Compliance Programs and that banks are following the FinCEN guidance.

California State Law: Medical Cannabis Regulation and Safety Act

- In 2015, the CA Legislature passed three bills that created a licensing and regulatory framework for medical cannabis.
- Establishes a comprehensive system to legalize, control and regulate the cultivation, processing, manufacture, distribution, testing, and sale of medical cannabis.
- Delegates responsibility across three state agencies:
 - The Dept. of Food and Agriculture – cultivation licenses.
 - The Dept. of Public Health – manufacturing licenses.
 - The Bureau of Medical Cannabis Regulation (Dept. of Consumer Affairs) – distribution, transportation, testing, and dispensary licenses.

California State Law: Medical Cannabis Regulation and Safety Act

- The type of license needed will depend on the business type
 - The Act limits the different types of licenses that one person may hold.
- The Act establishes a dual licensing system between the State and local cities and counties
 - Businesses are required to obtain a city, county, or city and county license, permit, or other authorization, before the business can apply for a state license
- State began issuing state licenses on January 1, 2018

California State Law: Adult Use of Marijuana Act

- Marijuana legalization initiative known as Prop. 64 which appeared and passed on the November 8, 2016 California ballot
- Establishes a comprehensive system to legalize, control and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical marijuana for use by adults 21 years and older in California
- The Bureau of Medical Cannabis Regulation was renamed the Bureau of Marijuana Control
 - State regulatory framework was developed and implemented on January 1, 2018.

Examination Considerations – MRB Program Governance

- Does the bank have adequate board-approved policies and procedures in place as to how to handle marijuana accounts and monitor for red flags?
- Is there a comprehensive risk assessment of the business line?
- Has the Board set appropriate limits to this program? (i.e. type of licensees [producer, processor, and/or retailer] accepted, number of accounts accepted, total amount allowed to be deposited, amount and types of loans, etc.)

Examination Considerations - MRB Program Governance

- Has the Board established appropriate risk-based pricing standards for MRB deposit and loan accounts?
- Has management considered participation in 314(b) – Voluntary Information Sharing. If so, have policies and procedures, and processes been developed?
- Does the bank have the staffing resources necessary to perform sufficient due diligence and ongoing monitoring on the MRB accounts, particularly given the size, nature, and risk inherent in the individual customers?

Examination Considerations - MRB Program Governance

- Does employee BSA training include sufficient detail on marijuana-related BSA risks and is the coverage commensurate with the bank's involvement in the industry?
- Did the bank perform a legal review of applicable federal and state laws, including seizure of property and forfeiture/subordination of collateral?
- Has the bank considered and addressed the practicalities of cash management, including the facility's capacity and security issues associated with handling greater amounts of cash than with other merchants?

Examination Considerations - MRB Program Governance

- Does the bank take steps to prevent the furtherance of any violation of the Cole Memo, including notice to the customer to halt the offending activity or evict a violating tenant?
- Does management have a contingency plan which includes an exit from the business should there be a change in the policies and forbearances from the Federal and State governments?

Examination Considerations – MRB Program Governance

Lending:

- Does the independent loan review appropriately test adherence to the bank's policy on lending to MRBs?
- Under what circumstances do the provisions in the loan and collateral documents contain requirements that the financial institution can accelerate the loan terms and call the balance due and payable?
 - i.e. MRB loses its license, runs counter to the Cole Memo requirements, or engages in activity that triggers red flags listed in the FinCEN guidance, etc.
- Does the ALLL methodology consider the inherent credit risks associated with MRB borrowers?

Examination Considerations – Regulatory Reporting

- Does the bank's BSA Policy prohibit the exemption of MRB customers for currency transaction reports (CTR) filing purposes?
- Is the bank filing CTRs on MRB customers in accordance with existing regulations and with the same thresholds?
- Is the bank filing SARs on MRB customers in accordance with the 2014 FinCEN guidance?
- Does the content of marijuana-related SARs include all of the contents as required by the 2014 FinCEN guidance?

Questions?