

Regulatory Bulletin

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Handbook:

Subject:

**Compliance Laws and Activities:
Bank Secrecy Act**

Section: 400

Supplemental Guidance on the Bank Secrecy Act and Anti-Money Laundering Programs

Summary: This bulletin provides supplemental guidance to examiners on the Bank Secrecy Act and Anti-Money Laundering Programs.

For Further Information Contact: Your Office of Thrift Supervision (OTS) Regional Office or the Consumer Protection and Specialized Programs Division of OTS, 1700 G Street, N.W., Washington, D.C. 20552. You may access this bulletin at our website, www.ots.treas.gov.

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Introduction

Bank Secrecy Act

The Financial Recordkeeping and Currency and Foreign Transactions Reporting Act (Bank Secrecy Act or BSA), passed by Congress in 1970, requires financial institutions to file certain currency and monetary instrument reports and maintain certain records for possible use in criminal, tax, and regulatory proceedings. Failure to comply with the BSA can result in criminal or civil penalties.

The BSA's purpose is to prevent financial institutions from being used as intermediaries for the transfer or deposit of money derived from criminal activity. Consequently, the BSA provides a paper trail of the activities of money launderers serving the interests of drug traffickers, terrorists, and other elements of white collar and organized crime. These activities generate large amounts of currency, often in small bills. During the course of these activities, the cash may be exchanged for larger denominations or converted to other monetary instruments for ease of use.

Congress has amended the BSA several times over the years to strengthen its anti-money laundering (AML) and counter-terrorism financing purposes. The most recent, and perhaps most significant, set of amendments is found in Title III of the USA PATRIOT Act (USAPA). President Bush signed the USAPA on October 26, 2001, just six weeks after the September 11 terrorist attacks. The USAPA contained strong and far-reaching measures to prevent, detect, and prosecute terrorism and international money laundering, and has resulted in the recent promulgation of several new regulations that have a direct impact on a savings association's BSA/AML compliance program. The USAPA, whose coverage extends beyond insured depository institutions, provides the statutory groundwork for new filing and reporting obligations for banks and thrifts. It requires additional due diligence and recordkeeping requirements, especially in the areas of foreign correspondent accounts and private banking. It also imposes on savings associations an

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obligation to develop and implement risk-based policies and procedures designed to ensure that the institution has a reasonable belief that it knows the true identity of each customer.

BSA Statutory and Regulatory Requirements

Under section 8(s) of the Federal Deposit Insurance Act (FDIA), 12 USC § 1818(s), as amended by the Money Laundering Control Act of 1986, OTS must require savings associations to establish and maintain procedures reasonably designed to assure and monitor the association's compliance with the BSA and its implementing regulations. Moreover, under subsection (s)(3), if OTS determines that a savings association has failed to establish and maintain the required procedures, or has failed to correct any problems with the procedures that OTS has previously reported to the association, OTS shall issue a cease and desist order under 12 USC §§ 1818(c) and (d).

Section 563.177 of Title 12 of the Code of Federal Regulations requires savings associations to establish and maintain a program to monitor compliance with the BSA. That regulation specifies that, at a minimum, the compliance program: (1) provide for a system of internal controls to ensure ongoing compliance; (2) provide for independent testing for compliance to be conducted by a savings association's in-house personnel or by an outside party; (3) designate individual(s) responsible for coordinating and monitoring day-to-day compliance; and (4) provide training for appropriate personnel. The regulation also specifies that the compliance program must contain a program for identifying the association's customers (Customer Identification Program (CIP)). Moreover, under 12 CFR § 563.180, a savings association must, under certain circumstances, file Suspicious Activity Reports (SARs). Savings associations are also subject to the Treasury's BSA regulations at 31 C.F.R. Part 103. Those regulations include several reporting and recordkeeping requirements applicable to savings associations, among them requirements that financial institutions file Currency Transaction Reports (CTRs) (103.22) and SARs (103.18). For purposes of this Bulletin, all of these regulatory obligations will be referred to as BSA/AML requirements or responsibilities to be managed by an association's BSA/AML compliance program.

OTS Enforcement Guidelines for BSA/AML Violations

A savings association that violates any of the statutory or regulatory requirements is subject to OTS's full range of enforcement authority. This authority includes both informal actions and formal actions under 12 USC § 1818. Under this broad authority, OTS may take various enforcement actions to effect corrective action or sanction a savings association. These actions range from informal actions such as a Director's Resolution and Supervisory Directive to formal actions such as a Cease and Desist Order (C&D), a Prohibition Order, and Civil Money Penalties (CMPs). FinCEN also levies CMPs against financial institutions, including savings associations, for failing to file CTRs and SARs, and Treasury's Office of Foreign Assets Control (OFAC) assesses CMPs against financial institutions, including savings associations, that conduct certain blocked or prohibited financial transactions.

OTS will exercise its enforcement authority under 12 USC § 1818(i) and (s)(3) to enforce BSA compliance as it may from time-to-time decide based on its sound discretion in accordance with the requirements of law. OTS will apply its full range of supervisory and enforcement authority as appropriate to the circumstances presented. OTS will exercise its enforcement authority keeping in mind its statutory obligation and the fundamental requirement that an association's BSA program should be adequate for the risk profile presented by its operations. OTS will use a variety of formal and informal enforcement tools to carry out its supervisory responsibilities, address legal and regulatory violations, and prevent unsafe and unsound banking practices.

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Choosing the appropriate supervisory response involves the careful balancing of a wide range of factors and the informed exercise of discretion. OTS's general guidelines on enforcement actions can be found in Section 370 of the Thrift Activities Handbook. OTS will consider the following standards when determining what enforcement options to apply in specific circumstances:

- Whether the savings association has adequately corrected BSA/AML violations noted in a prior Report of Examination (ROE).
- Whether the savings association's BSA compliance has deteriorated since BSA/AML violations were noted in the prior ROE, or there has been inordinate delay in making meaningful progress in addressing the violations.
- Whether the BSA/AML violations in fact constitute, or reflect a material risk of, money laundering, terrorist financing, or structuring to avoid reporting requirements.
- Whether the association identified the weaknesses itself through its BSA testing, audit, or self-evaluation efforts and the association has independently instituted timely and adequate corrective action.

As required under 12 USC § 1818(s)(3), if OTS determines that an association has failed to establish or maintain a BSA program, or if the association has failed to correct any substantive deficiency with its program that OTS previously identified in its ROE to the association, OTS will seek a cease and desist order. Enforcement orders will incorporate explicit remedies for all BSA/AML violations contained in the ROE.

Any questions regarding this Regulatory Bulletin should be directed to your Regional Office.



—Scott M. Albinson

Managing Director

Examinations, Supervision, and Consumer Protection