



2014 Federal Financial Institution Examination Council

BSA/AML Examination Manual Updates

Introduction

The long awaited update to the 2010 FFIEC Examination Manual was published on December 2, 2014. While the 2014 FFIEC Examination Manual contains many updates based on regulatory guidance issued after the 2010 publication, the orientation is very much like that of the earlier manual. The comprehensive approach taken in the 2010 FFIEC Examination Manual is still solid, and still applicable. The FFIEC Examination Manual will continue to be the foundation upon which BSA/AML examiners develop and carry out their regulatory examination plans.

To clarify, the FFIEC Manual provides guidance to examiners for carrying out BSA/AML and Office of Foreign Assets Control (“OFAC”) examinations. Though it does not have the force of law or regulation, it does provide evidence of regulatory expectations, and reflects the regulators’ view of sound banking practices in this area. It sets out the banking framework clearly and in detail, including payment systems, surveillance approaches, risk assessments, CDD/KYC, governance and other related BSA/AML requirements.

Updates

Updates were made throughout the manual, including references to new regulations and guidance as well as technical corrections. The following are some of the significant updates to the manual:

Independent Testing: Under the “Core Examination Overview and Procedures For Assessing The BSA/AML Compliance Program” section, there is updated language in the Independent Testing subsection. Specifically, it is recommended that independent testing findings be reported directly to the board of directors or a designated board committee composed primarily of, or completely of, outside directors.

Suspicious Activity Reporting (SAR) - Incorporates the new SAR E-Filing requirements providing detailed guidance on its new features including the ability to submit attachments with the SAR form. Further guidance was also provided in the following areas:

- *Continuing Activity*: There was no change to the Banks' expectation to file SARs for continuing activity after a 90 day review. However, a new SAR filing deadline of 120 calendar days after the date of the prior SAR filing was introduced. Banks may also file SARs on continuing activity earlier than the 120-day deadline if the bank believes the activity warrants earlier review by law enforcement. Although text is largely the same, the continuing SAR expectation deadline was clarified and emphasized.
- *Key components to an effective monitoring and reporting system*: Under the Suspicious Activity Reporting, in the subsection entitled "Systems to Identify, Research, and Report Suspicious Activity", a new requirement was added. Specifically, "Monitoring and SAR filing on continuing activity" was added as the 5th key component. The other four are 1) Identification or alert of unusual activity; 2) managing alerts; 3) SAR decision making; and 4) SAR completion and filing. This addition underscores the expectation that a bank's obligation does not end with the filing a SAR but extends to monitoring the activity to determine whether continuing activity SARs must be filed;
- *Prohibitions on disclosing a SAR*: This change reflects the 2010 change in regulations, but, as a matter of practice, is a clarification and reminder that a SAR and any information that would reveal the existence of the SAR are confidential, and should not be disclosed to anyone except as specifically permitted. The existence or even the non-existence of a SAR must be kept confidential, as well as the information contained in a SAR to the extent the information would reveal the existence of a SAR. FinCEN and the federal banking regulators have also taken the position that a bank's internal controls for the filing of SARs should minimize the risks of disclosure. The important distinction here is that the original focus on not disclosing a SAR to the SAR suspect now extends generally to anyone without a highly specific and legitimate need to know.
- *Sharing SARs with affiliates*: Here, again, there is further clarification based on guidance issued after the 2010 manual's publication. Essentially, sharing SARs is allowed amongst domestic bank affiliates because all are still subject to SAR regulations. However, sharing with foreign branches of U.S. banks is still not allowed because the foreign branches are not subject to SAR regulations. There was no change to the guidance allowing sharing of SARs with the head offices and controlling companies, whether located in the United States or in a foreign country;
- *ATM Transaction Reports*: The analysis of ATM transaction reports was added to the section on Transaction (Manual Transaction) Monitoring.

Currency Transaction Reporting (CTR) - Incorporates the new CTR E-Filing requirements. The most significant change here is the incorporation of FinCEN's guidance issued on March 16, 2012, *Currency Transaction Report Aggregation for Businesses with Common Ownership (FIN-2012-G001)*. This guidance encourages banks to aggregate the transactions of separately incorporated entities with common ownership as if they were one business when the facts and circumstances indicate the entities are truly operating as one business (e.g., same employees, common address, intermingling of bank account funds, or pay for expenses of one common owner). It is important to note banks are not specifically required to conduct any additional due diligence. The expectation is that banks need only use their current procedures to identify cases where aggregation of businesses is appropriate, but they are expected to harvest what they know in this regard. Additionally, CTR exemptions are declared unavailable for marijuana related businesses.

Foreign Correspondent Account Recordkeeping- Adds the requirement to assess, if applicable, the foreign bank's compliance with the Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA). CISADA is a sanctions program intended to prevent Iranian financial institutions and other entities from having access to the U.S. financial system. FinCEN issued the regulations covering CISADA in October 2011 (refer to 76 Fed. Reg. 62607). An overview and detailed requirements of CISADA have been incorporated into the updated Examination Manual. Although the manual does not specifically embrace Russian sanctions in this regard, this segment can be read to suggest that high profile sanctions aspects should be considered, in addition to CISADA, for specific treatment as part of correspondent bank due diligence going forward.

Foreign Bank and Financial Accounts (FBAR) - Incorporates the new FBAR filing requirements based on guidance and regulations issued by FinCEN and the Internal Revenue Service. The most significant aspect pertains to the requirement that persons with signature authority over a foreign financial account are required to file an FBAR (assuming they meet the threshold), even if they do not hold a financial interest in the account.

International Transportation of Currency or Monetary Instruments Reporting (CMIR) - Clarifies the monitoring and reporting obligations (SAR and CTR) in relationship to the international transportation of currency or monetary instruments. The update is related to the bulk cash transportation across the U.S. and Mexico border: the bulk cash update is discussed below. FinCEN guidance suggests that banks be vigilant to identify and report suspicious activity associated with the transportation of cash across the U.S. border. In addition, banks are not relieved, in general, of the CTR obligations associated with receipt or disbursement of currency in excess of \$10,000 based solely on whether there is a CMIR exemption.

Correspondent Accounts (Foreign) - Additional guidance has been added to the risk mitigation section, primarily with regard to due diligence associated with foreign correspondent banking and accounts. The following are examples of additional steps that should be incorporated into a bank's policies and procedures:

- Determine whether the foreign correspondent financial institution has in place acceptable AML compliance processes and controls;
- Follow up on account activity and transactions that do not fit the foreign financial institution customer's strategic profile;
- Establish a formalized process for escalating suspicious information on potential and existing customers to an appropriate management level for review.

Bulk Shipments of Currency- Updated to incorporate FinCEN's CMIR guidance for common carriers of currency, including armored car services (August 1, 2014), and to clarify monitoring and reporting obligations under the BSA. This expanded section provides further guidance on the different types of common carriers of currency as well as some typical types of arrangements to transport currency.

Automated Clearing House Transactions (ACH) - Incorporated National Automated Clearing House Association (NACHA)-The Electronic Payments Association modifications related to international ACH transactions and further defined third-party service providers. For example, a bank may hire a TPSP (Third Party Services Provider) to conduct ACH activities on behalf of the bank.

Informal Value Transfer Systems (IVTS) - Update includes guidance on the recognition of IVTSs as money service businesses (money transmitters). Update based on FinCEN advisory issued in September 2010, *FIN-2010-A011, Informal Value Transfer Systems*.

Prepaid Access- The Electronic Cash section was replaced with a Prepaid Access section. The new section has an expanded discussion as to the definitions, roles, responsibilities of prepaid access programs as well as their risk and mitigation factors. Most of the material is taken from FinCEN's Prepaid Access regulations issued July 22, 2011 and related frequently asked questions.

Third-Party Payment Processors- Updated to reflect regulatory guidance issued primarily since 2010: FDIC Clarifying Supervisory Approach to Institutions Establishing Account Relationships with Third-Party Payment Processors, FDIC FIL-41-2014, July 28, 2014; Payment Processor Relationships Revised Guidance, FDIC FIL-3-2012, January 31, 2012; Risk Management Guidance: Payment Processors, OCC Bulletin 2008-12, April 24, 2008; Risk Management Guidance: Third Party Relationships, OCC Bulletin 2013-29, October 30, 2013; and Risk Associated with Third-Party Payment Processors, FinCEN Advisory FIN-2012-A010, October 22, 2012. Key points include the following:

- Banks should review appropriate databases to ensure that the processor and its principal owners and operators have not been subject to law enforcement actions;
- Banks should periodically re-verify and update the processors' profiles to ensure the risk assessment is appropriate;
- Banks should ensure that their contractual agreements with payment processors provide them with access to necessary information in a timely manner;
- Banks should periodically audit their third-party payment processing relationships; including reviewing merchant client lists and confirming that the processor is fulfilling contractual obligations to verify the legitimacy of its merchant clients and their business practices.

Embassy, Foreign Consulate, and Foreign Mission Accounts- Updated to reflect the interagency guidance issued in March 2011. *Guidance on Accepting Accounts from Foreign Governments, Foreign Embassies and Foreign Political Figures (June 15, 2004); Updated Guidance on Accepting Accounts from Foreign Embassies, Consulates and Missions (March 24, 2011)*. The primary change is the focus on risk mitigation strategies such as written agreements that clearly define the intended use of accounts as well as establishing limited purpose accounts to handle operational expenses (e.g. payroll, rent, and utilities). The new material can be seen as part of the banking regulators' concerns with potentially excessive derisking, and underscores the flexibility banks have in responding to the risks of embassy related accounts, rather than taking an all or nothing servicing approach.

Nonbank Financial Institutions (NBFi)-Incorporated FinCEN regulations relating to foreign located Money Service Businesses (MSBs) and prepaid access programs. In addition, virtual currency guidance issued in March 2013 regarding administrators and exchangers was also added to this NBFi section. Key points include:

- Certain foreign located persons engaging in MSB activity within the U.S. fall within the definition of an MSB and are required to register with FinCEN;
- Virtual Currency administrators and exchangers are considered money transmitters which trigger BSA obligations;
- Prepaid Access programs generally fall within the MSB category and trigger BSA obligations.

The MSB treatment of these NBFIs frames as an examination priority the risk to banks when they provide banking services to these sorts of entities. The new manual indicates that regulators expect banks to manage these risks explicitly and to implement effective monitoring and reporting systems.

Appendix T: BSA E-Filing System- This new appendix includes helpful information relating to the FinCEN BSA E-Filing System, which has evolved and become mandatory since the last manual was published. In addition, under the new System there are no longer industry specific CTR and SAR forms (e.g. SAR-DI, SAR-C, CTR-C). The new CTR and SAR forms allow the user to identify their industry (e.g. depository institution, MSB, Casino) which will then generate industry specific data fields. A new functionality was also added to the new SAR form: Attachments can now be included in the SAR filing. Conversely, the SAR narrative field was reduced from approximately 39,000 to 17,000 characters.

What was not contained in the updates

There are of course some additional items that might have been included in these revisions that do not appear. The manual is designed to respond to existing BSA regulations, and not necessarily everything that might be significant in a bank's AML Program. Banks should recognize, however, that some areas that may not be included in current BSA regulations are nonetheless important to AML programs, and are high on the list of regulatory priorities, and that they may also find expression in upcoming examinations, anyway. Here are three examples of such items.

- *Customer Due Diligence*- FinCEN's proposed rule on beneficial ownership, including the appearance of a fifth "pillar" of the AML Program around Customer Due Diligence, is not addressed, but a new rule, and new examination protocols, are anticipated to match them.
- *FATCA*- The regulations will require banks to make determinations as to account ownership including citizenship/residency, create some overlapping obligations with those of the AML regulations, but these are not alluded to. As FATCA information accumulates in banks, examiners may leverage it in testing the adequacy of information gathering for AML purposes and the integration of information within an institution.
- *Guidance on the role of independent consultants*. Some of the banking regulators have issued guidance recently on the use of independent consultants by banks on enforcement related actions, as well as more general guidance on third party relationships, and applied these to the BSA/AML context.

Summary

The 2014 FFIEC BSA/AML Examination Manual builds on the 2010 version by incorporating intervening guidance and regulations. It remains the broadest collection of regulatory expectations of banks in this area, and represents an inventory of how banks are expected to mitigate risk, and how banks may anticipate being examined. It continues to reflect the overall view that regulators have of banks as institutions that are both responsible and capable to deal reasonably effectively with the money laundering risks that attend their business models.

This publication contains general information only and Deloitte is not, by means of this publication, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This publication is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. Deloitte shall not be responsible for any loss sustained by any person who relies on this publication.

As used in this document, "Deloitte" means Deloitte Financial Advisory Services LLP, which provides forensic, dispute, and other consulting services, and its affiliate, Deloitte Transactions and Business Analytics LLP, which provides a wide range of advisory and analytics services. Deloitte Transactions and Business Analytics LLP is not a certified public accounting firm. Please see www.deloitte.com/us/about for a detailed description of the legal structure of Deloitte LLP and its subsidiaries. Certain services may not be available to attest clients under the rules and regulations of public accounting.

Copyright © 2014 Deloitte Development LLC. All rights reserved.