

BSA/AML HOT TOPICS

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AGENDA

- ☐ Enforcement Action Updates
- ☐ FATF Countries with AML-CFT Deficiencies Update
- ☐ FinCEN Geographical Targeting Order Update
- ☐ When UDAAP and BSA/AML Meet
- ☐ Corporate Transparency Act
- ☐ 2022 Observations and Finding
- ☐ Future Learning Opportunities



Enforcement Action Trends

- What areas are banks failing to meet the expected standards of an effective BSA/AML program?
 - Overall failure to implement an adequate BSA/AML program
 - Programs lack comprehensive risk-based policies and procedures and fail to address the risks associated with their customer base, products and services, and geographies
 - Inadequate staffing
 - You can't just "give" someone the title of BSA Officer



Enforcement Action Trends

- Poor Alert Management
 - No policies or procedures to govern the validation and adjustment of the system (e.g. optimizing scenarios to detect suspicious activity)
 - Rushed software implementations turn into missed "opportunities" and unmanageable numbers of alerts
- No or inconsistent processes for SAR decisioning
 - Not having sufficient information to justify the decision not to file



Enforcement Action Trends

- Training
 - This is some of the lowest hanging fruit!
 - Training is missed or not tailored to applicable job responsibilities
- Customer Due Diligence/Enhanced Due Diligence
 - CDD information gathered at account opening is incomplete
 - Information obtained at account opening is insufficient to assess a customer's true risk and results in a flawed customer risk score model, which hinders the ability to identify higher risk accounts that may require enhanced due diligence



Key OFAC Enforcement Action

- OFAC Issues a Finding of Violation to MidFirst Bank for:
 - Maintaining accounts for and processing of 34 payments on behalf of two individuals added to OFAC's List of Specially Designated Nationals and Blocked Persons (the "SDN List") for 14 days post-designation.
 - On September 21, 2020, at 12:36 p.m. EDT, OFAC designated and added two individuals to the SDN List
 - On the same day, between 2:00 p.m. EDT and 5:48 p.m. EDT, MidFirst processed five transactions totaling \$604,000 on behalf of accounts held by the blocked persons
 - Between September 22, 2020 and October 5, 2020, MidFirst processed 29 additional transactions totaling \$9,879.02 on behalf of the blocked persons
 - Ninety-eight percent of the value of the post-designation transactions occurred within six hours of designation



Key OFAC Enforcement Action

- How did this happen?
 - Although the vendor that MidFirst used provided for daily screening of new customers and of existing customers with certain account changes (e.g., changes to a customer's name or address), the vendor only screened MidFirst's entire existing customer base once a month.
 - The Bank misunderstood the scope of the contract with its vendor, mistakenly believing that the daily screenings would screen its entire customer base against additions and changes to the SDN List.



FATF

- On October 31, 2022, the Financial Action Task Force issued public statements updating its lists of jurisdictions with strategic AML/CFT/CPF deficiencies following its plenary meeting this month:
 - List of Jurisdictions Under Increased Monitoring:
 - Removed Nicaragua and Pakistan
 - Added Democratic Republic of the Congo, Mozambique, and Tanzania



FATF

- List of High-Risk Jurisdictions Subject to a Call for Action:
 - Called for Enhanced Due Diligence measures, not counter-measures, for Burma
 - Also noted that “when applying enhanced due diligence measures, countries should ensure that flows of funds for humanitarian assistance, legitimate NPO activity and remittances are not disrupted.”
 - Iran and the Democratic People’s Republic of Korea (DPRK) remain on the list of High-Risk Jurisdictions Subject to a Call for Action and are still subject to the FATF’s counter-measures



Geographic Targeting Orders

- On October 26, 2022 FinCEN announced the renewal and expansion of its Geographic Targeting Orders (GTOs) that require U.S. title insurance companies to identify the natural persons behind shell companies used in non-financed purchases of residential real estate
 - These are effective October 27, 2022 – April 24, 2023



Geographic Targeting Orders

- Renewed the following areas:
 - Boston; Chicago; Dallas-Fort Worth; Las Vegas; Los Angeles; Miami; New York City; San Antonio; San Diego; San Francisco; Seattle, the District of Columbia, Northern Virginia, and Maryland (DMV) area; as well as the City and County of Baltimore, the County of Fairfield, Connecticut, and the Hawaiian islands of Honolulu, Maui, Hawaii, and Kauai
- Added:
 - The counties encompassing the Texas cities of Houston and Laredo.



When UDAAP and BSA/AML Meet

- Wait? What? I thought UDAAP was a compliance issue?
 - We bankers are often caught in the middle while trying to adhere to requirements to identify and act on suspicious activity without "tipping off" our customer, and the regulations' clear expectation that banks deal transparently with consumers and their complaints.
 - What happens when we are wrong?



When UDAAP and BSA/AML Meet

- Things to consider:
 - A lack of transparency with customers could have UDAAP implications
 - Customer complaints have always been a focus of the CFPB
 - The scrutiny around the response to the complaints is increasing, as well as the expectations around transparency
 - How do we balance what we as a bank may deem as suspicious or unusual with potentially doing something “unfair” to our customers such as:
 - Closing their account
 - Restricting access to an account or funds



When UDAAP and BSA/AML Meet

- AML software relies on automation to identify suspicious or unusual activity
- How do we ensure that all alerts are treated fairly?
 - (Yes I realized an alert is not a person with feelings!)
 - What does the investigation process look like?
 - Is the process consistent for alerts of a similar nature?
 - How involved should the customer be?



When UDAAP and BSA/AML Meet

- How could this affect our responsibilities around SAR confidentiality?
 - Example: You have a policy that an account is closed after two SAR filings. Your customer calls and is upset that their account has been closed. What does the CSR see? Why does it show them the account has been closed? What are they allowed to tell the customer?
 - The CSR shouldn't have knowledge about a SAR(s) being filed and the customer can't know.
 - Could this be perceived as unfair to the customer?



When UDAAP and BSA/AML Meet

- What can you do to protect your institution?
 - Have procedures in place and a process to ensure they are being consistently followed
 - Review account closure policies
 - Consider testing SAR filings to see if they are being filed disproportionately on those in a protected class
 - Make sure complaints are responded to in a timely manner and are well documented



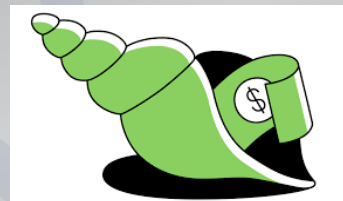
Corporate Transparency Act

- On September 29, 2022 FinCEN issued a final rule implementing the Corporate Transparency Act's (CTA) beneficial ownership information (BOI) reporting provisions
- The rule will enhance the ability of FinCEN and other agencies to protect U.S. national security and the U.S. financial system from illicit use and provide essential information to national security, intelligence, and law enforcement agencies and financial institutions to help prevent drug traffickers, fraudsters, and corrupt actors from laundering or hiding money and other assets in the United States



Corporate Transparency Act

- The rule describes who must file a BOI (Beneficial Ownership Information) report, what information must be reported, and when a report is due.
- The rule requires reporting companies to file reports with FinCEN that identify two categories of individuals:
 - the beneficial owners of the entity
 - the company applicants of the entity



Corporate Transparency Act

- The final rule identifies two types of reporting companies:
 - A domestic reporting company is a corporation, limited liability company (LLC), or any entity created by the filing of a document with a secretary of state or any similar office under the law of a state or Indian tribe
 - A foreign reporting company is a corporation, LLC, or other entity formed under the law of a foreign country that is registered to do business in any state or tribal jurisdiction by the filing of a document with a secretary of state or any similar office
 - Similar to the 2018 Beneficial Ownership Rule, other types of legal entities, including certain trusts, are excluded from the definitions to the extent that they are not created by the filing of a document with a secretary of state or similar office



Corporate Transparency Act

- Beneficial Ownership Information Reports
 - The rule requires a reporting company to identify itself and report four pieces of information about each of its beneficial owners: name, birthdate, address, and a unique identifying number and issuing jurisdiction from an acceptable identification document (and the image of such document)
 - If an individual provides their four pieces of information to FinCEN directly, the individual may obtain a "FinCEN identifier," which can then be provided to FinCEN on a BOI report in lieu of the required information about the individual



Corporate Transparency Act

- Timing

- The effective date for the rule is January 1, 2024.
- Reporting companies created or registered before January 1, 2024 will have one year (until January 1, 2025) to file their initial reports, while reporting companies created or registered after January 1, 2024, will have 30 days after receiving notice of their creation to file their initial reports.



Corporate Transparency Act

- Next Steps

- FinCEN will engage in additional rulemakings to:
 - establish rules for who may access BOI, for what purposes, and what safeguards will be required to ensure that the information is secured and protected; and
 - revise FinCEN's customer due diligence rule following the promulgation of the BOI reporting final rule.

[Beneficial Ownership Information Reporting Rule Fact Sheet](#)



2022 Findings & Observations Summary

Totals			
Suspicious Activity Reporting	14	CTR Exemptions	2
Customer Identification Program	3	Currency Transaction Reporting	6
BSA/AML Risk Assessment	3	BSA/AML Policies Review	4
Information Sharing 314(a)	3	Money Service Businesses	1
AML Program	4	Record Retention	3
CDD/EDD	11	BSA Training	6
OFAC	2	Past Examinations/Independent Test Results	1



2022 Findings & Observations Summary

Program Area	Specific Area/Activity	Observation/Finding
BSA/AML Program	Policies and Procedures	- We recommend the bank add a section in their BSA/AML policy to address if they will open accounts for any marijuana related businesses. - We recommend the bank enhance their BSA Policy to include a discussion of the product offerings and the related potential BSA/AML risk for all products and services. - We also recommend that the policy addresses the risks associated with each customer type of the bank, including third party payment processors and nongovernmental organization and charities. - The requirement for Board of Directors training is not explicitly mandated in the policy. It only specifies employee training.



2022 Findings & Observations Summary

Program Area	Specific Area/Activity	Observation/Finding
BSA/AML Program	Risk Assessment	- The bank does not recognize its risk exposure and the differences in the exposure among the multiple branches. - For example, in the more rural areas, customers are coming into the Bank to do their transactions, while the customers in the more suburban areas do most of their banking electronically. - The risk assessment does not accurately reflect the products offered by the bank. As products are added or removed, the risk assessment should be updated accordingly. - The risk assessment currently states that the Bank is not located in either a HIFCA or HIDTA. We recommend acknowledging that the bank is located in the North Central HIDTA.



2022 Findings & Observations Summary

Program Area	Specific Area/Activity	Observation/Finding
Training	Training Records	- The bank could not document that all members of the Board of Directors received training, as sufficient records were not maintained. - Training materials used to meet the training objectives are not maintained. - Five employees did not complete the assigned annual training requirements. - One part time employee is currently past due in fulfilling their annual training requirements.
Training	New Hires	While it is the policy of the bank to conduct BSA training annually, we recommend the bank amends its practice to conduct new hire BSA training within the first 30 days.
Training	Exemptions	If exemptions are made for certain employees, including part time contract personnel, we recommend adding these exceptions to the BSA policy.



2022 Findings & Observations Summary

Program Area	Specific Area/Activity	Observation/Finding
Customer Due Diligence/Enhanced Due Diligence	Beneficial Ownership Form	- The ownership prong information is missing from the Beneficial Ownership form. - The Ownership Prong identified was a company, not an individual. - The title for the control prong person(s) is not documented on the Beneficial Ownership form. - We were unable to verify that the Certification form was received in a timely manner with account opening. - For three accounts reviewed, the identification document section was blank. - For two accounts reviewed, the expiration date of the identification document was missing. - The bank relied on previously obtained certifications with the customer certifying that the information was still correct. However, the initial certifications relied upon were both incomplete, as they did not include a title for the control prong individual.



2022 Findings & Observations Summary

Program Area	Specific Area/Activity	Observation/Finding
Customer Due Diligence/Enhanced Due Diligence	High Risk Monitoring	- Customers are not currently risk rated, therefore additional due diligence and transactional monitoring is not performed, if needed. - Several commercial customers do not have a CDD questionnaire completed. Therefore, potentially high risk customers are not included on the high risk list for additional monitoring. - Currently, the bank has three customers with PATMs. This area is considered one of the highest risk customer types from an AML perspective. It does not appear that activity is being considered any differently when reviewed for a customer that replenishes the ATM from their own cash registers from daily cash transactions. This activity can be legitimate, or could also be used to integrate funds from illicit activity into the system, which is one aspect of money laundering.



Future Learning Opportunities

Join us at one of the upcoming BSA/AML and Compliance Institutes offered by ICBA Community Banker University!

BSA/AML Institute:

- November 7-9 (**In Person**/Dallas, TX)
- Dates TBD 2023 (Virtual and In Person)

Compliance Institute:

- Dates TBD 2023 (Virtual and In Person)



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Thank You Questions?

