

Managing a BSA Program

BSA Graduate School

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Section 1: Overview

Introduction

This section discusses some key components that will help you to effectively manage your BSA program. Specifically, this part of our course will address the following topics:

- Your Program
- Examiner Expectations
- Building a Policy
- The Five “E’s” of BSA Management
 - Examinations
 - Effectiveness
 - Efficiency
 - Ethics
 - Escalation

The Management Challenge and Reward

While challenging, strong BSA management can be rewarding for several reasons.

First, effective BSA management can result in an appropriate BSA compliance posture. This means that your financial institution is able to pass regulatory examinations without significant violations or additional examiner follow-up. Passing BSA examinations helps to drive a higher CAMELS rating in your Safety and Soundness examination, as the BSA rating is specifically considered as part of the Management (M) category in the CAMELS rating.

Secondly, effective BSA management helps to provide the leadership of your organization with a comfort level regarding the issues. As a result, the well-managed program requires less energy and support from management resulting in their ability to focus on other areas of the organization that are essential for the strategy of the institution.

A well-managed BSA program will be efficient. An efficient program results in saved time and less expenditures and will cost less than an inefficient program.

Finally, a well-managed BSA program will help you, as one responsible for the program in the organization, to sleep better at night. A well-managed program helps to provide you with a comfort level that you do not have any “elephants in the room” that are being ignored by the Bank, which would result in major concern for you and your organization.

Section 2: BSA/AML Responsibilities

Introduction

The first step in managing a BSA program is to understand what is required of your financial institution. To understand these requirements, we will examine two factors:

1. **Organizational Structure and Director Responsibilities:** Due to the nature of this course, we will assume that your organization is structured so that the Board of Directors is ultimately responsible for all activities of the organization.
2. **Core Regulatory Expectations:** For this, we will utilize the guidance found in the FFIEC BSA Examination Manual.

Organizational Structure and Director Responsibilities

Due to the way a bank is generally structured, the board of directors (“board”) is ultimately responsible for the bank’s BSA compliance program. It is important to understand the responsibilities of the board so that you can ensure that all requirements are appropriately designed into your program.

The board’s oversight begins with their approval of the written BSA compliance program. In today’s current examination environment, such approval should follow the board being apprised of the bank’s BSA/AML/OFAC risk profile. Only after evaluating a bank’s risks may it identify the necessary requirements of the bank’s written program. Communicating these risks to the board on a periodic and regular basis (i.e., annually) allows for informed decisions. Therefore, the board should expect and insist upon regular updates regarding the status of the bank’s program.

The board must designate and appoint the BSA compliance officer annually. This staff member or members to carry out the program. Failure to identify and designate a knowledgeable and effective BSA compliance officer may eventually lead to an ineffective and possibly criticized BSA compliance program. Further, it is a violation of the regulation. Therefore, designation of an effective BSA compliance officer is paramount.

As part of the overall responsibility for a bank’s BSA compliance program, the board is also responsible for assuring that risk-based independent audits are performed to assess the effectiveness of the program. While the BSA compliance officer typically coordinates and identifies potential individuals or firms to conduct such reviews, the final decision rests with the board. The board or a board committee needs to hire effective internal auditors or engage capable outside auditors or consultants. The results from these audits need to be communicated directly to the board or indirectly through the audit committee of the board.

In addition to receiving periodic updates on the bank’s BSA risk profile, as well as results of independent audits, the board should expect to receive regular reports on the status of the bank’s BSA compliance program. Status reports might include the following with one certain item a mandatory requirement:

- Notification of any suspicious activity reports that have been filed, generally at the next regularly scheduled board meeting (this is a regulatory mandate)
- Updates on procedural changes, as appropriate
- Education on new and/or amended regulatory requirements
- Status of BSA-related training initiatives, including board member training
- Changes or trends in the level of required reports, such as currency transaction reports
- Industry related BSA issues, trends, and concerns

Core Regulatory Expectations of a BSA Program

The second part of understanding what is expected is to assess what the regulatory expectations are for a BSA program. To do this, you must know the FFIEC BSA Examination Manual. This 442-page document outlines the specific requirements and expectations the regulators have for each element of your BSA program. As this course assumes each attendee has existing experience with many of these rules, we are not going to focus on the finite details found in this manual. Rather, we will look at the elements that relate to managing the program.

The current BSA Exam Manual mentions the directorate and management a number of times. The following are summaries of applicable sections of the manual.

For your reference, the entire BSA Examination Manual can be found at https://www.ffiec.gov/bsa_aml_infobase/pages_manual/manual_online.htm

Objective

A BSA examiner must assess the adequacy of the bank's BSA/AML compliance program. They should determine whether the bank has developed, administered, and maintained an effective program for compliance with the BSA and all of its implementing regulations.

A BSA examiner must review the bank's board approved written BSA/AML compliance program to ensure it contains the following required elements:

- A system of internal controls to ensure ongoing compliance
- Independent testing of BSA compliance
- A specifically designated person or persons responsible for managing BSA compliance (BSA compliance officer)
- Training for appropriate personnel

A bank must have a BSA/AML compliance program commensurate with its respective BSA/AML risk profile. In addition, a CIP must be included as part of the BSA/AML compliance program.

The examiner must assess whether the board of directors and senior management receive regular and adequate reports regarding BSA/AML compliance.

Internal Controls

The examiner must determine whether the BSA/AML compliance program includes policies, procedures, and processes that:

- Identify higher-risk banking operations (products, services, customers, entities, and geographic locations); provide for periodic updates to the bank's risk profile; and provide for a BSA/AML compliance program tailored to manage risks.
- Inform the board of directors, or a committee thereof, and senior management, of compliance initiatives, identified compliance deficiencies, SARs filed, and corrective action taken.
- Identify a person or persons responsible for BSA/AML compliance.
- Provide for program continuity despite changes in management or employee composition or structure.
- Incorporate BSA compliance into job descriptions and performance evaluations of appropriate personnel.

Independent Testing

The examiner must also determine whether the BSA/AML testing (audit) is independent (i.e., performed by a person (or persons) not involved with the bank's BSA/AML compliance staff) and whether persons conducting the testing report directly to the board of directors or to a designated board committee comprised primarily or completely of outside directors.

BSA Compliance Officer

The examiner must determine whether the board of directors has designated a person or persons responsible for the overall BSA/AML compliance program. They must also determine whether the BSA compliance officer has the necessary authority and resources to effectively execute all duties.

The examiner must then assess the competency of the BSA compliance officer and his or her staff, as necessary. They must determine whether the BSA compliance area is sufficiently staffed for the bank's overall risk level (based on products, services, customers, entities, and geographic locations), size, and BSA/AML compliance needs. In addition, the examiner must ensure that no conflict of interest exists and that staff is given adequate time to execute all duties.

Training

A BSA examiner must determine whether the following elements are adequately addressed in the training program and materials:

- The importance the board of directors and senior management place on ongoing education, training, and compliance.

Management Action Checklist

Do your BSA Management activities address the following?

- Did the board approve the policy?
- Did the board formally designate (and record in the minutes) the BSA Compliance Officer?
- Does the program identify higher-risk banking operations (products, services, customers, entities, and geographic locations); provide for periodic updates to the bank's risk profile; and provide for a BSA/AML compliance program tailored to manage risks?
- Are effective independent audits being conducted every 12 to 18 months?
- Are effective reports regularly being reported to the board?
- Is the system of internal controls to ensure ongoing compliance effective, as evidenced by exams and audits?
- Is training provided to the board and applicable employees regarding their responsibilities for BSA compliance?
- Does the BSA program provide for continuity despite changes in management or employee composition or structure?
- Does the program incorporate BSA compliance into job descriptions and performance evaluations of appropriate personnel?

Section 3: Key Ingredients to BSA Management

The Key Ingredients

While the BSA program at each financial institution will vary slightly due to the operations, size, and complexity of the organization, we believe that there are a number of key ingredients that are needed to effectively manage a BSA program. To establish a successful compliance program, the following ingredients must exist:

- Board of Directors involvement
- Management support
- Staff development
- BSA compliance monitoring

This section of the manual will discuss each of these areas in some detail.

Board of Directors Support

The board is ultimately responsible for the success or failure of the BSA program, just as they are for any other portion of the bank's risk management. Failure to be involved in the BSA compliance program can lead to unintended and painful consequences for the bank and the board.

The board needs a flow of information to assist them in understanding what their responsibilities are within the BSA compliance function, and the current status of the program. The board must also understand the stresses for the bank, and assure that there are adequate resources to assure success.

Director's Duties and Responsibilities

The regulatory agencies, and to some degree, the courts, have established a set of guidelines for the duties and responsibilities of the board of directors. Members of the board are personally liable for their decisions, especially in the world of BSA. In some cases, this liability has led to the resignation of directors or personal fines. In other cases, the boards have stripped much of the operating authority from the executive officers and, in essence, have taken over the management of the BSA program.

Neither of these alternatives should occur in banks with well run BSA programs. The reality is that BSA is a difficult subject, and directors should be keenly aware that BSA errors and issues can result in personal fines or worse, making them skittish about BSA – or at least they should be skittish.

In coming to an understanding of the duties and responsibilities of the board of directors, the board must determine how executive management and designated BSA officer fits into the realm of the board's duties and responsibilities. The board and staff must realize that

management and the designated BSA officer have specific duties and responsibilities toward the board of directors as well as to the overall institution.

Generally, the board should not be responsible for managing the BSA program of the institution. Instead, the board's function is supervisory; it acts as a watchdog for the shareholders. The board must monitor the institution's performance and direction. To do this, the board must have timely information of the institution's performance and a clear understanding of how institution's purpose or mission is defined. In terms of monitoring, a formal BSA compliance program is one means of fulfilling the directors' duties.

As part of their duties, the board must establish and implement the following:

1. Annual appointment by the board of directors of a BSA compliance officer who will be subject to supervision by the board of directors. This must be recorded in the board's minutes.
2. A brief description of the authority and duties of the BSA compliance officer to establish and administer a formal compliance program throughout, including formal procedures for:
 - a. Monitoring BSA compliance
 - b. Developing BSA compliance training
 - c. Investigating BSA compliance issues
 - d. Maintaining clear BSA compliance records

If the board has an understanding of the BSA regulation, when BSA compliance reports are presented, the board can better grasp the essence of the reports so that corrective action can be taken. The board need not have a detailed understanding, but needs to have a general concept of the program. To assist the board in this process, all BSA compliance reports should include some background information about the regulation itself.

Management Support

Management must be actively involved in the development of the BSA compliance program. Although management may not design and develop the program, management should provide direction and assure that there are resources to support the establishment and maintenance of the program. Management must stay involved by monitoring the progress of the BSA program through requiring periodic reports. As part of this process, management must support the program by using the BSA compliance reports as a means to improve the internal safety and soundness of the institution.

Duties of Executive Management and Designated Officers

While the board is charged with reasonable supervision and control, executive management and designated officers are charged with establishing the daily management and operating procedures that comply with industry and regulatory standards regarding BSA. Failure to do so may result in examination citations and/or unexpected losses.

The regulation requires that the institution establish minimum compliance procedures. In addition, management and the designated BSA officer must provide the reporting capability to inform the board of the status of the institution in terms of these operating procedures.

For example, management and the designated officers have the duty and responsibility to inform the board of any changes in the institution and the industry that may affect the institution. Examples could be changes in BSA regulations as well as the corrective actions the institution must complete. In addition, executive management and the designated officers have the ultimate responsibility for ensuring that the board is fully aware of the progress the institution has made toward completion of these corrective actions.

Management and the designated officers have a duty and a clear and present responsibility to provide some of the means to enable the board of directors to fulfill their duty to reasonably supervise and control the institution.

Both management and the Board of Directors have other fiduciary responsibilities that are outside of the scope of this course.

Staff Development

Staff development means providing the staff the necessary background to understand the purpose of compliance, the structure to support the program, and the technical skills to be able to carry out the compliance program. Management must allow them the resources, including the resource of time, to fully implement the BSA compliance program.

One staff development area that many banks have omitted is the requirement to include BSA duties in the job descriptions for individuals that have BSA duties. This encompasses most of your staff. The BSA exam manual insists on inclusion of this in job descriptions, as well as analysis of the individual's BSA performance at the time of the "annual review."

The BSA Compliance Officer

One of the first items required in the establishment of a BSA compliance program is to select the person who will be the compliance officer. Typically, institutions select someone from within the organization because they prefer someone who knows the organization and its people. Regardless of the selection method, there are skills and background knowledge that should be considered prior to and during the selection process. These include:

Working Knowledge of Industry. The BSA compliance officer should have a working knowledge of the industry and/or the institution. Compliance is institution-wide and requires coordination between areas. The BSA compliance officer can therefore be much more effective if he or she has an understanding of the institution and industry.

Technical Expertise. Another criterion to consider is technical expertise in BSA. Knowledge and understanding of the requirements can help the BSA compliance officer to interface with practical recommendations when citing BSA compliance deficiencies. In addition, hands-on experience adds credibility when making recommendations.

Background. Finally, the BSA compliance officer should have some form of legal, compliance, and/or auditing background.

Common Pitfalls

Once the institution selects the compliance officer, there are some common pitfalls:

- Failure to assure that the BSA compliance officer understands the breadth and depth of their assignment (poor job description).
- Failure to indicate management support to all employees. This tends to isolate the BSA compliance officer, and materially reduce their effectiveness.
- Failure to provide adequate BSA training or certification opportunities.
- Failure to provide adequate resources – both financial and a BSA compliance structure.

Accountability of the BSA Compliance Officer

The BSA compliance officer should be held accountable by making periodic reports to the board of directors or to a board committee. The BSA compliance officer does not and should not manage the bank. The role of the BSA compliance officer is to manage the BSA compliance program and process in conjunction with the management of the bank. If this vital link is not maintained, then the BSA compliance officer, and perhaps the bank, is probably doomed to BSA compliance failure.

However, you structure your BSA program, the BSA compliance officer must assure that every BSA compliance task, change, or issue, is addressed. Management must take steps to assure that this can occur. At the same time, the BSA compliance officer must assure that the decisions made to accomplish the BSA compliance goals do not usurp management authority to run the bank.

This line has become more difficult to nurture, as the BSA regulations continue to blur the line between management of the company and the regulation. In part, the success or failure of the program will rest upon maintaining the very best balance possible between these two competing and often contradictory forces. Banks that succeed in dealing with this reality are those banks where the BSA compliance officer and management work together to find ways to minimize staff and customer discomfort. A BSA compliance officer that simply imposes or attempts to impose its will on the staff without proper backing and preparation of management will face backlash, and is not likely to accomplish the underlying goal – compliance with a minimum of disruption.

People outside of BSA compliance operation will contribute opinions, and those opinions should be considered. However, the quality of the program cannot be sacrificed to the detriment of the program. This goal should exist at all levels of management, up to and including the board of directors.

The individual line managers and their employees must also be held accountable for their respective areas. To ensure this accountability, the BSA compliance officer should keep an accurate record of job performance. If there are BSA compliance projects that involve other staff

or management members, there should be a status reporting mechanism. All projects should have deadlines.

Authority

As noted above, it is extremely important for the BSA compliance officer to develop sufficient authority to operate within the bank. Without this authority, the BSA compliance officer and the overall program will be ineffective.

Assuming that the board of directors and executive management have clearly granted the BSA compliance officer sufficient authority with which to operate, the BSA compliance officer must ensure that they do not destroy this authority through their own actions.

Developing Credibility

If the BSA compliance officer does not act in a professional manner, the credibility of his or her answers may be questioned. If answers to questions are not developed quickly or communicated, then the credibility of the person may be questioned. Additionally, if the answers to questions are in legalese and not clear so that the employee can understand and use the information, then the credibility of the person and the answer may be questioned.

In short, the BSA compliance officer must ensure their own credibility to retain any authority that the board of directors and management have granted them.

If in the eyes of the employees, the BSA compliance officer is an informational source, useful, and helps them do their job, the BSA compliance officer will succeed. If policies are developed and distributed, but not enforced, the BSA officer and program will fail. If communications channels are established, but never work, the BSA officer and program will fail. The key to the success is to establish, implement, monitor, and enforce the BSA compliance function throughout the bank.

The credibility will surface as the BSA compliance officer presents a consistent message to all employees through both actions and communications. To further this message, the BSA compliance officer must remember who the audience is. The success and credibility of any compliance program, action, or communication depends on the cooperation of the employees. If the BSA compliance officer does not solicit this cooperation, then the compliance program may have difficulties.

Reviewing the Results

The final step in any program is to assure that the Bank has accomplished the program that has been set out by the board of directors. No program can be effective without accountability.

Questions for Discussion – Management of BSA

- How is your BSA area staffed?
- What support do you receive from the Board, Management, line personnel?
- Any suggestions or things that have worked in your bank to help achieve compliance?
- What reporting mechanisms do you have in place to management and the Board?
- Other comments on this topic?

Management Action Checklist

Do your BSA Management activities address and ensure the following are evident in your organization:

- Does the board have a flow of information to assist them in understanding what their responsibilities are within the BSA compliance function, and the current status of the program?
- Does the board have an understanding of how executive management and designated BSA officers, fit into the realm of the board's duties and responsibilities?
- Do the board appointed duties of the BSA Officer include 1) monitoring BSA compliance, 2) developing BSA compliance training, 3) investigating BSA compliance issues, and 4) maintaining clear BSA compliance records?
- Does the Board have a general understanding of the Bank's BSA requirements?
- Does management provide sufficient support in applicable business lines?
- Are daily management and operating procedures that are overseen by departments outside of the BSA department effective to comply with industry and regulatory standards regarding BSA?
- Are changes in the institution and the industry that may affect the BSA program being reported to the Board?
- Are those in BSA positions provided the necessary background to understand the purpose of compliance, the structure to support the program, and the technical skills to be able to carry out the compliance program?
- Does the BSA Officer understand the breadth and depth of their assignment, through a job description or other means?
- Are adequate BSA training or certification opportunities offered to applicable BSA staff?
- Does the BSA Officer take specific actions to gain credibility with applicable staff and management?

Section 4: Reports, Software, and Ticklers

Introduction

Effective BSA management will utilize various reports, software, and ticklers in order to track, monitor, and record certain BSA activities. While the types and volume of reports will vastly vary from one organization to another, these resources generally serve the same purpose – to help identify certain criteria from customer activities.

One challenge that BSA programs often face is to ensure that utilized reports are effective and efficient. An ineffective system of reports will create holes in the program that will potentially result in major issues for the organization. In addition, inefficient reports will create a large amount of work for limited return. The goal of establishing reports should be to create them in the most effective and efficient way possible. We will discuss ways to be efficient and effective in greater detail in our section on The Four E's of BSA Management.

Questions for Discussion - Reports, Software, and Ticklers

- What reports does your organization find most useful and how do you utilize them?
- What challenges has your organization faced in managing reports and ticklers?
- What steps has your organization taken to ensure efficiencies are achieved in your reports and ticklers?
- What reports have you desired to incorporate into your program, but do not feel you have an understanding how to utilize them for BSA purposes?
- What software solutions are working for you?

Section 5: The Five “E’s” of BSA Management

Introduction to the 5 E’s

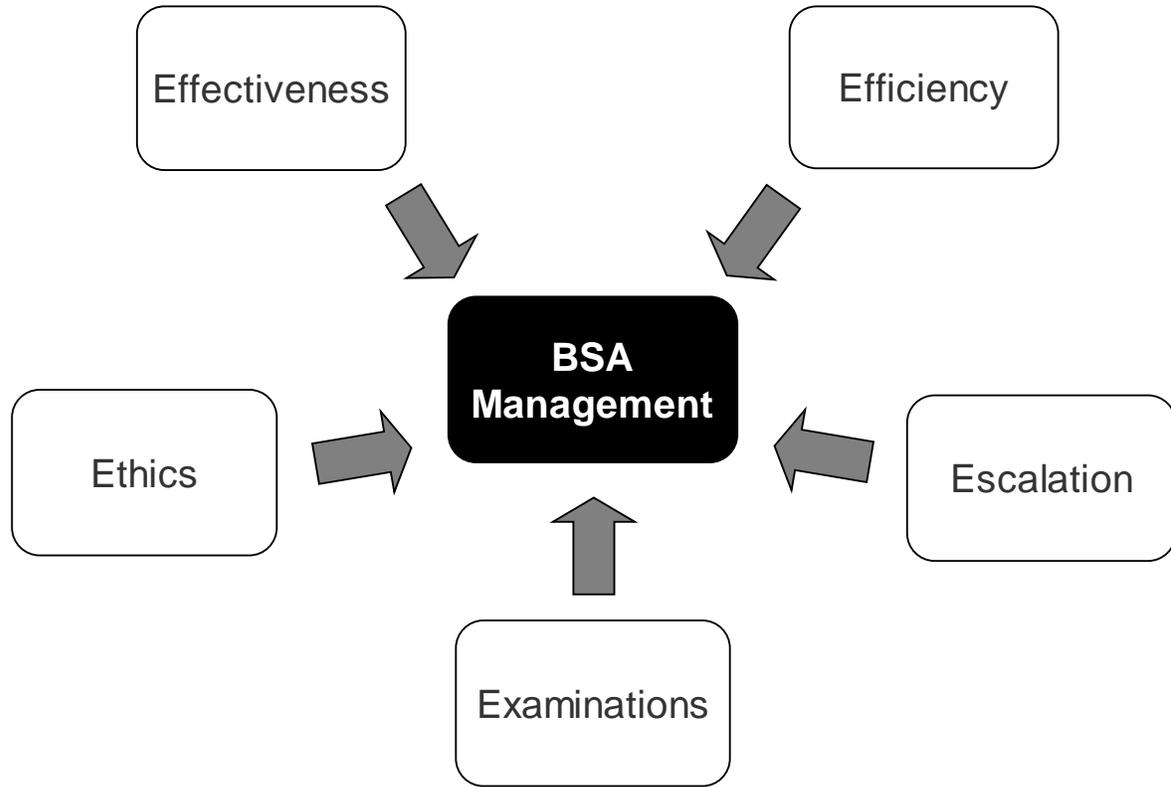
While many BSA programs are effective – meaning that they meet the minimum standards expected by federal functional regulators – just being effective often does not have the best impact on the bottom line. Financial institutions should work to implement a premier BSA program.

Every financial institution can redesign their BSA program to impact the bottom line by applying the 5 E’s of a Premier BSA program.

At its core, a premier BSA program includes the five following elements:

- Effectiveness
- Efficiency
- Escalation
- Examinations
- Ethics

The following chart illustrates the 5 E’s of a premier BSA program:



Together, these five elements create the framework for exceptional BSA management. We will look at each of these elements in this section.

Effectiveness

The first, and probably most important, element of evaluating BSA management is to determine the effectiveness of the program. If the program is not effective, then those responsible for BSA compliance are not doing their job.

At Young and Associates, Inc., we have found that there is not a specific formula for developing an effective BSA program. We find that consultants that come directly from a Bank often begin their employment with us with a mindset of “at my former institution we did it this way.” While a past employer may have had a BSA program that was effective, that process surely is not the only way to get the job done. In reality, it also may not be the most efficient way to get the job done.

As BSA professionals, we must be willing to be creative and think through the entire process when it comes to our existing programs and procedures. We should be concerned with the big picture and vision for the program, rather than the technical procedures that get us there. A BSA compliance officer in a bank needs to follow the same process.

Desired Results

For BSA management, you must ensure you are getting the results you need. However, to achieve the desired results, you must first develop goals. This means you must determine what the most important outcomes are. For example, a BSA Officer may have a goal of passing all examinations and audits without any significant violations or high priority recommendations. Or, a goal may be to ensure that CIP exceptions are limited to less than 5% when tested internally.

While both of these examples are very specific, it is also important to have a wider view or broader vision of effectiveness. For instance, developing a program so that there are no gaps where violations could eventually occur. This might include establishing a culture where BSA requirements are highly respected and each employee pro-actively works to incorporate BSA requirements into their positions.

Measuring Effectiveness

In order to determine if BSA management efforts are effective, someone must evaluate the program. To accomplish this, measurement can be done on both a quantitative and qualitative basis.

A quantitative analysis is an evaluation that is done by examining measurable characteristics. For example, a BSA Officer may track CTR violations that occur by each employee. By tracking this information on a month-to-month basis, the BSA Officer has statistical data that can be done to provide a quantitative analysis of the performance of each

employee. A BSA audit will determine if the final CTR (for instance) leaves the bank correctly. While that is important, it is equally important to determine the amount of BSA officer time necessary to correct staff errors.

A qualitative analysis is more subjective in nature than the hard statistical data used in a quantitative analysis. A qualitative analysis could evaluate things like employee BSA competency, management knowledge, or how well BSA has been integrated into the culture of the organization.

Effectiveness Case Study

Reggie Wayne was a new BSA Officer to the Bank. She had been a teacher before she came to the Bank and was quickly promoted to the BSA Officer role due to her organization and ability to create forms, something she had done for years as a teacher. Reggie had taken it upon herself to revise the CIP *New Account Form* that was required to be completed with each new account. The old form was cumbersome and fragmented, and in need of a makeover.

Reggie spent two days mastering this form and even utilized a special Adobe program so that the PDF would require certain fields and allow the user to tab from field to field. Overall, the Form looked great and the employees commented on the improvement of the form, especially since the form did not require as much information as it did before, meaning they could complete it quicker. Reggie was pleased with her work and moved on to other projects.

During the Bank's next examination, the examiner discovered that the Bank was often collecting a P.O. Box instead of a physical address. Upon some research, it was discovered that the old form specifically stated "physical address only" where the new form did not provide this disclosure. In addition, the examiner determined that the form did not record the date of birth, which is a requirement for BSA purposes. While the Bank could retrieve this information from their core system, the intent of the *New Account Form* was to provide a central location for this information.

While Reggie's form may have been beautiful, it turned out to lack needed effectiveness.

Efficiency

While the effectiveness of a BSA program is discussed at each examination and independent audit, the efficiency of the program is rarely addressed by anyone other than the Present or CFO. Generally, many in leadership are often intimidated by BSA rules. This intimidation is often justified as ineffective BSA programs can result in major consequences for both the financial institution as well as those involved with the oversight of the BSA program.

The reality is, however, that a BSA program can be both effective and efficient at the same time. Just because a process works in determining an effective outcome does not mean that it is the most efficient way to achieve the same results.

Evaluating Efficiency

Efficiency is currently a hot topic among bank Chief Financial Officers. As Banks continue to see squeezed margins and reduced abilities to collect fees, efficiency ratings have again become a key area of focus. Many financial institutions are paying thousands of dollars to bring in efficiency consultants to evaluate their processes and procedures. The challenge with many of these consultants, however, is that they do not fully understand the BSA implications associated with their recommendations. In addition, it is often very difficult to make efficiency recommendations for a BSA program without having a full picture of the BSA program and how the specific process being considered fits into that picture.

As one responsible for BSA in your organization, you have an excellent opportunity to recommend and create efficiency opportunities in relation to the BSA program. In order to evaluate the efficiency of BSA processes, the following steps should be taken:

- Uncover why the process is being done.
- If BSA related, ensure that the process is first achieving the objective.
- Next, determine if the process is part of a smooth workflow or if it is fragmented in nature.
- Determine whether the process is being done once or if it is being done multiple times or by multiple individuals who must “re-invent the wheel” each time they take part in the process.

Becoming Lean

It has now been many years since the initial BSA program was designed at your organization. Over the years, this program has been tweaked and re-tweaked to address changes in both regulation and internal processes. These adjustments to the program are often temporary or singular fixes to a single problem. They can be very narrow in focus and do not address the BSA program as a whole, but rather, are designed to address the single problem at hand. What happens is, over time, a number of singular changes to the BSA program can result in significant inefficiencies.

To eliminate these inefficiencies, one must look at the BSA program holistically and determine how each process fits into the larger picture. Once this is done, the process can be evaluated for both of the following:

- Waste
- Rework

Process Waste

Process waste can often be the result of two different things.

First, it can occur when a procedure was implemented to fix a problem, which is no longer a problem. The challenge with implementing procedures as a singular fix to a single problem is that it is difficult to fully understand the reason for the procedure and fully knowing when a procedure has become irrelevant and unnecessary. While effective communication can help to avoid process waste, evaluating “why we do what we do” can help to increase efficiencies in financial institutions through the elimination of process waste.

In addition to being a solution for something that is no longer a problem, waste can also be the result of a bloated process. For example, if a regulation only requires three elements to be collected but a financial institution is collecting fifteen elements on a form, then there is a good chance that process waste exists.

A bloated process can often occur in relation to organization training on the Bank Secrecy Act. While BSA training of most employees is essential for an effective outcome, the implementation of training is often not as efficient as it could be. For example, a busy BSA Officer may choose to assign an electronic training course from a third party vendor to all employees rather than spend 8 hours creating and delivering BSA training. While this extensive electronic course may be effective – meaning that all employees receive in-depth training on BSA – the course may actually provide much more than what is actually needed.

The result could be that each employee ultimately spends 30 minutes more training than what was essential for effectiveness. If the organization has 80 employees who received more training than necessary, then this waste could be quantified to 40 hours of process waste. If the BSA Officer were to choose to create the training themselves – a process that would take 8 hours – then 32 hours of process waste could be eliminated.

The challenge in eliminating process waste is to be able to identify the critical elements and balance those with not removing too much of the process so that it is no longer effective.

In evaluating your process, the following question can be considered to determine if any steps of the process produce waste:

Questions to Determine Process Waste

- Is this information or step essential for the goal we are trying to achieve?
- Is it relevant for the process we are establishing?
- If this is eliminated, will it sacrifice the integrity of the program?
- Is there an easier way to do this?
- Is this process achieving more than what is needed to be effective?

Process Rework

Rework is the act of subjecting something to a repeated process. Process rework often occurs in two different ways.

First, it can often occur in processes where multiple people are involved. If information is not clearly passed “down the line,” each employee must spend time familiarizing themselves with the account or problem being worked on. This process of “familiarizing themselves” is rework that can be eliminated by utilizing one individual to complete the entire process, as one individual would not have a need to re-familiarize themselves for each step of the process.

The second way rework can occur is through overlapping processes. When two processes that are designed to achieve two different results overlap, rework can occur in the portions of the process that overlap. For example, if employee Ted is given the task of reviewing a complex report for item A and Tina is given the task of reviewing the same complex report for item B, the process of reviewing the report two separate times creates rework. A solution to this could be to instruct Tina to review both items A and B, while Ted’s time can be utilized in different areas.

For example, if the CIP process requires a new accounts employee to complete three different forms that contain the customer’s name, address, phone number, and social security number, the employee is conducting a large amount of unnecessary rework. In the example given above, the collecting of the customer information is considered rework as the same information is unnecessarily collected on multiple occasions.

Questions to Determine Rework

- Is this information being collected somewhere else?
- Do we already have this information in our records?
- Is this process redundant with another process?
- Can this process (such as a form) be combined/consolidated with another existing process?
- If we eliminate this process or step, will it sacrifice the effectiveness of our program?

MIL Efficiency Case Study

The Problem

Curtis Painter, the new BSA Compliance Officer, was evaluating the bank's process for handling monetary instrument purchase logs (MILs). In looking at the process, Curtis found that the bank kept physical copies of each monetary instrument purchased with currency in an amount from \$3,000 to \$10,000. These forms, which were kept in a central binder, were a full page in length and only allowed for one monetary instrument to be logged on the form – a separate form was required for each log. In addition to the required recordkeeping information, the form requested additional information regarding the customer such as the account number, the port number, the address, date of birth, and phone number. Furthermore, Curtis found that Ed Smith, the Operations Manager who followed rules to a "t," heavily enforced each of these forms to ensure they were completed in entirety.

The Solution

Curtis first went back to the BSA rules to determine what exactly the Bank needed to retain. To eliminate waste, Curtis eliminated all information except for the core recordkeeping requirements, which include both the name of the purchaser and the account number (identifying information). Furthermore, he was able to eliminate rework by no longer requiring a separate form for each monetary instrument purchased. This now meant that if one individual purchased fifteen qualified monetary instruments, the bank would no longer be completing fifteen separate forms.

In addition, Curtis determined that the BSA rules require the information to be retained, but do not state that the information must be retained in paper form. Therefore, he was able to eliminate the paper form and implement a log system through a spreadsheet that was accessible on the bank's shared drive.

Through these changes, Mr. Painter was able to establish an efficient process while ensuring the regulatory requirements were still met.

Ethics

The third "E" in the five "E's" is ethics. As a BSA manager, ethics is an essential topic to discuss in this course.

Merriam-Webster defines ethics as the discipline dealing with what is good and bad and with moral duty and obligation. Ethics often reaches beyond the scope of company policy or even law – it is your internal definition of what is good and bad and what your moral duty and obligation are.

The truth is that you alone are responsible for yourself. If one is to read individual enforcement actions issued by the regulatory bodies, you will find a number of enforcement actions where a bank employee is banned from the banking industry as they conducted actions that were not in the best interest of the customer, bank, or shareholders. We have all heard stories of embezzlement schemes where people knowingly get involved due to pressure from their superiors. Ethics, however, is a question that is not usually this black and white. Ethics comes in to play for every choice and action we make.

Say you are a branch manager at your Bank. On December 1, the Bank president comes to you in confidence and advised that the Branch will be shut down in 90 days. Fortunately, they have created a position for you, but your entire staff will be let go. He asks you to not share this information with anyone as the needed regulatory paperwork has yet to be filed.

The next day, the branch Loan Officer, who you are close with because he reports to the Senior Lender rather than you, asks you about rumors that the branch may be closing. He says, “Do you know anything about this? This is serious for me as my wife stays home with our kids. Should I cut back on Christmas gifts?”

The challenge with this situation is that your question of ethics really is not a question of right and wrong, but rather a question of right and right. To answer the Loan Officer honestly would be the correct answer, but it would also be going in direct violation of the President’s request for confidentiality.

Legal Duties

In the BSA world, we are quite fortunate that we have pages and pages of guidance to tell us how we should do things. This is especially wonderful for those who are detail people and like to “play by the rules.” Difficulties, however, arise when our situation is outside of the scope of formal guidance.

Informal guidance (such as a phone call to FinCEN) or a legal opinion from an attorney can assist us in our decision-making, but those options are not always available.

Justification and the Sleep Test

Shakespeare provides the perfect example of the sleep test. Lady Macbeth wakes up in the middle of the night as she is tormented by guilt because she and her husband have just murdered several of his political rivals. Not only have they murdered these rivals, but they also “murdered sleep.”

We often justify our decisions through countless details that build our case. However, our conscience will often override these justifications.

Ethics Discussion Case Studies

Case 1: As a new BSA Officer, you are taking over for Robert Mathis, who is being promoted to the Compliance Officer position, which you will report to. As Robert is still with the organization (and now your boss), he provides you with several days of training on how he did things when he managed the BSA program. One of the items he specifically mentioned was in regards to CTR reporting. He stated that if a teller provided incomplete information on a CTR, such as the occupation field or ID used to verify the customer, he would contact the teller who conducted the transaction to get the information. As you begin to process CTRs on your own, you quickly find that the occupation and ID information is frequently missing. Therefore, you start to contact the tellers who conducted the transactions to get the needed information. In the course of your interaction with these tellers, they consistently say, “Why do we need this information, it has never been requested before? I don’t think I talked to Robert once in the two years he was a BSA Officer.” Through these interactions, it becomes clear that Robert had not been contacting the tellers for this information, though your review of prior CTRs discovered no instances where the information was missing. Through this, you feel that Robert may have been completing CTRs with incorrect information.

Case 2: Your Bank has long had a policy where each filed SAR is provided to the Board of Directors in entirety. You have brought this topic up with the President, but he insists that the Directors want to know the name of the individual on which the SAR is being filed. As of today, you have determined that you must file a SAR on the Chairman of the Board due to six deposits in consecutive days for \$9,999. You are the sole SAR decision maker, so the choice to file is your decision.

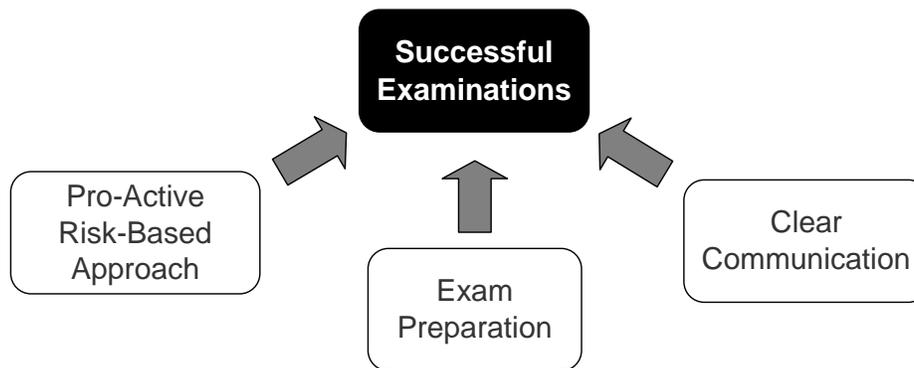
Case 3: Your Bank has a SAR Committee comprised of you (BSA Officer), the Security Officer, and the bank President. You just presented SARs to the group for consideration and the President attempted to veto the SARs as he “feel(s) comfortable that this customer isn’t intentionally doing anything wrong. Plus, I know him very well – he is a respectable businessman who brings us a ton of business.” Even though both you and the Security Officer feel a SAR should be filed, President clearly states, “Do not file these SARs.”

Case 4: Bob Sanders is a new BSA assistant who processes CTRs, though he has been with the Bank for several years. When Bob takes over the CTR program, he uncovers a situation he believes to be an issue. However, Bob does not have many “hard facts” to support his theory. Bob discovered one instance where a businessman deposited funds together for five different businesses, which together in aggregate would cause a CTR to be filed on the businessman. As all of the deposits for the businesses were less than \$10,000, a CTR would not be required had the same person not brought in all of the deposits. Bob’s theory is that he suspects that the businessman has brought in all of deposits on the account for the last 8 months these accounts have been open. Bob now wants to back file CTRs on each transaction where the five businesses aggregate more than \$10,000. When he brings this up to the BSA Officer (his boss) and the President, both state they doesn’t want to open that “can of worms” and to just start contacting the tellers each day to see who brought in the deposits. Without telling the BSA Officer what he

is doing, Bob sends a letter to the Board advising them of the situation and states that the BSA Officer and President are incompetent.

Examinations

The fourth “E” of optimal BSA Management is ensuring examinations go well. Successful examinations are the result of three things:



Risk-Based Approach

The first step to a successful examination is to take a risk-based approach. If your program is designed to spend the most time, resources, and effort on the areas of highest risk, you are going to be pro-actively working on the areas of your program that could cause the biggest concerns during a BSA examination.

Preparing for Exams

Preparing for a bank examination is a process best coordinated and managed by the designated bank management, although some request items often affect the bank’s line staff. The federal regulators will provide banks with advance notice of upcoming examinations. A bank’s next examination estimated date may be known to the bank as early as the conclusion of its current exam. Depending on the regulator and the bank’s current status, many types of examinations are on set schedules and have become routine for banks.

Exam Request Lists

While the FFIEC exists to provide consistency to the examination methods employed by the various federal regulatory agencies, each agency may have a slightly different version of an examination request list. The request list may also vary depending on the types of products or organization of a particular bank. Finally, each type of examination carries its own types of items to be requested and the items requested typically cover the period back to the bank’s last examination. The two discussed in this manual are for the safety and soundness exam and the compliance exam.

Regardless of the delivery method of the requested items, it is important that each requested item be provided in a clear and conspicuous manner. If items are not clearly labeled or difficult to find, the examiner will most likely request this information again which can lead to frustrations for both the bank employee and the examiner conducting the review.

Clear Communication

During an examination, bank management typically designates one or more staff individuals to monitor the ongoing exam, respond to inquiries and resolve any issues. For example, in a BSA exam, this might be the BSA officer or members of the BSA department. A well-managed exam on behalf of the bank can often reduce misunderstandings that may result in issues discussed at the exit meeting.

The designated individual(s) should attempt to create an open-door policy with examiners and keep communication lines open while the examiners are on site. A potential issue discovered by an examiner, after immediate research and/or resolution by the bank, may not result in a report finding, or may be lessened in severity in the final report. Another benefit of designating select individuals to manage the exam can reduce miscommunications between bank staff and the examiners. While the examiners have the ability to talk with any staff member, immediate follow-up with the staff person meeting with the examiners may shed light on any potential issues.

Exit Interviews after Exams

The examination team will typically hold an exit meeting with senior management. At this point, any or all potential issues discovered in the exam should have been discussed with a member of a management, either in the department the issue affected, or the bank's designee. Hopefully, the exit meeting will provide "no surprises." During the exit meeting, the examiners will discuss any violations of law discovered, procedural deficiencies noted, and the bank's initial commitment to address these issues. While not all items can be resolved at or before the exit meeting, the regulatory agency's final exam report will identify the bank's actions necessary to address those items in the report.

The Employee's Role

Each and every bank employee, regardless of job function or position, plays a vital role in assuring that the bank perform well in regulatory examinations. Depending on the regulation violation involved, consequences of noncompliance can affect any bank employee. Therefore, it is imperative that all bank employees receive proper training and gain a comprehensive understanding of his/her role in the bank's overall BSA operations.

During an examination, each bank employee should be courteous and cooperative with bank examiners. While most examiners deal directly with bank management, there may be instances where an examiner wishes to interview line staff. Management should apprise staff when such situations arise. Employees should be aware that the examiner is only trying to assess the bank's compliance and not "trap" them or "trick" them. Some examiners' techniques tend to

come across as “tricky,” but they are really attempting to determine whether the employee knows his/her job function and is complying with the law.

Should a situation arise where, after discussions with an examiner, the employee believes that there may be a regulatory issue, the employee should immediately inform the bank’s exam point person or a member of bank management of the issue. This will assist management in preparing to discuss the issue with the examiner.

Questions for Successful Examinations

- What could we have done to make our last exam better?
- What can we do now (before an exam) to prepare for our next exam?
- What can we do during the preparation stage (request list) to ensure an effective exam?
- How can we improve exam management during the exam?
- Do our employees understand their roles in the exam?

Escalation

The final “E” is escalation. Escalation is the flow of movement within the BSA program. While escalation can come in many different forms within the BSA function of a financial institution, the following four types of escalation can help to impact the bottom line of the financial institution:

- Escalation of information (integration)
- Escalation of issues (communication)
- Escalation of decisions (management)
- Escalation of employees (culture & continuity)

Escalation of Information

In creating a Premier BSA Program, it is imperative that information be able to properly flow within a financial institution. This is accomplished through formalized procedures that are pro-actively designed to integrate BSA into all functions of the organization. If processes are fragmented, the likelihood of information getting where it needs to be decreases.

Escalation of Issues

The next step in escalation is to ensure that issues are able to flow to the proper person within a company. Without communication of issues, the BSA Program is not able to function as it needs to and will ultimately lack in effectiveness. Issues can be escalated in a number of ways. First, concerns of suspicious activity can be identified by various employees and reported to the BSA Officer for SAR consideration. Secondly, departments must be notified of applicable changes to regulations and laws, as well as applicable procedures and processes. Finally, the Board of Directors and senior management should be apprised of BSA program initiatives, concerns, and upcoming changes.

Escalation of Decisions

Due to the way a financial institution is structured, the board of directors (“board”) is ultimately responsible for the BSA compliance program. Therefore, information should naturally flow up to the board of directors, especially information of higher impact to the organization. While the board of directors should not be involved in managing the daily functions of a BSA program, some decisions should be escalated – some to the BSA Officer, some to senior management, and some to the board of directors. For example, the BSA officer may need to be involved in decisions regarding potential OFAC matches, while senior management may need to be involved in decisions regarding whether or not to open an account for a Money Service Business. Decisions of whether or not to purchase expensive BSA monitoring software may be a decision for the board.

Regardless of who ultimately makes a specific decision, there should be a flow of decisions toward the board of directors so that the decisions with the most impact to the organization are being made at the highest levels.

Escalation of Employees

The final component of escalation relates to employees. First, BSA elements should be escalated in the overall importance of each employees job function. Without proper incorporation into the job function of all employees, sufficient accountability will be lacking. In addition, an escalation plan should be established in the event a key employee (conducting BSA functions) leaves the organization or is not able to complete those functions. Basically, an optimal BSA program will be designed with appropriate back-up plans for individuals in key BSA roles.

Organizational Structure and Director Responsibilities

The board's oversight begins with their approval of the written BSA compliance program. In today's current examination environment, such approval should follow the board being apprised of the organization's BSA/AML/OFAC risk profile. Only after evaluating a financial institution's risks may it identify the necessary requirements of the financial institution's written program. Communicating these risks to the board on a periodic and regular basis (i.e., annually) allows for such informed decisions. Therefore, the board should expect and insist upon regular updates regarding the status of the BSA program. Such status reports might include the following with one certain item a mandatory requirement:

- Notification of any suspicious activity reports that have been filed, generally at the next regularly scheduled board meeting (this is a regulatory mandate)
- Updates on procedural changes, as appropriate
- Education on new and/or amended regulatory requirements
- Status of BSA-related training initiatives, including board member training
- Changes or trends in the level of required reports, such as currency transaction reports
- Industry related BSA issues, trends, and concerns

Questions for Successful Escalation

- Does our BSA program have effective escalation of information to applicable parts of the organization?
- Is our program designed to escalate issues relating to BSA to the appropriate place?
- Do decisions get escalated in accordance to their impact to the organization?
- Is BSA incorporated into employee job functions and do we have sufficient back-ups for those in key BSA roles?

Section 6: Writing a Comment Letter

Introduction

Rules and regulations for financial institutions have been changing at a rate faster than ever before. While we have experienced an extremely rapid pace of regulatory change over the last few years, there are several rules that have yet to go into effect and the CFPB has been stating that they will also begin to revise several existing rules. Therefore, we can expect regulatory changes to continue for some time.

The Problem with Rapid Regulatory Change

The challenge with rapid regulatory changes is that many of them either do not work as intended or have unexpected consequences, not to mention that they are often impractical or extremely difficult to implement in smaller financial institutions. The result is a significantly increased burden to the financial industry, and specifically community banks.

When changes are quickly forced upon the industry without an educated understanding of the full implications of the change, the consequences can result in inefficient implementation, reduced products and services, wasted resources and unhappy customers. Therefore, it is imperative that those in the financial industry do what they can to help guide the regulators when rules are being changed or released. This can be accomplished by participating in the rule making process.

Comment Letters Make a Difference

Financial institutions can participate in the rule making process by commenting on proposed regulations. The way the rule making process works is that a rule is initially proposed by a regulatory agency with a defined period of time for anyone, such as those within the financial industry, to comment. These comments are then reviewed and considered by the implementing regulatory agency. Upon the release of the final rule, the implementing agency will often address the comments they received and either provide justification for their proposed rule or make appropriate changes to the rule.

Even in understanding this importance, those in the financial industry still often struggle to justify the work it takes to draft a comment letter. One of the easiest excuses for not writing a letter is to justify that writing another letter is really just a waste of time, as it will not be considered in the final rulemaking process. The reality is that there are several reasons why comment letters are extremely valuable.

First, the process requires the perspective of outsiders. Within the process the regulators follow, the open comment period is a required part of the rulemaking process. This part of the process provides an opportunity for those in the financial industry, who are industry experts, to express their concerns and ideas. This opportunity allows for a contribution to help educate those developing the rules so that they better understand what will and will not work from both a practical and logistical perspective.

Secondly, the volume of comments received does make a difference. The reality is that consumer advocacy groups often work very actively to ensure every available comment and complaint they can find is sent in as a formal comment to the regulators. This “volume approach” can easily allow the comments submitted by consumers to far outnumber those sent by financial institutions. This imbalance would not be easily overlooked by those designing the rules.

Finally, it is important to understand that comments are actually heard and even considered. While one could easily assume that comment letters really do not make a difference, the reality is that received comments are read and, at least to some degree, considered. An effective comment will often be addressed in the commentary section (pre-ambule) of a final rule submitted in the Federal Register. In addition, proposed rules are often redesigned to address certain concerns brought to light from public comments.

Writing a Comment Letter

There are many different approaches as to how a comment letter can be written. Some comment letters, such as those sent by various trade associations, take an analytical approach where they work through an entire proposed rule and comment on every part of the proposal. This type of an approach often takes a great amount of time as the proposed rule must be understood in full so that valuable comments can be provided.

The truth is, writing a comment letter does not have to be an all-inclusive, overwhelming task. A simple one-paragraph comment on one specific part of a proposal can be just as effective as a long doctoral thesis-type of comment. The value of a short comment letter is exemplified when the overall volume of comment submissions increase in regards to a specific part of a proposed rule.

One Approach to Writing Comment Letters

Writing a comment letter can appear to be an overwhelming task. The reality is that it does not have to be. Therefore, we would like to offer the following practical tips to help you COAST through your next comment letter:

Choose Your Battles

Remember that you do not have to comment on everything found in a proposal, so stick to what you know. If a particular area is not your strength, send a joint letter with someone who is familiar with the topic.

Outline Your Comment

In developing your response, “map” it out first. A quickly created outline will go a long way in motivating you to finish the project.

Apply a Theme

After you have outlined your letter, use one or two “big picture” points to create and apply a theme. Branding your letter this way will help to drive home your key points and keep your letter focused.

Substantiate Your Comments

Once you have stated your opinion, justify it with the “details” and give a solid explanation to prove your case. Work to support your points with existing guidance, court cases, and contradicting regulations or advisory opinions.

Tie It All Together

When editing your draft, ensure the document circles back to the beginning of your letter to bring everything together. The final product should be autonomous, a self-explanatory and independent document.

Conclusion

Comment letters play a very important role in the rule making process. They provide a much needed alternative perspective and can point out potential challenges, redundancies, or opportunities for change before an ineffective rule creates an unnecessary burden.

Therefore, we recommend that every financial institution attempt to comment on potential rule changes that would have a direct impact on their organization.

Section 7: Case Study

The following case study is designed for management application purposes only and the information found in the case study is (at this point) purely fictional.

Instructions

In a group of 2-4 people, read through the following fictional new BSA rule and do one of the following:

1. Draft an outline for a comment letter
2. Draft an outline for a board presentation
3. Draft an outline for rolling this out in your bank

Summary of Final Rule

Last Thursday, FinCEN released a final rule to expand Customer Identification Requirements (CIP) and reduce the risk of money laundering activities. This rule is effective as of January 1, next year and implements the Striving To Undermine People from Infiltrating Dollars Act, otherwise known as the STUPID Act.

The new rule will require enhanced CIP requirements by requiring fingerprinting of any customer (existing or new) who opens a new account.

Exemptions include the following:

1. Government officials – this rule is not clearly defined and currently open for interpretation. FinCEN has promised clarification 1 year after the implementation date on January 1 of next year.
2. Individuals signing on a business account
3. Individuals who have already been fingerprinted such as:
 - a. Mortgage Loan Originators registered through the national registry
 - b. Investment Advisors registered with the SEC/FINRA
 - c. Insurance agents (assuming the applicable state governing insurance laws requires fingerprinting)
 - d. Those with a criminal conviction
 - e. Other individuals when the bank can provide sufficient evidence that the individual has already been fingerprinted for their current employment. Sufficient evidence is determined at the discretion of the examiner reviewing the evidence.

In conducting the fingerprinting, each organization must utilize a Certified Regulatory Expert Experienced in Printing (CREEP). Each CREEP must have a current license through the Department of Defense and be listed on the CREEP registry.

Each financial institution must develop applicable policies and procedures to ensure that fingerprinting is appropriately incorporated into the bank's CIP program.

Each financial institution must designate a STUPID officer responsible for monitoring compliance with the fingerprinting requirements of CIP. While the STUPID officer may also be the BSA Officer or Compliance Officer of a financial institution, this person cannot be a registered CREEP (who would be able to conduct fingerprinting for customers).

Policies and procedures should include requirements to file SARs on customers and potential customers who start the account opening process, but refuse to be fingerprinted and, therefore, do not open a new account.