



On Compliance

Establishing an Anti-Money Laundering Program – The Account Activity Analysis/Reporting Program

In the first two articles on AML compliance we discussed an overview of the program and the basic requirements for a Customer Identification Program (CIP). In this article, we will outline the the Account Activity Analysis/Reporting Program. Again, it's necessary to offer a cautionary comment. The scope, breadth, detail and duplication of the body of BSA/Patriot Act related regulations are large and complex. In this article we will provide a roadmap to the general requirements and the resources you should explore on your own. The message should be clear: the opportunity to ignore the BSA/AML requirements is long past.

The biggest difference between the CIP part of your compliance and the account activity analysis part is in the detail of what is required: The Devil is in the Detail! The real problem is that even with the amount of detail available in the various publications, there remains a significant opportunity for interpretation by both you and the regulators. Not a particularly good thing!

Let's start at the end first. There are two primary reports that can be required as a result of the account activity analysis process. The first is the Currency Transaction Report (CTR), Financial Crimes Enforcement Network (FINCEN) Form 104ⁱ. The CTR is well known and the instructions are reasonably clear, so we won't go into it here.

The second is the Suspicious Activity Report (SAR), the Treasury Department's form TD F 90-22.47.ⁱⁱ There are other reports that you may need to submit for specific circumstances, but the CTR and the SAR are the most critical in terms of basic compliance.

The SAR is an important document in the overall national scheme of preventing money laundering, terrorism financing, and other forms of fraud and abuse. The Bank Secrecy Act outlines the requirements for the SARⁱⁱⁱ, which is required when:

1. *"Any suspicious transaction relevant to a **possible** violation of law or regulation" ...is detected;*
2. *A transaction ... "is conducted or attempted by, at, or through the bank, it involves or aggregates at least \$5,000 in funds or other assets, and the bank knows, **suspects, or has reason to suspect that:***

- a. *The transaction involves funds derived from illegal activities or **is intended** or conducted in order to hide or disguise funds or **assets derived from illegal activities (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;***
- b. *The transaction is designed to evade any requirements of this part or of any other regulations promulgated under the Bank Secrecy Act, Pub. L. 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330; or*
- c. *The transaction **has no business or apparent lawful purpose** or is **not the sort in which the particular customer would normally be expected to engage**, and **the bank knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.***

The remainder of Section §103.18 details: the filing procedures, where to file reports, and when to file. It also provides information on exceptions to filing requirements, the retention of records, confidentiality and the limitation of liability, and possible impacts for non-compliance.

The biggest concern most institutions have with the SAR reporting requirements stem from the rather subjective requirements that are highlighted in bold in the above extract. While we know that it is important to track currency transactions and wires that may involve offshore locations or high risk beneficiaries or recipients, *the real problem is far more complex.*

For a better example of the scope of account activity analysis that is needed, take a look at the following extract from the FINCEN SAR Bulletin:^{iv}

“Taken individually, the indicators do not necessarily equate to terrorist or other criminal financial activity. Combinations of indicators should raise the level of concern about potential terrorist financing or other criminal context. For example, references to occupation or nationals of countries associated with terrorist activity as reported in SARs should not, on their own, be taken to indicate potential terrorist activity. But such indicators when part of the larger grouping of indicators could add to the suspicion of potential terrorist activity.”

This statement should suggest to you that traditional forms of daily exception report reviews for a few types of transactions may not be enough. Account analysis now needs to consider the entire range of activity involved in an account. The analysis must be accomplished on a continuing basis and needs to consider the behavior, trends and profiles for each account. Because of the diversity and complexity of

money laundering techniques, it is not sufficient to monitor only those accounts that are considered high risk. The proliferation of identity fraud and theft, as well as the ability of criminals to penetrate financial institutions with normal and innocuous accounts require that all accounts be monitored.

The analysis needs to include the ability to detect not only unusual individual transactions (e.g., unusual transaction type, unusual amount), but it must also be able to group transactions together over time to detect relationships and to produce a profile of activity. It must then be able to alert reviewers to departures from expected behavior, patterns of known high risk activity, and activities that involve high risk locations or entities.

Credit unions have often looked at BSA compliance with the idea that, defined membership and small size combine to avoid the risks of fraud, money laundering and terrorism financing. But criminals are well aware that smaller financial institutions are easier marks, and examiners appear to be also increasing their scrutiny as they work their way down the ladder to smaller organizations. You should carefully review the NCUA Examiner's Guide for BSA compliance.^v

In the next article, we will discuss account analysis in greater detail, and we will also take a look at some of the potentials for using automated analysis tools. We'll look at some of the "indicators" that are part of the complex set of scenarios that have been highlighted for detection.

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ⁱ Financial Crimes Enforcement Network, U.S. Department of Treasury: <http://www.fincen.gov/> - A key source of current BSA information and guidance, including current forms http://www.fincen.gov/fin104_ctr.pdf

ⁱⁱ You can access information about the SAR from either the NCUA web site at: <http://www.ncua.gov/GuidesManuals/sar/sar.html> ; or, more directly at the FINCEN web site at: <http://www.fincen.gov/f9022-47-1a.pdf>

ⁱⁱⁱ Bank Secrecy Act, Subpart B – Reports Required To Be Made, Section §103.18, “Reports by banks of suspicious transactions.”

^{iv} FINCEN SAR Bulletin, Issue 4, titled “Aspects of Financial Transactions Indicative of Terrorist Funding,” dated January 2002.

^v NCUA Examiner's Guide, Chapter 18, Appendix 18A, BSA Compliance: http://www.ncua.gov/GuidesManuals/examiners_guide/chapters/chapter18.pdf