

**OCC BULLETIN**

Comptroller of the Currency
Administrator of National Banks

Subject:	Bank Secrecy Act/Anti-Money Laundering	Description:	Enforcement Guidance for BSA/AML Program Deficiencies
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TO: Chief Executive Officers and Compliance Officers of All National Banks, Federal Branches and Agencies, Department and Division Heads, and All Examining Personnel

This document provides guidance and a consistent approach for citing violations and taking enforcement actions with respect to the Bank Secrecy Act (BSA) compliance program rule (12 CFR 21.21) and the suspicious activity reporting (SAR) requirements (12 CFR 21.11). The document is not intended, does not, and may not be relied upon to create rights, substantive or procedural. It is not enforceable at law or in any administrative hearing.

BSA Compliance Programs

Under 12 CFR 21.21, banks must establish and maintain adequate internal controls, independent testing, responsible personnel, and training to comply with the BSA. Also, banks must implement a customer identification program (CIP) (31 CFR 103.121) as part of the BSA compliance program. The comprehensiveness of BSA compliance programs may vary among institutions, product lines, and levels of risk.

Unlike other examination areas, a statutory mandate exists that instructs the OCC to issue a cease-and-desist order (C&D) whenever a bank fails to establish and maintain a BSA compliance program, as required by 12 CFR 21.21. This mandate also applies when a bank fails to correct any problem with its BSA compliance program, which was previously cited in a report of examination (ROE) or other supervisory correspondence. Examples in which a violation citation and accompanying C&D are appropriate include situations in which a bank:

- Lacks a BSA compliance program that adequately covers all of the required program elements (internal controls, independent testing, responsible personnel, and training);
- Fails to implement a written BSA compliance program;
- Exhibits BSA compliance program deficiencies coupled with aggravating factors such as highly suspicious activity creating a significant potential for money laundering, potential terrorist financing, a pattern of structuring to evade reporting requirements, insider complicity, repeat failures to file currency transaction reports or suspicious activity reports, or other substantial BSA violations;
- Fails to respond to supervisory warnings concerning BSA compliance program deficiencies previously reported to the bank, or continues a history of program deficiencies, even when deficiencies are dissimilar to those cited in the past;

- Engages in systemic or pervasive BSA reporting or record keeping violations, fails to respond to supervisory warnings regarding such violations, or continues a history of such violations, even when they are dissimilar to those cited in the past; or
- Engages in a one-time, nontechnical violation that demonstrates willful or reckless disregard for the requirements of the BSA or that creates a substantial risk of money laundering or the financing of terrorism. The violation renders deficient an otherwise effective program.

When the OCC notes BSA compliance program deficiencies that are not severe enough to cite a violation, the OCC will notify the bank of the deficiencies, which may include violations of 31 CFR 103, and will require timely corrective action by the bank. The OCC's requirement for corrective action may be included in the ROE as a matter requiring attention, or it may be in the form of a formal or informal enforcement action. In these circumstances, such actions are based on unsafe or unsound banking practices rather than based on a violation of 12 CFR 21.21. The form of enforcement action depends on the severity of noncompliance, the capability and cooperation of bank management, and the OCC's confidence that the bank will take appropriate and prompt corrective action. In all cases, examiners will monitor, document, and test the effectiveness of the corrective actions taken. If the bank fails to promptly correct the deficiencies, the OCC will cite a violation of 12 CFR 21.21 and issue a C&D.

Suspicious Activity Reporting Requirements

Under 12 CFR 21.11, banks are required to report suspicious activity that may involve money laundering, BSA violations, and certain other crimes above prescribed dollar thresholds. If the bank has no reasonable explanation for an unusual transaction after evaluating the facts, it should be considered suspicious, and the bank should file a SAR. A SAR must be filed if a bank knows, suspects, or has reason to suspect that a transaction involves:

- Federal criminal violation(s) involving insider activity for any amount;
- Potential money laundering or BSA violation(s) for \$5,000¹ or more;
- Federal criminal violation(s) for \$5,000 or more involving a known suspect; or
- Federal criminal violation(s) for \$25,000 or more, regardless of potential suspects.

The SAR must be filed within 30 days of detecting the suspicious activity (or within 60 days if there is no suspect). The OCC will cite a violation of the SAR regulation if a bank's failure to file a SAR (or SARs) is accompanied by evidence of bad faith, represents a significant or egregious situation, involves a pattern or practice, or otherwise evidences a systemic breakdown. The OCC recognizes that the decision to file a SAR is an inherently subjective judgment. A bank should not be cited for a violation if and when it fails to file a SAR in an isolated circumstance, unless the failure is significant or accompanied by evidence of bad faith, provided that the bank otherwise has adequate systems and controls in place. Before citing a violation, examiners will consider the:

¹ The \$5,000 and \$25,000 thresholds apply to the aggregate amount of the transaction(s) involved in the suspicious activity, as opposed to any monetary loss to the bank.

- Severity of violations;
- Time span of violations;
- Frequency or isolated nature of violations; and
- Related findings on prior examinations.

When violations are cited or deficiencies are noted, examiners will consider whether the bank's BSA compliance program is implicated and will determine whether civil money penalties and/or a referral to FinCEN is appropriate.

The OCC reminds banks that the "safe harbor" in the BSA provides broad protection against liability, including Right to Financial Privacy Act actions based on the disclosure of customer financial records to law enforcement. In May 2004, the banking agencies issued an advisory (OCC 2004-24) informing institutions of a federal court case, *Whitney Nat'l Bank v. Karam*, 306 F. Supp.2d 678 (S.D. Tex. 2004), that reaffirms this safe harbor. The *Whitney* court sided with the majority of courts in ruling that a bank may not be subject to a civil suit regarding communications it may have made to law enforcement about suspected violations of law or suspicious activities. Further, the court ruled that a bank may not be required to produce documents in discovery relating to such communications or to the contents or existence of a SAR. In light of the *Whitney* decision, the agencies remain confident that financial institutions and their employees who follow the prescribed agency regulations and SAR filing instructions should be fully protected by the safe harbor provisions of the law.

Questions about the guidance may be directed to your OCC supervisory office or the Compliance Department at (202) 874-4428.

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