

**Board of Governors of the Federal Reserve System
Federal Deposit Insurance Corporation
National Credit Union Administration
Office of the Comptroller of the Currency
U.S. Department of the Treasury**

August 30, 2016

**U.S. Department of the Treasury and Federal Banking Agencies
Joint Fact Sheet on Foreign Correspondent Banking:
Approach to BSA/AML and OFAC Sanctions Supervision and Enforcement**

The global financial system, trade flows, and economic development rely on correspondent banking relationships. To protect this system from abuse, U.S. financial institutions must comply with national anti-money laundering (AML) and countering the financing of terrorism requirements set forth in the Bank Secrecy Act (BSA) as well as sanctions programs administered by the Treasury Department's Office of Foreign Assets Control (OFAC). The Financial Crimes Enforcement Network (FinCEN), a bureau of the Treasury Department, is responsible for administering the BSA in furtherance of its mission to safeguard the U.S. financial system from illicit use. The Federal Banking Agencies (FBAs) have the responsibility and authority to conduct examinations of depository institutions for compliance with the BSA and OFAC requirements in order to ensure the safety and soundness of the U.S. financial system. Together, these agencies are responsible for implementing the strong regulatory and supervisory framework that is essential for promoting compliance with these obligations and keeping our U.S. banking system safe and sound.

U.S. depository institutions that maintain correspondent accounts for foreign financial institutions (FFI) are required to establish appropriate, specific, and risk-based due diligence policies, procedures, and processes that are reasonably designed to assess and manage the risks inherent with these relationships. To comply with their legal obligations, U.S. depository institutions must monitor transactions related to these accounts to detect and report suspicious activities. These policies, procedures, and processes will depend on the level of risk posed by the correspondent FFI. Such risks can vary depending on the FFI's strategic profile, including its size and geographic locations, the products and services it offers, and the markets and customer bases it serves.

The vast majority (about 95%) of BSA/OFAC compliance deficiencies identified by the FBAs, FinCEN, and OFAC are corrected by the institution's management without the need for any enforcement action or penalty.

The Treasury Department and the FBAs communicate expectations regarding BSA and OFAC compliance in a number of ways including, the FBA examination process, the issuance of rules and regulations, the issuance of supervisory guidance, and through regular participation in organized public events focusing on these issues. This fact sheet summarizes key aspects of federal supervisory and enforcement strategy and practices in the area of correspondent banking.

Federal Banking Agencies' Expectations for U.S. Depository Institutions

The FBAs expect U.S. depository institutions to have robust BSA and OFAC compliance programs that include appropriate customer due diligence so that the institutions have a clear understanding of FFI risk profiles and expected account activity. This information helps U.S. depository institutions make informed decisions regarding the risks associated with their FFI relationships and the level and nature of suspicious activity monitoring needed to manage those risks effectively.

In order for U.S. depository institutions to develop a clear understanding of FFI risk profiles and determine how best to manage the risks associated with these relationships, they are expected to obtain and review sufficient information about their FFI relationships, including the types of customers the FFI serves and the markets in which the FFI is active. This approach allows the U.S. depository institution to conduct an adequate assessment of the risks present in: (i) the FFI's business and markets, (ii) the type, purpose and anticipated activity, (iii) the nature and duration of the relationship with the FFI, and (iv) the supervisory regime of the jurisdiction in which the FFI is licensed, and to design and implement controls to manage these risks effectively.

Under existing U.S. regulations, there is no general requirement for U.S. depository institutions to conduct due diligence on an FFI's customers. In determining the appropriate level of due diligence necessary for an FFI relationship, U.S. depository institutions should consider the extent to which information related to the FFI's markets and types of customers is necessary to assess the risks posed by the relationship, satisfy the institution's obligations to detect and report suspicious activity, and comply with U.S. economic sanctions. This may require U.S. depository institutions to request additional information concerning the activity underlying the FFI's transactions in accordance with the suspicious activity reporting rules and sanctions compliance obligations.

FBAs' Supervisory Examination Processes

The FBAs apply a risk-based approach to supervision in order to allocate supervisory resources appropriately based on money laundering and terrorist financing risks identified in the supervised institutions. The FBAs' risk-based approach to the examination process guides the scoping, planning and transaction testing portions of federal depository institutions' BSA and OFAC examinations.

The examination process, including the interaction between the examiners and the bank, is integral to the process of ensuring compliance with the BSA and OFAC sanctions programs. These supervisory communications can spur remediation, and indeed, in the vast majority of instances, deficiencies identified during the examination process are resolved promptly after they are brought to the attention of a depository institution's management through the issuance of confidential reports of examination and supervisory letters that contain specific language communicating supervisory findings to the institution.

In cases where prompt remedial action is not taken by management, the corrective action is not effectively implemented or the deficiencies are more serious, the FBAs can consider a range of steps to ensure that actions are implemented or deficiencies are successfully addressed. These

options can vary in levels of severity, allowing the agencies to consider their supervisory responses relative to the seriousness of the identified deficiencies in the particular depository institution. This range of options allows the FBAs flexibility in targeting their supervisory responses to remediate any deficiencies identified. The vast majority of BSA/AML compliance deficiencies identified by the FBAs—approximately 95%—are resolved through the supervisory process without the need for an enforcement action.

FBA Enforcement Actions

Enforcement actions by the FBAs are an extension of the supervisory process and are used to address more serious deficiencies, or situations where deficiencies have not been corrected in the course of the supervisory process.

Enforcement actions reinforce awareness of senior management and boards of directors of the deficiencies identified during the supervisory process and ensure they take prompt remedial actions to correct the identified deficiencies. Enforcement tools may vary and can include informal memoranda of understanding, or formal, public, written agreements, and cease-and-desist orders. The FBAs are required by statute to use their cease-and-desist authority when an institution fails to establish or maintain a BSA compliance program or fails to correct any problem with the program previously reported to the institution. In very limited instances, when corrective action has not been achieved within a reasonable amount of time or serious violations or unsafe or unsound practices or breaches of fiduciary duty have been identified, the FBAs also have the authority to assess civil money penalties (CMPs). CMPs are designed by statute to serve as a deterrent to future violations, practices or breaches of fiduciary duty, to encourage correction of violations, practices or breaches of fiduciary duty, and in the case of individual actions, to emphasize the accountability of individuals.

FinCEN and OFAC

FinCEN and OFAC are also essential to the effectiveness of the U.S. BSA/AML framework and sanctions regime. FinCEN has independent enforcement authority to impose CMPs and may seek equitable relief against financial institutions for non-compliance with the BSA. OFAC administers and enforces the U.S. economic and trade sanctions programs based on U.S. foreign policy and national security threats. In cases where institutions are supervised by the FBAs, the FBAs examine for BSA/AML and OFAC compliance, and in situations involving apparent BSA/AML or sanctions violations resulting from deficiencies, FinCEN and OFAC coordinate with the FBAs. In determining whether an enforcement action is appropriate, FinCEN considers whether the institution responded adequately to the FBA's previous corrective actions or if the institution engaged in significant violations. Similarly, in certain circumstances, OFAC will consult with relevant FBAs regarding the quality and effectiveness of an institution's compliance program when determining the appropriate enforcement response. OFAC investigates cases of sanctions violations, many of which (over 95 percent) are closed with administrative measures,

Criminal Enforcement

In addition to FBA, FinCEN, and OFAC enforcement actions, financial institutions may also be subject to criminal enforcement actions by the U.S. Department of Justice. Criminal prosecutions for BSA/AML and sanctions violations are typically brought against financial institutions only when there is sufficient evidence of willful wrongdoing.

such as cautionary or no action letters. This means that less than five percent of all cases of sanctions-related violations investigated by OFAC have resulted in a civil monetary penalty or other public enforcement response.

Recent Large FBA, FinCEN, and OFAC Enforcement Penalties

Over the past several years, certain major enforcement cases involved large enforcement penalties related to BSA/AML and OFAC sanctions. It is important to note that the largest and most prominent monetary penalties for BSA/AML and sanctions violations in recent years generally involved a sustained pattern of serious violations on the part of depository institutions. With regard to the sanctions violations, these cases did not involve unintentional mistakes, but generally involved intentional evasion of U.S. sanctions over a period of years and/or the failure of the institutions' officers and/or senior management to respond to warning signs that their actions were illegal. Many of these major cases also involved criminal conduct that was prosecuted separately by the Department of Justice.

Conclusion

The goal of BSA compliance programs and OFAC sanctions programs is to ensure a well-functioning, transparent, resilient, and safe and sound financial system. While the Treasury and the FBAs do not utilize a zero tolerance philosophy that mandates the strict imposition of formal enforcement action regardless of the facts and circumstances of the situation, Treasury and the FBAs take the threats posed by criminals, money-launderers, and terrorist financiers very seriously, and continue to use their authorities—in a proportionate and appropriate manner—to safeguard our financial system against abuse.

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