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Administrator of National Banks

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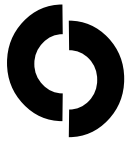
# **Meeting the Challenges of BSA/AML Risk Management: A Regulatory Perspective**

Virtual Seminar

**Wednesday, March 16, 2005**  
**11:00 a.m. – 12:30 p.m. Eastern**  
**10:00 a.m. – 11:30 a.m. Central**  
**9:00 a.m. – 10:30 a.m. Mountain**  
**8:00 a.m. – 9:30 a.m. Pacific**

**Presented by:**

**Julie L. Williams**  
**Daniel P. Stipano**  
**Ann F. Jaedicke**  
**Kenneth M. Kohrs**  
**Mardy Agostino**



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## **A Telephone Seminar**

# **Meeting the Challenges of BSA/AML Risk Management: A Regulatory Perspective**

Tuesday, March 15, 2005  
and again on  
Wednesday, March 16, 2005

**Speaker Biographies  
Electronic Polling Question  
Power Point Presentation**



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# SAVE THE DATE

**Thursday, June 23, 2005**  
**2:00 p.m. – 3:30 p.m. EDT**

Mark your calendar for OCC's next telephone seminar on HMDA. Program details and registration information will appear mid-May on our Web site, [www.occ.treas.gov/up\\_event.htm](http://www.occ.treas.gov/up_event.htm).

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## **Julie L. Williams**

*Acting Comptroller of the Currency*

*Office of the Comptroller of the Currency*



Julie L. Williams became Acting Comptroller on October 14, 2004, succeeding John D. Hawke, Jr. at the end of his term of office. Ms. Williams was initially appointed Chief Counsel of the Office of the Comptroller of the Currency in June 1994, with responsibility for all of the agency's legal activities, including legal advisory services to banks and examiners, enforcement and compliance activities, litigation, legislative initiatives, and regulation of securities and corporate practices of national banks. As the agency's statutory "First Deputy," she previously served as Acting Comptroller from April 6, 1998 through December 8, 1998, before Mr. Hawke was sworn in as the 28<sup>th</sup> Comptroller of the Currency.

As Chief Counsel, Ms. Williams also supervised the Licensing Department and the Community Affairs Department, and served as a member of the OCC's Executive Committee. In her current position, Ms. Williams leads the Executive Committee in providing policy and strategic direction to the agency.

Ms. Williams joined the OCC in May 1993 as Deputy Chief Counsel with responsibility for special legislative and regulatory projects. Before joining the OCC, Ms. Williams served in a variety of positions at the Office of Thrift Supervision and its predecessor agency, the Federal Home Loan Bank Board, culminating in a position as Senior Deputy Chief Counsel at the OTS from 1991 to 1993. Ms. Williams joined the Bank Board in 1983, after working as an attorney with the law firm of Fried, Frank, Harris, Shriver & Kampelman in Washington, D.C. from 1975 to 1983.

Ms. Williams is the author of *National Banks and the Dual Banking System* (Comptroller of the Currency, 2003) and *Savings Institutions: Mergers, Acquisitions and Conversions* (Law Journal Seminars-Press, 1988), and has published numerous articles on the regulation of depository institutions, financial services, securities and corporate law matters.

She was awarded a B.A. in 1971 from Goddard College, Plainfield, Vermont, and a J.D. in 1975 from Antioch School of Law, Washington, D.C., where she was first in her class.

## **Daniel P. Stipano**

*Acting Chief Counsel*

*OCC Law Department*



Daniel P. Stipano is presently the Acting Chief Counsel for the Office of the Comptroller of the Currency (OCC). Since December 2000, he has served as the OCC's deputy chief counsel. In this position, Mr. Stipano supervises the OCC's Enforcement and Compliance, Litigation, Community and Consumer Law, and Administrative and Internal Law Divisions. He also supervises the OCC's district counsel staffs in the Southern and Western district offices.

Prior to his appointment as deputy chief counsel, Mr. Stipano served from 1995-2000 as the OCC's director of the Enforcement and Compliance Division. In this position, Mr. Stipano was responsible for taking administrative enforcement actions against national banks and their institution-affiliated parties and the development of enforcement-related policies and procedures. From 1985-1995, Mr. Stipano was an assistant director and a staff attorney in the Enforcement and Compliance Division.

From 1983-1985, Mr. Stipano was a staff attorney at the Federal Energy Regulatory Commission, and an associate with the law firm of Jackson and Jessup, P.C., in Arlington, Virginia.

Mr. Stipano received his J.D. degree from the Marshall-Wythe School of Law, College of William and Mary in 1983. He also received a B.A. degree, *summa cum laude*, from Union College, in 1980, where he earned departmental honors in Political Science and was elected *Phi Beta Kappa*.

Mr. Stipano is a member of the Virginia State Bar and the American Bar Association. He is also a member of the Treasury Department's Bank Secrecy Act Advisory Group, and the National Interagency Bank Fraud Working Group. Mr. Stipano is a frequent speaker at seminars and conferences relating to financial institutions.

## **Ann F. Jaedicke**

*Deputy Comptroller for Compliance*

*Office of the Comptroller of the Currency*



Ann F. Jaedicke has served as deputy comptroller of Compliance since December 2003. She is responsible for policy and examination procedures relating to consumer issues, money laundering, and bank secrecy. She also sits on FFIEC's (Federal Financial Institution Examination Council) task force on consumer compliance and FFIEC's Bank Secrecy Act task force. These task forces of U.S. regulators promote policy coordination and the uniform enforcement of laws and regulations.

Ms. Jaedicke has been employed by the Office of the Comptroller of the Currency (OCC) as a bank examiner for 28 years. She began her career in 1977 as a bank examiner in Texas. From 1984-1986, Ms. Jaedicke worked in OCC's London office where she examined branches of U.S. banks. Later she served as the director for OCC's Large Bank Division. At the time, OCC's Large Bank Division supervised 12 of the largest national banks in the U.S. In 1997, Ms. Jaedicke was promoted to deputy comptroller for Supervision Operations where she managed, among other things, OCC's Problem Bank Division and sat on OCC's Enforcement Committee. In 2001 and 2002, Ms. Jaedicke led projects to restructure OCC's six districts and OCC's Washington D.C. headquarters.

Ms. Jaedicke is a native Texan and a graduate of Texas A&M University.

## **Kenneth M. Kohrs**

*National Bank Examiner*

*Office of the Comptroller of the Currency*



Kenneth M. Kohrs is a national bank examiner based in Houston, Texas. In this position, Mr. Kohrs conducts compliance related examinations of large, mid-size, and community banks. A majority of his time is spent on BSA/AML examinations.

Mr. Kohrs is an instructor for the OCC's National Anti-Money Laundering School and has taught the OCC's Anti-Money Laundering School for Foreign Supervisors. He is also an instructor for the National Training Initiative BSA/AML Examiner Specialty Skills Program. Mr. Kohrs serves as chairman of the Southern District's BSA/AML Working Group.

Prior to joining the OCC in 1998, Mr. Kohrs worked in the banking industry for eight years.

Mr. Kohrs received his B.A. degree from Southwestern University in Georgetown, Texas. He holds a Certified Regulatory Compliance Manager designation from the Institute of Certified Bankers.



## **Mardy Agostino**

*National Bank Examiner*

*Office of the Comptroller of the Currency*



Mardy Agostino is a national bank examiner, serving as a member of the resident core staff at Citibank in New York City and of OCC's National Anti-Money Laundering Group (NAMLG).

Ms. Agostino joined the OCC in Boston, Massachusetts as a safety and soundness examiner in 1989. Her banking experience prior to joining the OCC was in the wire transfer area of bank operations. Mardy moved to New York City in 1998 to join OCC's compliance cadre. She currently focuses exclusively on BSA/AML issues and is a member of the OCC's Large Bank

Program.

Ms. Agostino has been involved in AML examinations of national interest and priority. She has been an active member of the instructor cadre for the FFIEC's Interagency Advanced Anti-Money Laundering School as well as OCC's tailored version of the same school since their inception. She is a member of OCC's Foreign Technical Assistance Program and has participated in training initiatives for regulators from jurisdictions around the world both in the U.S. and abroad.

Ms. Agostino earned a BS/BA degree in finance and international management from Boston University.

**Polling Question**  
**3/15/05 and 3/16/05 Teleconferences**

**How many people are at your listening site? Press:**

- 1 for one person**
- 2 for two people**
- 3 for three people**
- 4 for four people**
- 5 for five people**
- 6 for six people**
- 7 for seven people**
- 8 for eight people**
- 9 for nine or more people listening at your site.**



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# Meeting the Challenges of BSA/AML Risk Management: *A Regulatory Perspective*

## **A Telephone Seminar for National Banks**

*Tuesday, March 15, 2005  
and again on  
Wednesday, March 16, 2005*

# Purpose of Today's Call

- Share information with the Banking Industry
- Respond to Recurring Questions



# Topics We Will Discuss Today

- Risk Assessments and Monitoring
- Money Services Businesses
- Politically Exposed Persons
- Enforcement Issues





# **A comprehensive institution-wide risk assessment is a critical component of an effective BSA program**

Refer to the BSA/AML Comptroller's Handbook (September 2000) for discussion of high-risk products, services, and customers.

# Risk Assessment: Products and Services

- Identify high-risk products and services offered by the bank
- Consider transaction volume and number of accounts
- Understand potential risk posed by new products and services



# Risk Assessment: Customers

- Identify the bank's exposure to high-risk customers
  
- Best Practices
  - North American Industry Classification System (NAICS) codes
  - Risk grading at account opening
  - Customer profiles





# Risk Assessment: Geographies

- Branch Locations
  - HIDTAs and HIFCAs
  - Foreign branches
- Consider impact of new branches/acquisitions
- Consider customers and transactions



# Geographic Risk Assessment Resources

- [www.treas.gov/ofac](http://www.treas.gov/ofac)
- [www.fatf-gafi.org](http://www.fatf-gafi.org)
- [www.state.gov/s/ct/](http://www.state.gov/s/ct/)
- [www.state.gov/g/inl/rls/nrcrpt/](http://www.state.gov/g/inl/rls/nrcrpt/)
- [www.fincen.gov](http://www.fincen.gov)





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# **Avoiding BSA Program Pitfalls in Implementing Automated Monitoring Systems and Independent Testing**

# Keys to Implementing Automated AML Solutions

- Understand parameters
- Understand what system does not do – identify gaps
- Formalize procedures and responsibilities
- Staffing



# Keys to an Effective BSA/AML Audit

- Risk-Based – focus on high-risk areas
- Testing of Internal Controls – test both accuracy of systems as well as effectiveness of implementation
- Follow-up on deficiencies



# Keys to an Effective BSA/AML Audit (continued)

- Independence
- Knowledge and expertise
- Procedures/audit program
- Due diligence on external firm
- Engagement letter





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# Controlling Risk Related to Money Services Businesses

# An MSB Can Be Any of These

- Currency dealer or exchanger\*
- Check casher\*
- Issuer of traveler's checks, money orders, or stored value\*
- Seller or redeemer of traveler's checks, money orders, or stored value\*
- Money transmitter
- United States Postal Service

\*more than \$1,000 for any person on any day in one or more transactions





# Two Important Things to Remember About MSB's

- May be high risk for money laundering
- Play a vital role in the financial services of the U.S.



# Certain MSB's Must Be Registered and Licensed

- Registered with U.S. Treasury's FinCEN (31 CFR 103.11)
- and licensed by the state, depending on the laws of the state in which they are located



# **Not Everyone Has To Register with FinCEN**

Certain MSBs, including a person who is solely an agent of another MSB, and issuers, sellers, and redeemers of stored value, are specifically excepted from the requirement to register with FinCEN pursuant to 31 CFR 103.41(a)(1)



# MSB's Must Have BSA Compliance Programs Too

- MSB's file currency transaction and suspicious activity reports
- MSB's must have an anti-money laundering program
- MSB's keep customer records
- Check cashers and issuers, sellers, and redeemers of stored value do not yet have to report suspicious activities



# For More Help

- OCC Advisory Letter 2004-7
- Provides guidance to national banks concerning MSB customers



# Due Diligence for an MSB Should Vary Based on the Risk

- First, do a risk assessment of the customer
- Not all MSB's require the same due diligence



# Due Diligence To Consider for MSB's

- Verify registration and licensing status
- Consider visiting customers at their place of business
- Consider implementing enhanced monitoring procedures to identify and report suspicious activity



# More Due Diligence Considerations

- Obtain financial information, including primary lines of business and major customers
- Obtain the MSB's anti-money laundering policies, procedures, and controls
- Seek third-party references and information from verification services





# Due Diligence Considerations

- Obtain information on owners of the MSB
- Consider the purpose, source of funds to open the account, and the level of expected activity



# I've Done My Due Diligence. Now What?

- Decide if you want to provide banking services to MSB's in the same manner that you have or alter or end that service
- The OCC will NOT, absent extraordinary circumstances, direct a bank to open, close, or refuse an account from an MSB



# What Do I Do If an MSB Is Unlicensed or Unregistered?

- File a SAR in accordance with OCC regulations and carefully consider the risks of providing services to such an entity



# Where Can I Get More Information?

- [www.fincen.gov](http://www.fincen.gov)
- [www.msb.gov](http://www.msb.gov)





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# Controlling Risk Related to Politically Exposed Persons (PEPs)

# PEP or Senior Foreign Political Figure – Defined:

- A current or former senior official in the executive, legislative, administrative, military or judicial branches of a foreign government, a senior official of a major foreign political party, or a senior executive of a foreign government-owned commercial enterprise;
- A corporation, business or other entity formed by or for the benefit of such individual;
- An immediate family member of such an individual; or
- An individual publicly known to be a close personal or professional associate of the individual.



# **U.S. Treasury Department January 2001**

**“Guidance on Enhanced Scrutiny for  
Transactions That May Involve the  
Proceeds of Foreign Official Corruption”**



# Current Regulatory Requirements

- Identify
- Enhanced due diligence
- Monitor to detect unusual or suspicious activity, especially foreign corruption





# Identify

- Reasonable steps
- Public information
- Databases
- Internet



# Enhanced Scrutiny

- Will vary according to risk
- Well documented details
- Purpose
- Location
- Source of funds
- Source of wealth
- Transactions
- Jurisdictions



# Foreign Political Corruption

- “Assets or property that are acquired by, through, or on behalf of a senior foreign political figure through:
  - misappropriation, theft, or embezzlement of public funds, or
  - the unlawful conversion of property of a foreign government, or
  - through acts of bribery or extortion, and shall include other property into which such assets have been transferred.”



# Periodic Reviews

- At least annually
- Assessment of current risk



# SUMMARY

- Defined
- Identify
- Enhanced scrutiny
- Monitoring and review
- Audit



# Additional Information

- [www.wolfsberg-principles.com](http://www.wolfsberg-principles.com)
- [www.fatf.org](http://www.fatf.org)
- USA PATRIOT Act
- [www.occ.treas.gov](http://www.occ.treas.gov)
  - OCC Bulletin 2001-9
  - OCC Bulletin 2004-26





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# Enforcement Issues

# Suspicious Activity Reports

- Number of SARs filed
- The problem of “defensive SARs”
- “Criminalization” of the SAR process





# BSA Enforcement Guidance (OCC Bulletin 2004-50)

- Guidance ensures consistency so that program violations are cited only in serious cases
- Guidance does not limit examiners' discretion to cite a violation; discretion as to remedy has been limited by Congress
- Violation cite requires WSRC consideration and approvals at highest levels of agency
- OCC has operated under substantially similar guidance since 1999



# Statutory Mandate for C&D (12 USC 1818(s))

- A statutory mandate requires the OCC to issue a C&D whenever a bank
  - Fails to establish and maintain a BSA compliance program as required by regulation or
  - Fails to correct any problem with its BSA compliance program that was previously cited in the bank's ROE or other correspondence
- Informal remedies are used to correct less serious problems



# Compliance Program Requirement (12 CFR 21.21)

- Four elements of a BSA/AML compliance program
  - Internal controls
  - Independent testing
  - Responsible personnel
  - Training
- Bank must also implement CIP as part of BSA program
- The comprehensiveness of a bank's program may vary among banks, product lines, and levels of risk



# Examples of 21.21 Program Violation

- Lacks adequate BSA compliance program
- Fails to implement a written program
- Exhibits program deficiencies coupled with aggravating factors (e.g., potential money laundering or terrorist financing, a pattern of structuring, insider complicity, repeat failure to file SARs or CTRs, etc.)



## Examples of 21.21 Violation (cont'd)

- Fails to respond to warnings or continues a history of program deficiencies
- Engages in systemic BSA reporting violations, fails to respond to warnings, or continues a history of such violations
- Engages in a one-time, nontechnical violation that demonstrates willful or reckless disregard for the BSA or creates substantial risk



# SAR Requirement (12 CFR 21.11)

- The OCC will cite a violation of the SAR regulation if the bank's failure to file:
  - Is accompanied by bad faith
  - Represents an egregious situation
  - Involves a pattern or practice
  - Evidences a systemic breakdown
- A bank should not be cited for a violation if it fails to file a SAR in an isolated incident, provided it has adequate systems in place



# Recent OCC BSA Enforcement Actions

- Post 9/11 and post-Riggs the OCC has been looking closely at BSA compliance
- Enforcement actions have clearly been warranted and have not been founded on technicalities
- Banks were engaged in high risk activities and failed to have systems in place to adequately manage the risks



# Recent Actions (cont'd)

- Example #1:
  - Federal Branch of foreign bank with previous supervisory warnings
  - Frequent large dollar remittances to customers in countries designated as non-compliant (NCCT)
  - Pouch activity
  - Non-resident alien (NRA) accounts
  - Payable upon proper identification (PUPID) transactions
  - Offshore and other high risk accounts
  - Head office in NCCT





# Recent Actions (cont'd)

- Example #1 (cont'd):
  - Branch did not follow its own BSA policy, including use of available monitoring systems and development of customer profiles and risk ratings, and EDD guidelines
  - Branch did not monitor remittances for suspicious activity, even though it originated 162,000 transactions, totaling \$208MM in one year. All were sent to NCCTs



# Recent Actions (cont'd)

- Example #1 (cont'd):
  - OCC identified 47 large remittances for customers whose occupations did not justify the size of the transactions, including \$222,000 over a three-day period, \$111,000 over a ten-day period, and \$93,000 over a five-month period
  - Pouch (courier) activity was significant (\$8 million in sample eight days), but was not monitored for suspicious activity. OCC identified 17 transactions involving high-dollar sequentially numbered travelers checks received from head office
  - Branch had no process to review aggregate activities (cash, checks, wires) and whether nature and volume of business was commensurate with its type and size



# Recent Actions (cont'd)

- Example #2:
  - Bank with previous supervisory warnings
  - Many large-dollar wire transfers to foreign countries, including NCCT countries
  - High number of customers that are cash intensive businesses
  - Large number of CTRs



# Recent Actions (cont'd)

- Example #2 (cont'd):
  - Bank does not require any financial information from commercial customers that deposit large amounts of cash or exhibit other high-risk activity
  - No monitoring of international wire transfers, despite originating more than 54,000 transfers with a value exceeding \$109MM to foreign countries, including NCCTs
  - No process to review aggregate activities (cash, checks, money orders, wires) and whether the nature/volume of business was commensurate with its type or size



# Recent Actions (cont'd)

- Example #2 (cont'd):
  - The external audit sampled only 10 accounts for suspicious activities and performed no transaction testing of wire/remittance activities
  - The OCC identified at least 32 suspicious transactions that the bank had not identified over a three-month period



# Recent Actions (cont'd)

- Example #3:
  - Bank with previous supervisory warnings
  - Substantial international business, including wire transfers and large cash transactions
  - Unusually large number of CTRs, and
  - Foreign ownership as part of a parallel banking organization



# Recent Actions (cont'd)

- Example #3 (cont'd):
  - Wire activity and CTR filings were not analyzed for trends, patterns, and reasonableness
  - Account opening information was not always complete and was insufficient to rate the account risk level appropriately
  - High risk accounts are not reviewed on a periodic basis for suspicious activity. Only eight of 1,600 high risk accounts had been reviewed



# Recent Actions (cont'd)

- Example #3 (cont'd):
  - Pouch activity is not reviewed
  - Bank's SAR processes directed toward a software program that is not operational
  - Politically-exposed persons (PEPs) were not identified and their accounts were not monitored for suspicious activity





## Recent Actions (cont'd)

- Orders require institutions to correct violations and adopt enhanced systems and controls in the BSA area
- Typically cover elements of BSA compliance program regulation: internal controls, testing, designated officer, training
- No “one size fits all” approach: articles are tailored to address the problems found in a particular institution





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# Question and Answer Segment



# OCC BULLETIN

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Comptroller of the Currency  
Administrator of National Banks

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Subject:	Reporting and Disclosure Requirements for National Banks with Securities Registered Under the Securities Exchange Act of 1934; Securities Offering Disclosure Rules	Description: Final Rule
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**TO:** Chief Executive Officers of All National Banks, Federal Branches and Agencies, Department and Division Heads, and All Examining Personnel

The Office of the Comptroller of the Currency (OCC) published the attached final rule in the *Federal Register* on December 9, 2003. The final rule, entitled “Reporting and Disclosure Requirements for National Banks With Securities Registered Under the Securities Exchange Act of 1934; Securities Offering Disclosure Rules,” amends 12 CFR 11, which implements section 12(i) of the Securities Exchange Act of 1934 (Exchange Act), and 12 CFR 16, which governs the sale of securities issued by national banks that are not required to be registered pursuant to the Securities Act of 1933 (Securities Act). The final rule became effective on January 8, 2004.

Titles III and IV of the Sarbanes–Oxley Act included a number of provisions that are designed to improve the corporate governance and financial disclosures of public securities issuers. All registered national banks are public securities issuers for purposes of the law. Pursuant to the amendments to section 12(i) made by the Sarbanes–Oxley Act, the OCC administers and enforces certain provisions of the act with respect to registered national banks.

Part 11 of the OCC’s regulations currently applies the reporting and disclosure provisions of sections 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Exchange Act to registered national banks, and requires those national banks to file any reports or forms required by such regulations with the OCC (rather than the SEC). The final rule amends part 11 of OCC rules to add cross-references to the new provisions that the OCC is required by the Sarbanes–Oxley Act to administer and enforce. The effect of the proposal will be to conform the OCC’s rules to the amendment to section 12(i) made by the Sarbanes–Oxley Act.

Part 16 of the OCC’s regulations sets forth rules governing the offer and sale of securities by national bank issuers that are not subject to the registration and reporting requirements of the Securities Act. Section 16.20 of the regulation mirrors the requirements of section 15(d) of the Exchange Act and requires each national bank that files a registration statement that has been declared effective by the OCC to file the current and periodic reports required by section 13 of the Exchange Act in accordance with the SEC’s regulation 15D, as if the securities covered by the registration statement were securities registered pursuant to section 12 of the Exchange Act.

The final rule amends section 16.20 by adding a reference to section 13 of the Exchange Act and to cross-reference the requirements of the revised 12 CFR 11.2(a)(1)(ii). The effect of the final rule is to require banks filing registration statements pursuant to part 16 to comply with the rules issued by the SEC pursuant to those sections of the Exchange Act, including new subsection

10A(m), and those provisions of the Sarbanes–Oxley Act that are directly applicable to other section 15(d) filers and that the OCC is authorized to enforce.

For further information, contact MaryAnn Nash, counsel, Legislative and Regulatory Activities Division at (202) 874-5090.

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Julie L. Williams  
First Senior Deputy Comptroller and Chief Counsel

Attachment—[68 FR 68489](#)  
<http://www.occ.treas.gov/fr/fedregister/68fr68489.pdf>

**OCC BULLETIN**

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Comptroller of the Currency  
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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 \$5,000<sup>1</sup> 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:

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<sup>1</sup> 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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Ann F. Jaedicke  
Deputy Comptroller for Compliance

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Daniel P. Stipano  
Acting Chief Counsel

# Program Evaluation

This form is electronically tallied. Please mark only one selection for each question. Do not mark outside the boxes.

Meeting the Challenges of BSA/AML Risk Management:

March 16, 2005

Event ID: 10443

**Scale Definition:**    1 - Excellent    2 - Good    3 - Fair    4 - Poor

	1	2	3	4
1. Overall rating of program.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Similarity of actual program content to advertised content.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Audibility of Seminar .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Presenter: Overall Effectiveness**

4. Daniel P. Stipano .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Ann F. Jaedicke .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Kenneth M. Kohrs .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Mardy Agostino .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Participant Information**

8. How many people listened at your site?

1   
  2   
  3   
  4   
  5   
  6-10   
  11-15   
  16-20   
  21+

9. Would you participate in another virtual seminar?.....

Y     N

10. Did the web component add to the value of the virtual seminar?.....

Y     N

How can we make the web portion of the call more useful to the participants?

What was your overall impression of the program and format?

X

X

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**Please use the fine or superfine setting on your fax machine.**