

# Key Issues to Consider Regarding SAR Filings, Due Diligence and Failure to File

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# Speakers



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# Roadmap

- Background on the BSA, FinCEN and Regulatory Framework
- The Suspicious Activity Report: What is it and how is it used?
- Creating a Robust SAR Program
- Filing SARs
  - Considerations before filing
  - When to file
  - What to include in a filing
  - What to do after filing
- Failure to File: Lessons Learned from Enforcement



# Background: The BSA and FinCEN

## Bank Secrecy Act

- Requires US financial institutions to assist US government agencies to detect and prevent money laundering
- Enacted in 1970 and amended in 1992 to require financial institutions to report suspicious activity
- Further amended in 2001 by USA PATRIOT Act, extending SAR obligation to additional types of financial institutions

## Financial Crimes Enforcement Network (FinCEN)

- Bureau of the US Treasury that administers the BSA
- FinCEN collects, analyzes and disseminates financial intelligence to law enforcement and other authorities to help fight money laundering and terrorist financing





# Background: Regulatory Framework

- The BSA authorizes the Treasury Secretary to require financial institutions to report suspicious activity. 31 U.S.C. 5318(g)
- The Secretary delegated his rulemaking authority under the BSA to FinCEN
- FinCEN and the federal banking agencies have issued regulations implementing the BSA and requiring banks and other financial institutions to report suspicious activity to FinCEN

Agency	Rule(s)	Applies To
FinCEN	31 CFR 1010.320; 31 CFR Ch. X.320	Covered financial institutions, including banks, casinos, MSBs, broker-dealers, mutual funds, insurance companies, futures commission merchants, loan or finance companies and housing GSEs (Each has its own rule in 31 CFR Chapter X.)
Federal Reserve	12 CFR 208.62	Federal Reserve member banks
	12 CFR 211.5(k)	Edge and agreement corporations
	12 CFR 211.24(f)	Branches, agencies and representative offices of foreign banks
	12 CFR 225.4(f)	Bank holding companies and their nonbank subsidiaries (Reg. Y)
FDIC	12 CFR 353	Insured state nonmember banks
	12 CFR 390.355	State savings associations and service corporations
NCUA	12 CFR 748	Credit unions
OCC	12 CFR 21.11	National banks, federal branches/agencies of foreign banks
	12 CFR 163.180	Savings associations and their service corporations

## What is a Suspicious Activity Report?

- A SAR is an electronic form that financial institutions file electronically through FinCEN's BSA E-Filing System
- Prior to mandatory e-filing (effective 2012), there were separate SAR forms for each type of financial institution
- In general, a financial institution covered by one of the various SAR rules must file a SAR when it "knows, suspects or has reason to suspect" that a transaction "conducted or attempted by, at or through" the institution or its affiliate is suspicious
- Dollar threshold: \$5,000 or \$25,000



# How are SARs Used?

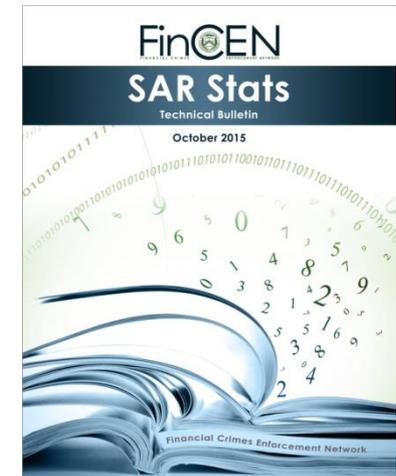
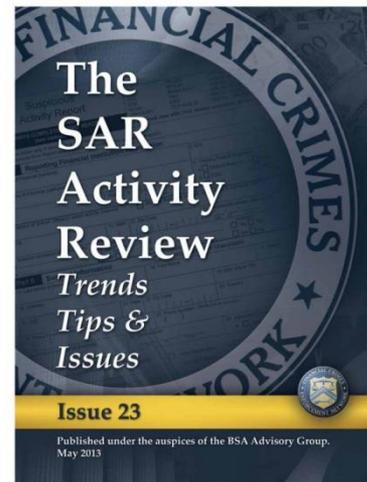
SAR data provides valuable leads to law enforcement and financial regulators



Department of the Treasury  
Internal Revenue Service



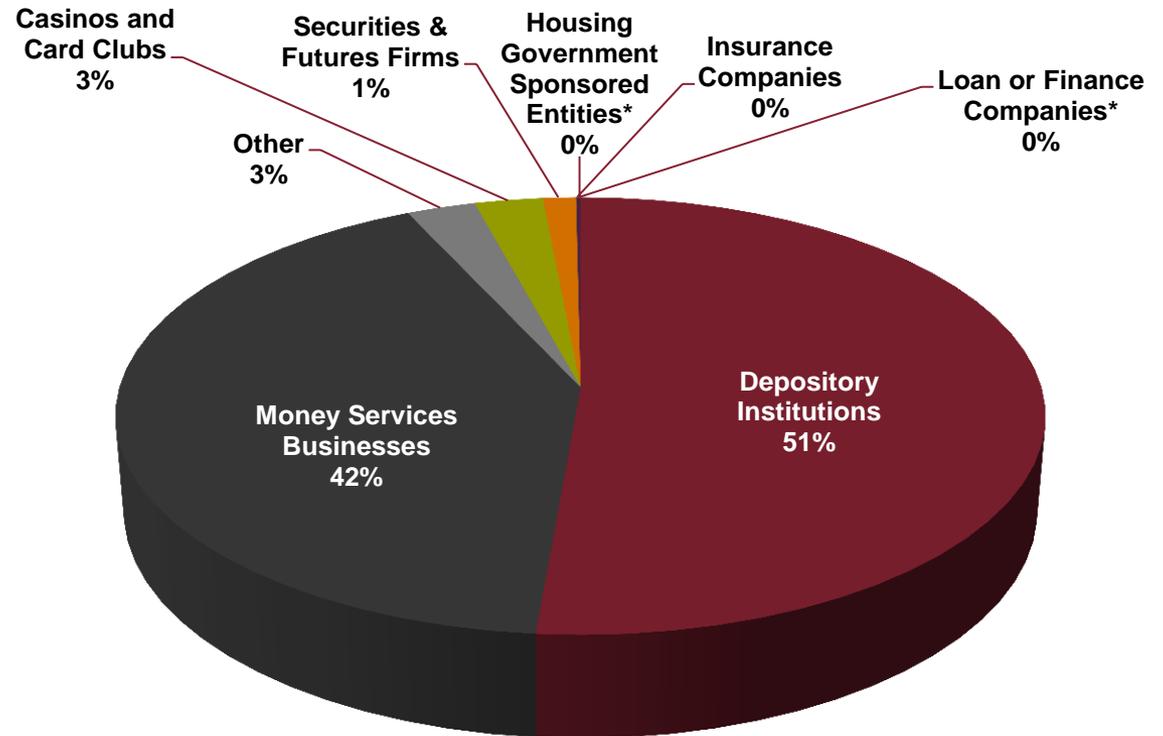
FinCEN periodically publishes reports summarizing SAR data





# SAR Stats: SARs Filed in 2014

Institution Type	SARs
Depository Institutions	886,927
Money Services Businesses	720,985
Other	46,899
Casinos and Card Clubs	46,575
Securities & Futures Firms	22,448
Insurance Companies	2,897
Housing Government Sponsored Entities*	160
Loan or Finance Companies*	84
<b>Total SARs Filed in 2014</b>	<b>1,726,975</b>



\*Aug 13, 2014 through Dec 31, 2014

SOURCE: FinCEN, SAR Stats (Oct. 2015)



## Creating a Robust SAR Program

- Information flow
- Transaction monitoring
- Training
- Enterprise-wide vs. legal entity

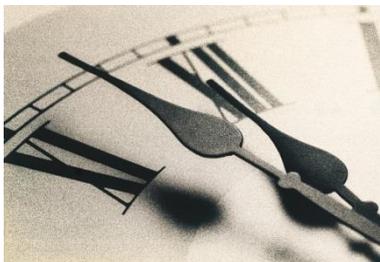


## Considerations before Filing

- Collect information from across the enterprise
- Consider applicable self-reporting regimes
  - Cybersecurity
  - Foreign Corrupt Practices Act
- Leverage the knowledge of front-line business personnel – but don't tip off the customer
- Document the decision not to file a SAR



## When to File



### 30-day SAR Filing Clock

“A bank is required to file a SAR no later than 30 calendar days after the date of initial detection by the bank of facts that may constitute a basis for filing a SAR.” If no suspect is identified, the bank may delay filing for an additional 30 days. 31 CFR § 1020.320(b)(3).



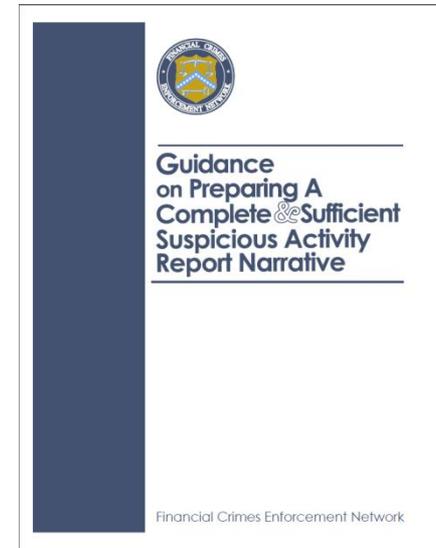
If warranted (e.g., terrorist financing), pick up the phone and call law enforcement directly.

“In situations involving violations that require immediate attention, such as, for example, ongoing money laundering schemes, the bank shall immediately notify, by telephone, an appropriate law enforcement authority in addition to filing timely a SAR.” 31 C.F.R. § 1020.320(b)(3) (emphasis added).



# What to Include in the Filing

- Clear Narrative that explains:
  - Who?
  - What?
  - When?
  - Where?
  - Why?
  - How?
- Contact information of designated compliance officer so that law enforcement can follow up and request additional information



## After Filing: Continuing Activity SARs

- Regulators have begun to focus on continuing suspicious activity that goes unreported
- Timeframe for filing continuing activity SARs where subject is identified:\*

Day 0	Identification of suspicious activity and subject
Day 30	Deadline for initial SAR filing
Day 120	End of 90-day review
Day 150 (120 days after initial filing)	Deadline for continuing activity SAR with subject information
If the activity continues, this timeframe will result in three SARs filed over a 12-month period	

\* See FinCEN, SAR FAQ #16, [http://www.fincen.gov/whatsnew/html/sar\\_faqs.html](http://www.fincen.gov/whatsnew/html/sar_faqs.html)



# After Filing: SAR Confidentiality

SARs are confidential. Be careful about requests to produce SARs or information that would reveal the existence of a SAR.

**CONFIDENTIAL**

## Requests from Regulators / Law Enforcement

- A financial institution can provide SARs directly to FinCEN, federal, state, and local law enforcement agencies, and to a regulator who examines it for BSA compliance, but not to other regulators. See, e.g., 31 C.F.R. § 1020.320(e)(1)(ii)(A)(1).
- Thus, a national bank can provide a SAR filed on banking activity to the OCC, but not to the SEC

## Litigation Requests

- SARs, and information that would reveal the existence of a SAR, generally cannot be produced in response to a subpoena. If a bank receives a subpoena requesting SAR information, it should decline to produce the information, citing the applicable SAR confidentiality rule and 31 U.S.C. § 5318(g)(2)(A)(i), and notify FinCEN. See, e.g., 31 C.F.R. § 1020.320(e)(1)(i).

## After Filing: Supporting Documentation

- Law enforcement may follow up on a SAR with a request for supporting documentation
  - No subpoena required
  - Maintain supporting documentation to provide to law enforcement upon request
- Law enforcement also may send a letter requesting that the account on which a SAR was filed remain open
  - Financial institutions are not obligated to comply with “keep-open” letters, but may voluntarily comply
  - Can share with examiners



## Enforcement: Failure to File

### **First National Community Bank, FinCEN (Feb. 2015)**

FinCEN assessed a civil money penalty of \$1.5 million against First National Community Bank for failing to file SARs on accounts held by one of its directors, a Pennsylvania judge who was convicted of judicial corruption relating to the “jailing kids for cash” scandal. FNCB failed to investigate the accounts after receiving a law enforcement subpoena.

### **Commerzbank, DOJ, DANY, OFAC, NYDFS, FRB (Mar. 2015)**

Commerzbank agreed to pay \$1.45 billion to resolve allegations of sanctions and AML violations, including failure to file SARs. Deficiencies in Commerzbank’s AML compliance program prevented it from detecting suspicious activity and stopping transactions related to a massive fraud by Olympus Corporation. Specifically, 2 senior bank officials in Singapore had suspicions about the fraud but failed to convey those suspicions to compliance personnel in New York.



# Questions?

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