



A Tough Act to Follow Part 1: The Bank Secrecy Act and USA Patriot Act

Laurie Kelly, CAMS



Alessa: Integrated AML Compliance Solution

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AML Capabilities

Customer Due Diligence

Sanctions Screening

Transaction Monitoring/
Screening

Regulatory Reporting

Data Management, Workflows, Case Management,
Fraud Detection & Prevention (Advanced Analytics)



Markets

Traditional FIs

MSBs

FinTechs

Gaming and Casinos

Questions? Email us at connect@alessa.com
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Presenter

Laurie has a 35-year career spanning the fields of accounting, finance, risk management, and regulatory compliance. Most recently, from 2006 to 2018 she served as the Director of Compliance for CoBank ACB, a \$183 billion Farm Credit System institution, where she developed and managed the bank's anti-money laundering, fraud, and economic sanctions compliance programs.

She holds the Certified Anti-Money Laundering Specialist (CAMS) designation as well as the CAMS-Audit specialization. She helped found the Colorado Chapter of the Association of Certified Anti-Money Laundering Specialists, serving as its Executive Board Chair from 2016 to 2018, and Programs Director from 2015 to 2016.



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What We'll Cover in Part 1

- **Evolution of the Bank Secrecy Act:**
 - ✓ Legal challenges
 - ✓ Significant amendments
 - ✓ Driving forces behind them
 - ✓ Regulatory regime developments
- **USA PATRIOT Act**
 - ✓ Effects on privacy laws
 - ✓ Major impacts to financial institutions

Coming up in Part 2:

- *The Customer Due Diligence Rule (2016)*
- *The Anti-Money Laundering Act of 2020*



Disclaimer

The contents of this presentation are intended to provide you with a general understanding of the subject matter. However, it is not intended to provide legal or other professional advice, and should not be relied on as such.



Laws and Regulations: Review



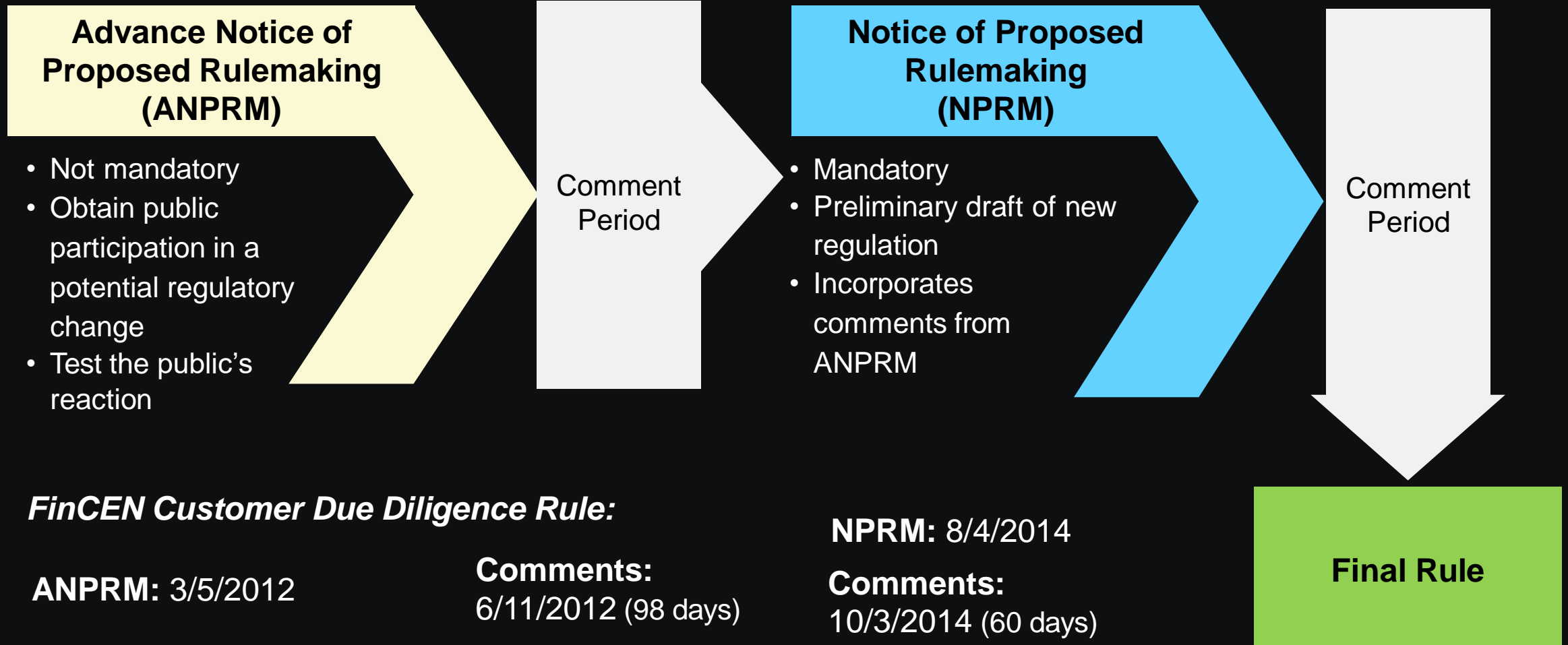
Law

Regulation

| Introduced by | Altered by | Can be stopped by | Finalized when | Has the effect of | Published in |
|----------------|------------|--|--|-------------------|-----------------------------------|
| Lawmakers | Congress | Stalling or failing in Congress Presidential veto | President signs Congress overrides veto | Law | United States Code (USC) |
| Federal Agency | The public | Congress or the public | Published | Law | Code of Federal Regulations (CFR) |



The Rule-Making Process



Laws: The United States Code

- Every U.S. law is stored in the United States Code (“USC”)
- 54 Titles
 - Subtitles
 - Chapters and subchapters
 - Parts, subparts, and sections
- Popular name
 - ~ Americans with Disabilities Act (ADA)
 - ~ Bank Secrecy Act (BSA)
- Public Law number (“Pub. L.”)
- Not always entirely in one place in USC

U.S. HOUSE OF REPRESENTATIVES

Office of the Law Revision Counsel
UNITED STATES CODE

Search & Browse

Currency and Updating

Classification Tables

Popular Name Tool

Other OLRC Tables and Tools

Understanding the Code

Positive Law Codification

Editorial Reclassification

Downloads

Other Legislative Resources

The United States Code is a consolidation and codification by subject matter of the general and

Search the United States Code

Search

Jump To: Title Section Go

Browse the United States Code [Current [change...](#)]

- ⊕ Front Matter
- ⊕ *Title 1—General Provisions
- ⊕ Title 2—The Congress
- ⊕ *Title 3—The President
- ⊕ *Title 4—Flag And Seal, Seat Of Government, And The States
- ⊕ *Title 5—Government Organization And Employees; and [Appendix](#)
- ⊕ Title 6—Domestic Security
- ⊕ Title 7—Agriculture

<https://uscode.house.gov>

The Bank Secrecy Act in the US Code

POPULAR NAME TOOL

The Popular Name Tool enables you to search or browse the United States Code Table of Acts Cited by Popular Name. For printing purposes, the [PDF file](#) is recommended. A detailed explanation of the Table is located [here](#).

July 12, [1870, ch. 252](#), 16 Stat. 251

Bank Official Loan Act

June 16, [1933, ch. 89](#), Sec. 12,48 Stat. 182 ([12 U.S.C. 375a](#))

Bank Protection Act of 1968

Pub. L. [90-389](#), July 7, 1968, 82 Stat. 294 ([12 U.S.C. 1881](#) et seq.)

Short title, see [12 U.S.C. 1881](#) note

Bank Robbery Act

May 18, [1934, ch. 304](#), 48 Stat. 783

Bank Secrecy Act

Pub. L. [91-508](#), titles I, II, Oct. 26, 1970, 84 Stat. 1114, 1118

Short title, see [12 U.S.C. 1951](#) note

Bank Service Company Act

Pub. L. [87-856](#), Oct. 23, 1962, 76 Stat. 1132 ([12 U.S.C. 1861](#) et seq.)

Short title, see [12 U.S.C. 1861\(a\)](#)

Bank Service Corporation Act

Renamed Bank Service Company Act

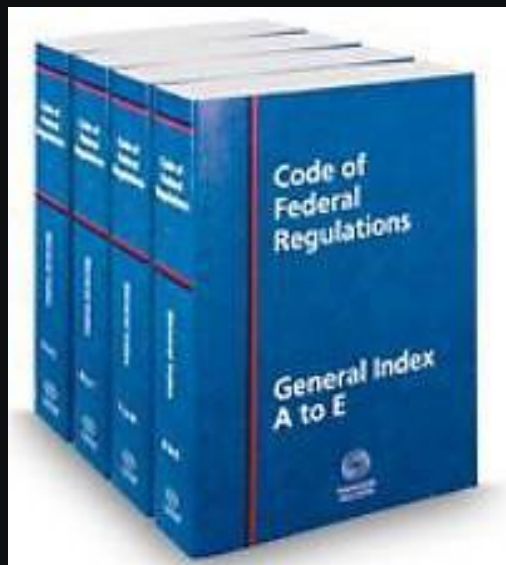
The Bank Secrecy Act in the US Code

| 91st Cong. ↑ | | 84 Stat. ↑ | | Oct. 26, 1970 ↑ | |
|------------------------------|---|---|-------------------------|---------------------------------|---------|
| 91-506 | | 91-508 _(pdf) | | 91-510 | |
| Act Section | Stat. Pg. | United States Code | | | Status |
| | | Title | Section | | |
| 101 | 1114 | 12 | 1829b | | |
| 101 | 1114 | 12 | 1830 | | |
| 101 | 1114 | 12 | 1831 | | |
| 102 | 1116 | 12 | 1730d | | Rep. |
| 121 | 1116 | 12 | 1951 | | |
| 122 | 1116 | 12 | 1952 | | |
| 123 | 1116 | 12 | 1953 | | |
| 124 | 1117 | 12 | 1954 | | |
| 125 | 1117 | 12 | 1955 | | |
| 126 | 1118 | 12 | 1956 | | |
| 127 | 1118 | 12 | 1957 | | |
| 128 | 1118 | 12 | 1958 | | |
| 129 | 1118 | 12 | 1959 | | |
| 130 | | 12 | 1960 | | |
| 201-213 | 1118-1121 | 31 | 1051 nt, 1051-1062 | | Rev. T. |
| 221-223 | 1122 | 31 | 1081-1083 | | Rev. T. |
| 231-235 | 1122 , 1123 | 31 | 1101-1105 | | Rev. T. |
| 241, 242 | 1124 | 31 | 1121, 1122 | | Rev. T. |
| 301(a) | 1124 | 15 | 78g | | |
| 301(b) | 1125 | 15 | 78g nt | | |
| 401(a), (b) | 1125 | 12 | 1951 nt | | |
| 401(c) | 1125 | 15 | 78g nt | | |
| 501 | 1126 | 15 | 1602 | | |
| 502(a) | 1126 | 15 | 1642 | | |
| 502(a) | 1126 | 15 | 1643 | | |
| 502(a) | 1127 | 15 | 1644 | | |
| 503(1) | 1127 | 15 | 1642 nt | | |
| 503(2) | 1127 | 15 | 1643 nt | | |
| 503(3) | 1127 | 15 | 1644 nt | | |
| 601 | 1128 | 15 | 1601 nt | | |

| | | | | |
|-----|----------------------|----|-------------------------|--|
| 601 | 1128 | 15 | 1681 | |
| 601 | 1128 | 15 | 1681a | |
| 601 | 1129 | 15 | 1681b | |
| 601 | 1129 | 15 | 1681c | |
| 601 | 1130 | 15 | 1681d | |
| 601 | 1130 | 15 | 1681e | |
| 601 | 1131 | 15 | 1681f | |
| 601 | 1131 | 15 | 1681g | |
| 601 | 1131 | 15 | 1681k | |
| 601 | 1132 | 15 | 1681i | |
| 601 | 1132 | 15 | 1681j | |
| 601 | 1133 | 15 | 1681k | |
| 601 | 1133 | 15 | 1681l | |
| 601 | 1133 | 15 | 1681m | |
| 601 | 1134 | 15 | 1681n | |
| 601 | 1134 | 15 | 1681o | |
| 601 | 1134 | 15 | 1681p | |
| 601 | 1134 | 15 | 1681q | |
| 601 | 1134 | 15 | 1681r | |
| 601 | 1134 | 15 | 1681s | |
| 601 | 1136 | 15 | 1681t | |
| 602 | 1136 | 15 | 1681 nt | |



US Code of Federal Regulations



- 50 Titles
- Title 31: Money and Finance

► CFR only updated annually

| | | |
|---|--|----------------|
| ▼ Title 31 Money and Finance: Treasury | | Part / Section |
| ► Subtitle A | Office of the Secretary of the Treasury | 0 – 50 |
| ▼ Subtitle B | Regulations Relating to Money and Finance | 51 – 1099 |
| Chapter I | Monetary Offices, Department of the Treasury | 51 – 199 |
|  Code of Federal Regulations  | | |
| A point in time eCFR system | | |
| | | eCFR |
| | Treasury | |
| Chapter VIII | Office of Investment Security, Department of the Treasury | 800 – 899 |
| Chapter IX | Federal Claims Collection Standards (Department of the Treasury - Department of Justice) | 900 – 999 |
| Chapter X | Financial Crimes Enforcement Network, Department of the Treasury | 1000 – 1099 |

<https://eCFR.gov>

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The Bank Secrecy Act



Bank Secrecy Act – The Beginning



- Passed on October 26, 1970
- One of the first examples of dedicated AML legislation in the world
- Also known as ***Currency and Foreign Transactions Reporting Act***

Express Purpose:

"To require certain reports or records where they have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings."

- ▶ Authorizes the **Secretary of Treasury** to define these reports and records

Driving Factors:

- Increase in money laundering activity through banks
- Banks failure to consistently maintain customer and transaction records that could be used by law enforcement



Bank Secrecy Act – The Beginning

Objective: provide law enforcement with greater evidence of money laundering - by collecting information on customers and their transactions.

Title I: General recordkeeping:

- “On Us” Check images over \$100 (some exceptions)
- Extensions of credit over \$5,000
- **Foreign** funds or currency transfers over \$10,000
- Identification and Tax ID of deposit account holders after June 30, 1972



Title II:

Currency Transaction Reports (CTR)

- Single cash transactions greater than \$10,000
- Reports submitted to the IRS

International Transportation of Currency or Monetary Instruments Report (CMIR)

- Physical transportation of cash/coin or monetary instruments out of or into the US
- Exceeding \$10,000 at any one time

Court Challenge

June 1972: *US District Court for the Northern District of California*

Plaintiffs:

- California Bankers Association
- Security National Bank
- Several individual bank customers
- American Civil Liberties Union (ACLU)

Plaintiffs claims:

- Violates Fourth amendment (right to privacy)
- Personal information collected/used inappropriately
- Unreasonable burden on banks – ‘agents of the government’
- General recordkeeping requirements international currency transport reporting rules okay

Defendants:

- Secretary of the Treasury
- Heads of other federal agencies

Outcome – The District Court:

Outcome – Supreme Court (1974):

- Customers don’t have an “*unqualified right to conduct their affairs in secret*”
- Domestic transaction reporting requirements violate Fourth Amendment

Money Laundering Control Act of 1986

- Subtitle H of the Anti-Drug Abuse Act of 1986
- ***Criminalized money laundering***
- ***Criminalized structuring***
- CTR threshold: aggregated transactions > \$10,000



1988 to 1990 Developments

Money Laundering Prosecution Improvements Act

(part of the Anti-Drug Abuse Act of 1988)

#1 New identity verification and recordkeeping for purchases of bank/cashier's checks, traveler's checks and money orders greater than **\$3,000**

- Different rules for account vs. non-account holders
- Records retained for 5 years

#2 Expanded definition of "financial institution"

- Automobile, airplane and boat dealers
- Persons involved in real estate closings/settlements
- US Postal Service
- An agency of the U.S. government or state/local government carrying out the powers of a business that is subject to the BSA
- **Treasury now has power to define others**

#3 Geographic Targeting Orders (GTOs)

- Treasury Department can require FIs in certain localities to keep records/report on certain activities
- Broad discretionary power

1988 – 1990 cont'd



- Established by the 1989 G-7 Summit
- 16 original member states
- 40 Recommendations issued April 1990



- Established April 1990
- Financial Intelligence Unit (FIU) for the USA
- Administers BSA regulations

Annunzio-Wylie Anti-Money Laundering Act of 1992

- Included within the Housing and Community Development Act
- Response to the Bank of Credit and Commerce International (BCCI) money laundering case

See Robert Mazur's book *The Infiltrator*

- **Shift in focus of anti-money laundering regulation towards financial institutions themselves**

Created the Suspicious Activity Report (SAR)

- Replaced the Criminal Referral Forms filed with regulators with a simplified form and centralized filing process with FinCEN
- Criminalized the act of disclosing the existence of a SAR
- Safe Harbor provision for filing institutions



Introduced the Travel Rule for Wire Transfers

- FI's to maintain records associated with wire transfers that "have a high degree of usefulness in criminal, tax or regulatory investigations or proceedings"
- Treasury and Fed Reserve to create specific regulations

Annunzio-Wylie Anti-Money Laundering Act cont'd

Formal Anti-Money Laundering Programs introduced

- Established the “four pillars” of an AML program:
 - ✓ Internal controls
 - ✓ Designated Compliance Officer
 - ✓ Staff training
 - ✓ Independent audit/review
- Treasury to establish specifics via regulations

Significant Penalties

- Increased civil penalties for BSA violations
- “**Death penalty**” for financial institutions convicted of money laundering
- Convicted bank officials may be permanently banned



Money Laundering Suppression Act of 1994



- Streamlined CTR filing:
 - ✓ New exemptions (mandatory & discretionary)
 - ✓ Simplified the CTR form
- Money Service Businesses required to register with FinCEN - \$5,000/day penalty and/or 5 years in prison

BSA Timeline

1970

**Bank
Secrecy
Act**

- Currency Transaction Reports (CTRs)
- Customer identification
- Customer transaction records

1972 – 1974 Supreme Court Challenge

1986

**Money
Laundering
Control Act**

- Money laundering and structuring: federal crimes

1988

**ML
Prosecution
Improv Act**

- ID & recordkeeping for cashiers/travelers checks, money orders > \$3,000
- Geographic Targeting Orders
- Treasury now has power to designate new covered FIs

1989



1990



BSA Timeline cont'd

1992

**Annunzio-
Wylie AML
Act**

- Unified SAR form
- Travel Rule for wire transfers
- Introduced formal AML programs

1994

**Money
Laundering
Suppression
Act**

- Streamlined/simplified CTRs
- Registration requirement for MSBs

2001

The USA PATRIOT Act

USA PATRIOT Act

Signed into law **October 26, 2001**

300+ pages

10 Titles

Title 3: Banking/BSA impacts

Amended many U.S. laws:

- Electronic Communications Privacy Act (aka the Wiretap Act)
- Foreign Intelligence Surveillance Act
- Communications Act of 1934
- Bank Secrecy Act



Uniting and
Strengthening
America by
Providing
Appropriate
Tools
Required to
Intercept and
Obstruct
Terrorism

- ✓ Surveillance and wiretapping on terrorist suspects
- ✓ “Delayed notification” search warrants
- ✓ Bank and business records used in terror investigations
- ✓ No statute of limitations for terror-related crimes
- ✓ Tougher penalties for convicted terrorists and those who harbor them

USA PATRIOT Act: Title 3

International Money Laundering Abatement and Antiterrorist Financing Act of 2001

Subtitle A: *International Counter-Money Laundering and Related Measures*

Sections 311 through 330

Subtitle B: *Bank Secrecy Act Amendments and Related Improvements*

Sections 351 through 366

Subtitle C: *Currency Crimes and Protection*

Sections 371 and 372

- #1** - Impact on financial institutions' day-to-day activities
- #2** - Dealings with foreign financial institutions/parties
- #3** - Empowering law enforcement in fighting money laundering/terrorist financing

USA PATRIOT Act Title 3: Impacts on Financial Institutions

Section 352 Anti-Money Laundering Programs

- Anti-money laundering programs now **mandatory** for all covered financial institutions
- Four Pillars
 - ✓ Internal controls/policies/procedures
 - ✓ Designated Compliance Officer
 - ✓ Staff training
 - ✓ Independent review of the program



USA PATRIOT Act Title 3: Impacts on FI's

Section 326 Identity Verification

- Customer Identification Program: **CIP**
- Verify a **new** customer's identity: "*a customer seeking to open an account*"
- Three minimum requirements:
 - ✓ Procedures should be reasonable & practical
 - ✓ Records must be kept
 - ✓ Screen new customer name against lists of **known & suspected terrorists** provided to the FI by **any** government agency
 - Original: FBI Control List
 - Now: OFAC Specially Designated Nationals List



USA PATRIOT Act Title 3: Impacts on FI's

Section 314 Cooperative Efforts to Deter Money Laundering

- “Information Sharing”
- Safe harbor to FIs against violations of privacy laws
- **314(a)** – sharing information with law enforcement at their request
- **314(b)** – sharing information between FI's
 - ✓ Register with FinCEN first
 - ✓ Make sure the other FI is also registered
- File a SAR!



USA PATRIOT Act Title 3: Dealings with Foreign FI

Section 313



No correspondent accounts with foreign shell banks

Foreign Shell Bank: Foreign bank with **no physical presence** in any country

Correspondent Account: Type of settlement account between two banks

- Between a US bank and a foreign bank
- Most often for settling foreign wire transfers (can't go through the Fed)
- Running due to/due from account



USA PATRIOT Act Title 3: Dealings with Foreign FIs cont'd

Section 312



Special due diligence for:

- Foreign private banking accounts
- **Certain** foreign bank correspondent accounts

Foreign Private Banking Account:

- ✓ Minimum of \$1 million
- ✓ Non-US account holder or beneficial owner
- ✓ Managed by a bank officer on behalf of the client

Correspondent account with a foreign bank that:

- ✓ Has an offshore banking license, **or**
- ✓ Is based in a weak/non-cooperative AML country, **or**
- ✓ Is designated under Section 311 Special Measures



USA PATRIOT Act Title 3: Dealings with Foreign FI

cont'd

Section

311



Special measures:
“Primary money laundering concern”

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311 Special Measures

Special Measures for Jurisdictions, Financial Institutions, or International Transactions of Primary Money Laundering Concern

Rulemakings Listed in Alphabetical Order

| | Finding** | Notice of Proposed Rulemaking | Final Rule | Rescinded |
|--|-----------|-------------------------------|------------|---|
| ABLV Bank | | 02/13/2018 | | |
| Asia Wealth Bank | | 11/25/2003 | 4/12/2004 | 10/01/2012 |
| Banca Privada d'Andorra | 3/10/2015 | 03/10/2015 | | 2/29/2016 (Finding) 2/29/2016 (NPRM) |
| Banco Delta Asia | 9/15/2005 | 9/15/2005 | 3/14/2007 | 8/10/2020 (Finding) 8/10/2020 (Final Rule) |
| Bank of Dandong | | 7/7/2017 | 11/08/2017 | |
| Burma**** | | 11/25/2003 | 4/12/2004 | |
| Commercial Bank of Syria (Includes Syrian Lebanese Commercial Bank) | | 5/18/2004 | 3/09/2006 | |
| Democratic People's Republic of Korea | 5/27/2016 | 5/27/2016 | 11/9/2016 | |



USA PATRIOT Act Title 3: Empowering law enforcement

315 Foreign corruption now a predicate crime

317-320 US jurisdiction over foreign money launderers

371 Bulk cash smuggling now a federal crime

372 Cash forfeiture: smuggling & structuring

Wrap Up

The BSA from 1970 to 2001:

- ✓ Six major Acts
- ✓ Money laundering criminalized
- ✓ FATF created; FinCEN established
- ✓ CTRs, CMIR's, SARs, the Travel Rule
- ✓ USA PATRIOT Act's sweeping changes

Coming up...

The Customer Due Diligence Rule

The Anti-Money Laundering Act of 2020

Tuesday October 25, 2022 12:00pm ET



ALESSA

A Tough Act to Follow Part 1: The Bank Secrecy Act and USA Patriot Act

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