



2020 TMN Annual Client Conference


Compliance Update

October 21, 2020

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Compliance Update

- SECURE Act
- CARES Act
- State Trust Statutes
- FFIEC BSA/AML Examination Manual
- PEPs
- Enforcement of AML Rules



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SECURE Act

- **1st Qtr. 2020 – TMN Leadership Forum**
 - Focus was on the SECURE Act

- SECURE Act took effect January 1, 2020
 - An Act to amend the IRC of 1986 to encourage retirement savings
 - Short Title: **Setting Every Community Up for Retirement Enhancement Act of 2019**

- **Summary of Key Takeaways for Trustees and Custodians**
 - Deductible contributions to Traditional IRAs can be made after age 70½
 - RMD withdrawals start at age 72, not 70½
 - Stretching payments from inherited retirement accounts no longer permitted for most non-spouse beneficiaries

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CARES Act

- CARES Act signed into law March 27, 2020
 - \$2 trillion coronavirus economic recovery bill
 - Short Title: **Coronavirus Aid, Relief, and Economic Security Act of 2020**

- **Summary of Key Takeaways for Trustees and Custodians**
 - Up to \$100,000 in coronavirus-related distributions (CVDs) can be taken from IRAs (and other eligible retirement accounts)
 - No 10% penalty if taken before age 59½
 - Income taxes on CVDs can be paid over three years (default)
 - Can also opt to pay at end of third year or other customized approach
 - Alternately, owner can recontribute CVD back into IRA within three years of withdrawal date and treat withdrawal and later recontribution as a tax-free rollover
 - RMD withdrawals can be skipped completely in 2020
 - RMDs already taken in 2020 could be rolled back into IRA by August 31, 2020

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CARES Act

What this means:

- CARES Act added complexity for retirement accounts that had already been impacted by SECURE Act
- RMDs
 - No RMDs required in 2020
 - RMDs already taken could be rolled back
 - As trustee/custodian did you inform clients these could be rolled back?
- CVDs
 - CVDs could be, and can still be, taken
 - Penalty free and no tax withholding required
 - Three year window for a roll back of any CVD
- Ask – do you have a duty to inform clients?

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State Trust Statutes

- Changing state laws
- Alaska, Delaware, Nevada, South Dakota considered the best states for directed trust statutes
 - Delaware always permitted
 - South Dakota, Nevada, Alaska changed their trust laws
 - To attract more trust business to the states
- Recently, other states moved in same direction
 - New Illinois Trust Code
- However, not all states treat directed trusts the same
 - Delaware provides highest protection for directed trustees
 - ... but even Delaware trust statutes do not prevent litigation

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State Trust Statutes

- Illinois recently adopted its version of the UTC
 - Took effect January 1, 2020
- Major change to the notice and accounting rules
 - Prior law required accounting and notice only to current income beneficiaries
- Under new law, all current beneficiaries require notice and accountings
 - income and principal beneficiaries and presumptive remainder beneficiaries
 - Unless trust agreement language overrules

However:

- Effective only for new trusts that become irrevocable after 01/01/2020
- Or revocable trusts where a new trustee starts acting after 01/01/2020

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State Trust Statutes

What this means:

- Notice and accounting rules are relevant for any trust organization that administers trusts with a situs in Illinois
 - Illinois trust charter
 - National charter with Illinois situs trusts
 - Any other state charter with Illinois situs trusts
- Rule applies to new irrevocable trusts or revocable trusts with a new trustee after January 1, 2020
 - Important to know when administering Illinois trusts...
 - System coding should reflect relevant change in circumstances of trust
 - Trust agreements must be reviewed to identify all current beneficiaries
 - Unless language specifically overrules notice and accounting requirements
- Ask – are controls in place to monitor new/changing trusts?

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2020 Updates to FFIEC BSA/AML Manual

- **April 15, 2020:** FFIEC published updated sections and related examination procedures in the FFIEC *Bank Secrecy Act/Anti Money Laundering (BSA/AML) Examination Manual (Manual)*
 - To provide further transparency into BSA/AML examination process
- The BSA/AML Manual provides guidance on regulatory expectations for BSA/AML/OFAC compliance
 - Including the examination process
- First published by FFIEC in 2005
 - Revised and republished in its entirety in 2006, 2007, 2010, and 2014
 - In 2018 two updates were released outlining new procedures for Final CDD Rule
 - Customer Due Diligence
 - Beneficial Ownership Requirements for Legal Entity Customers

2020 Updates to FFIEC BSA/AML Manual

- The 2020 updates are designed to emphasize and enhance the risk-focused approach to BSA/AML supervision
 - Result of a multi-year interagency process to evaluate BSA/AML effectiveness
 - Intended to provide further transparency and clarify the focus of BSA/AML examinations by providing more focused instructions to examiners
- The updates do not establish new requirements, but do incorporate regulatory changes implemented since the last major revision of the BSA/AML Manual in 2014

2020 Updates to FFIEC BSA/AML Manual

The entire first section of the BSA/AML Manual has been replaced:
Core Examination Overview and Procedures for Assessing the BSA/AML Compliance Program

- Covers scoping and planning of an examination, BSA/AML risk assessment, and key aspects of compliance, including:
 - Internal controls
 - Independent testing
 - Designation of a compliance officer
 - Training
- Updates were made in each of the four sub-sections
 1. Scoping and Planning
 2. BSA/AML Risk Assessment
 3. Assessing the BSA/AML Compliance Program
 4. Developing Conclusions and Finalizing the Exam

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2020 Updates to FFIEC BSA/AML Manual

Summary of Key Updates

- Keep in mind that the updates to the BSA/AML Manual provide instructions to examiners when assessing the adequacy of your BSA/AML compliance program

1. Scoping and Planning

- Adds new section, “Risk-Focused BSA/AML Supervision”
 - Emphasizes that examiners should use risk-based approach tailored to each organization’s specific BSA/AML risk profile

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2020 Updates to FFIEC BSA/AML Manual

2. BSA/AML Risk Assessment

- New term, “ML/TF and other illicit financial activity risks” replaced “BSA/AML risks”
- Acknowledgement that risk assessment is not a legal requirement
- Clarifies there is no expectation for a particular method or format
- Clarifies there is no requirement to update risk assessment on any specified periodic basis
- But expectation that it remains an accurate reflection of the bank’s ML/TF and other illicit financial activity risks

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2020 Updates to FFIEC BSA/AML Manual

3. Assessing the BSA/AML Compliance Program

- Overall objective has changed from 2014, which stated:
 - *Assess the adequacy of the bank’s BSA/AML compliance program. Determine whether the bank has developed, administered, and maintained an effective program for compliance with the BSA and all of its implementing regulations.*
- To 2020:
 - *Assess whether the bank has designed, implemented, and maintains an adequate BSA/AML compliance program that complies with BSA regulatory requirements.*
- Adds specific reference that compliance program must include, in addition to its CIP program, appropriate risk-based procedures for conducting ongoing CDD and complying with beneficial ownership requirements for legal entity customers

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2020 Updates to FFIEC BSA/AML Manual

Sub-section 3 adds sections that align with 4 Pillars of AML Compliance

- a. *BSA/AML Internal Controls*
- b. *BSA/AML Independent Testing Examination Procedures*
- c. *BSA Compliance Officer Examination Procedures*
- d. *BSA/AML Training*

These new sections expand the guidance for the 4 Pillars previously outlined in the 2014 Manual

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2020 Updates to FFIEC BSA/AML Manual

Relevant updates in these four new sections include the following:

- a. **BSA/AML Internal Controls**
 - Stated objective for examiners is to assess system of internal controls to assure ongoing compliance with BSA regulatory requirements
 - The list of what internal controls “should” accomplish is shorter and less prescriptive than the 2014 guidance

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2020 Updates to FFIEC BSA/AML Manual

b. BSA/AML Independent Testing Examination Procedures

- Clarified there is no regulatory requirement establishing frequency of independent testing
- May conduct periodically, e.g., every 12-18 months, and/or when there are significant changes in the risk profile, systems, compliance staff, or processes

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2020 Updates to FFIEC BSA/AML Manual

c. BSA Compliance Officer Examination Procedures

- Emphasized that appointing BSA compliance officer is not, by itself, sufficient to meet regulatory requirement to establish and maintain BSA/AML compliance program
- BoD responsible for ensuring BSA compliance officer has appropriate authority, independence, and access to resources to administer adequate BSA/AML compliance program based on bank's ML/TF and other illicit financial activity risk profile
 - Previous guidance did not stipulate need for "independence"
- Indicators of appropriate independence may include:
 - Clear lines of reporting and communication ultimately to BoD or designated board committee that do not compromise BSA compliance officer's independence
 - Ability to undertake BSA compliance officer's role without undue influence from business lines
 - Identification and reporting of issues to senior management and BoD

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2020 Updates to FFIEC BSA/AML Manual

d. BSA/AML Training

- Continued focus on training for appropriate personnel
- BSA compliance officer and BSA compliance staff should receive training that is relevant and appropriate
- Also BoD and senior management should receive foundational training and be informed of changes and new developments in BSA, regulations, and supervisory guidance
 - This is a change from 2014 guidance which required only need for BoD to “understand” importance of regulatory requirements
- Other change includes requirement to provide training for any agents responsible for conducting BSA-related functions on behalf of organization

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2020 Updates to FFIEC BSA/AML Manual

4. Developing Conclusions and Finalizing the Exam

- Changes to this section include reminders to examiners that organizations have flexibility in the design of their BSA/AML compliance programs
 - Minor weaknesses, deficiencies, and technical violations alone are not indicative of an inadequate program

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2020 Updates to FFIEC BSA/AML Manual

What this means:

- At a minimum, will require updates to your written BSA/AML program
 - Include references to 2020 FFIEC BSA/AML Manual
 - Update to reflect new terminology, “ML/TF and other illicit financial activity risks”

- May require changes to your risk assessment

- May require additional focused training for BSA compliance officer and compliance staff

- May also require training for members of BoD

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2020 Updates to FFIEC BSA/AML Manual

In Conclusion:

- The major change in 2020 is the release of the updated version of the first section of the FFIEC BSA/AML Examination Manual
 - While there are no legal or regulatory changes to the requirements, important to recognize these revisions will guide future BSA/AML examinations

- The FFIEC is continuing to review and revise the remaining sections of the 2014 edition of the Manual
 - These updates will be released in phases

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CDD Requirements for PEPs

- August 21, 2020: Federal agencies issued a joint statement clarifying that BSA due diligence requirements for customers who may be considered "politically exposed persons" (PEPs) should be commensurate with risks posed by PEP relationship
 - Banks reminded of their obligation to identify and report suspicious activities, including transactions that may involve proceeds of corruption
 - Agencies recognize that PEP relationships present varying levels of money laundering risk, and those risks depend on the presence or absence of numerous factors
 - Banks must adopt appropriate risk-based procedures for conducting CDD, however, under the FinCEN 2016 CDD Rule, there is no regulatory requirement or supervisory expectation for banks to have unique, additional due diligence steps for customers whom the banks consider to be PEPs

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FFIEC Clarifies CDD Requirements for PEPs

What this means:

- There is no change in regulatory framework
 - Banks had requested clarification on how to apply a risk-based approach to PEPs consistent with the FinCEN 2016 CDD Rule
- PEPs are not interpreted to include U.S. public officials
 - Term used to refer to foreign individuals who are or have been entrusted with a prominent public function, their immediate family members and close associates
- No regulatory requirement in the CDD Rule, nor a supervisory expectation, to have unique, additional due diligence steps for PEPs
 - Instead, the level and type of CDD should be appropriate for the customer risk
- Stated simply, not every PEP is a high risk!

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Enforcement of AML Rules

- **February 6, 2020:** Marking the 50th anniversary of the BSA, the U.S. Treasury issued the *2020 National Strategy for Combating Terrorist and Other Illicit Financing*
 - Three primary priorities include:
 - Increasing transparency and closing gaps in AML/CFT legal framework
 - Continuing to improve efficiency and effectiveness of AML/CFT regulatory and supervisory framework for financial institutions
 - Enhancing current AML/CFT operational capabilities
- 2020 Strategy reviews the most significant vulnerabilities, including:
 - Complicit actors in financial institutions and other businesses
 - Compliance weaknesses
- Steps underway to close gaps include the following...

Statement on Enforcing BSA/AML Requirements

- **August 13, 2020:** Federal banking agencies issued a joint statement updating their existing enforcement guidance to enhance transparency regarding how they evaluate enforcement actions when financial institutions fail to meet BSA/AML obligations.
 - The statement clarifies that isolated or technical violations or deficiencies are generally not considered findings that would result in an enforcement action
- The statement also addresses how the agencies evaluate violations of the four pillars of the BSA/AML compliance program
 - And describes how the agencies incorporate CDD regulations and recordkeeping requirements as part of the internal controls pillar of the compliance program

FinCEN Final Rule for Banks Lacking Federal Regulator

- **September 15, 2020:** FinCEN published a final rule implementing sections 352, 326 and 312 of the USA PATRIOT Act and removing the exemption for banks that lack a Federal functional regulator
 - To ensure consistent BSA coverage across the banking industry
- Final Rule requires such banks to establish and implement AML programs that meet the minimum standards and extends CIP and beneficial ownership requirements to those banks
 - Compliance with FinCEN 2016 CDD Rule
- *Effective Date:* September 15, 2020
- *Compliance Date:* March 15, 2021

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FinCEN Final Rule for Banks Lacking Federal Regulator

What this means:

- The final rule now applies to, among others, state-chartered non-depository trust companies
 - If your organization has a State Charter and is not a member of a federal agency
- If your organization is a state-chartered non-depository trust company your State banking division may have already required compliance with FFIEC guidance and FinCEN regulations
- If not, or if not strictly enforced, then recommend you:
 - Review your BSA/AML program to ensure it meets the minimum requirements
 - A great place to start is with the 2020 Updates to the BSA/AML Manual
 - Review the FinCEN 2016 CDD Rule
 - Update your BSA/AML program to incorporate beneficial ownership requirements

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ANPRM on AML Program Enhancements

- **September 17, 2020:** FinCEN published an Advance notice of proposed rulemaking (ANPRM) on AML Effectiveness
 - Scope includes all industries with AML requirements under FinCEN regulations
- Expected amendments would further clarify that such a program
 - Assesses and manages risk as informed by a financial institution’s risk assessment, including consideration of AML priorities to be issued by FinCEN
 - Provides for compliance with BSA requirements
 - Provides for reporting of information with high degree of usefulness to authorities
- Among other things, FinCEN is seeking comment on whether it is appropriate to clearly define a requirement for an “effective and reasonably designed” AML program in BSA regulations

What this means:

- Stay tuned, more changes will be on the way!



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Summary of Key Takeaways

- Diligence required when dealing with IRA and other retirement accounts
- Illinois trusts have new notice and accounting requirements
- Review and update your written BSA/AML program
- Confirm that training is adequate
 - Especially for compliance officer and Board members
- Be on the lookout for new and changing regulations

If you have specific questions on anything in today’s presentation, or questions on another law or regulation not covered today, please feel free to contact me via email:

joanne.eby@nthdegreefinancial.com



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