



1

Compliance Update

- SECURE and CARES Acts – 2021 Update
- State Trust Statutes – 2021 Update
- FFIEC BSA/AML Examination Manual – 2021 Update
- Anti-Money Laundering Act of 2020
- Other Notable Items
- Things That Go Bump in the Night

2

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2

SECURE and CARES Acts – 2021 Update

- SECURE Act took effect January 1, 2020
 - The Act amended IRC of 1986 to encourage retirement savings
 - Short Title: **Setting Every Community Up for Retirement Enhancement Act of 2019**
- A Key Takeaway for Trustees and Custodians of IRAs
 - RMD withdrawals **required** to start at age 72, not 70½
- 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**
- A Key Takeaway for Trustees and Custodians of IRAs
 - RMD withdrawals **not required** in 2020

It's 2021 – now what?

3

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3

SECURE and CARES Acts – 2021 Update

What this means:

- Under SECURE Act:
 - For individuals who turned 70½ in 2019, the old rules applied
 - Individuals born between July 1, 1948 and June 30, 1949
 - Required to take first RMD no later than April 1, 2020
- ...but CARES Act added complexity
 - No RMDs required in 2020, thus no first RMD and no annual 2020 RMD
 - RMDs required in 2021, but April 1 rule still applies for first RMD from IRA
 - Individuals required to take first RMD no later than April 1, 2022
 - 2nd RMD must be taken in calendar year 2022 and every year thereafter
- Also under SECURE Act:
 - For individuals who did not turn 70½ in 2019, RMD not required until age 72
 - Individuals born between July 1, 1949 and December 31, 1949 turned 72 in 2021
 - Required to take first RMD no later than April 1, 2022
 - 2nd RMD must be taken in calendar year 2022 and every year thereafter
- Ask – do you have a control process to ensure required RMDs are made by the deadline?

4

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State Trust Statutes

- Changing state laws: **Electronic Wills and Trusts**
 - To date, Utah, Washington, Colorado, and North Dakota have enacted the Uniform Electronic Wills Act
 - Virginia and Idaho have introduced this legislation
 - Four other states, Nevada, Indiana, Arizona, and Florida, have passed their own laws that allow electronic wills
 - California, the District of Columbia, New Hampshire, Texas, and Virginia have considered e-will legislation, but have not yet adopted a law
 - During the coronavirus pandemic, New York and Connecticut issued executive orders allowing for the temporary electronic notarization or execution of wills.

5

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State Trust Statutes

What this means:

- Digital technology is only becoming more prevalent, so electronic wills and trusts are likely to become more common
 - The question is how they will work in practice
- Uniform Electronic Wills Act applies only to wills
 - Applies only to those states who have enacted
 - And should assess whether uniform code has been modified
- Other state laws vary:
 - In Nevada, both a will and trust may be drafted, signed, and even witnessed and notarized, electronically or virtually and still be valid
 - In Florida, the Electronic Legal Documents act provides for online and remote notary services to validate legal documents, including wills and trust
- Ask – are controls in place to verify electronic legal documents, which may include POAs and trusts?

6

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6

2021 Updates to FFIEC BSA/AML Manual

- Federal Financial Institutions Examination Council (“FFIEC”) BSA/AML Examination Manual
 - First published by the FFIEC in 2005
 - FFIEC has six voting members: Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Office of the Comptroller of the Currency; National Credit Union Administration; Consumer Financial Protection Bureau; and State Liaison Committee
 - Revised and republished in its entirety in 2006, 2007, 2010, 2014
 - 2018 draft updates published to reflect changes to CDD
 - 2020 updated sections and related examination procedures published to provide further transparency into BSA/AML examination process

- 2021 updated sections and related supervisory guidance published to continue to **emphasize and enhance the risk-focused approach to BSA/AML supervision**

7

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2021 Updates to FFIEC BSA/AML Manual

- Updates were released on February 25 and June 21
 - Updates are now published in the FFIEC Bank Secrecy Act/Anti-Money Laundering InfoBase
 - Available at: <https://bsaaml.ffiec.gov/manual>

- The updates do not establish new requirements
 - The agencies clarified the manual does not establish requirements for banks; requirements are found in statutes and regulations

- The revisions incorporate regulatory and other changes since the last update of the Manual in 2014

- The FFIEC revised the sections in close collaboration with Treasury’s Financial Crimes Enforcement Network (FinCEN)

8

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2021 Updates to FFIEC BSA/AML Manual

February 25, 2021

- New section added:
 - *Assessing Compliance with BSA Regulatory Requirements*
- Sections Revised:
 - Customer Identification Program,
 - Currency Transaction Reporting
 - Transactions of Exempt Persons

June 21, 2021

- Sections Revised:
 - Purchase and Sale of Certain Monetary Instruments Recordkeeping
 - Special Measures
 - Reports of Foreign Financial Accounts
 - International Transportation of Currency or Monetary Instruments Reporting

9

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9

2021 Updates to FFIEC BSA/AML Manual

What this means:

- **At a minimum**, may require updates to your written BSA/AML program
 - Include references to 2021 FFIEC BSA/AML Manual
- The changes are targeted to retail banking products and services
 - Not specific to trust or other asset management organizations
- Expect ongoing future revisions
- There will continue to be collaboration with FinCEN
- Ask – are controls in place to monitor ongoing updates and assess whether the updates will require changes to BSA/AML Program?

10

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10

AML Act of 2020

- **Anti-Money Laundering Act of 2020 (AML Act)**
 - Part of the National Defense Authorization Act for FY 2021
 - Became law January 1, 2021 and is considered the most consequential anti-money laundering legislation passed by Congress since USA PATRIOT Act
 - AML Act consists of five titles, 56 sections, and is 86 pages long
 - Likely to be significantly expanded by implementing federal regulations

- **Key provisions include:**
 - Establish uniform beneficial ownership information reporting regime
 - Codify risk-based approach to AML/CFT compliance
 - Expand enforcement and investigation-related authority
 - Including authority to subpoena foreign banks with U.S. correspondent accounts
 - Expand whistleblower rewards and protections
 - New BSA violations and penalties for repeat and egregious violators
 - Emphasize coordination, cooperation, and information-sharing among financial institutions, U.S. financial regulators and foreign financial regulators

11

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AML Act of 2020: Corporate Transparency Act

- **Corporate Transparency Act (CTA) is part of AML Act**
 - AML Act Title LXIV (Sections 6401-6403)

- **CTA amends BSA to require corporations, LLCs, and other entities to report beneficial ownership information**
 - FinCEN will maintain this beneficial ownership information
 - But CTA authorizes FinCEN to disclose information to several categories of recipients, such as federal law enforcement

- **April 01, 2021 FinCEN issued ANPRM related to implementing beneficial ownership information provisions**
 - To solicit public comment on a wide range of questions related to implementation of beneficial ownership information reporting provisions of CTA

- **This is just the first of the regulatory actions to implement CTA**

12

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AML Act of 2020: AML/CFT Priorities

- June 30, 2021 FinCEN issued the first government-wide priorities for AML/CFT policy
- These Priorities identify and describe the most significant AML/CFT threats currently facing the U.S.
 - Include: corruption, cybercrime, domestic and international terrorist financing, fraud, transnational criminal organizations, drug trafficking organizations, human trafficking and human smuggling, and proliferation financing
- FinCEN also issued two statements to provide guidance to covered institutions on how to approach the Priorities
 - Statement for Banks
 - Statement for Non-Bank Financial Institutions

13

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13

AML Act of 2020: AML/CFT Priorities

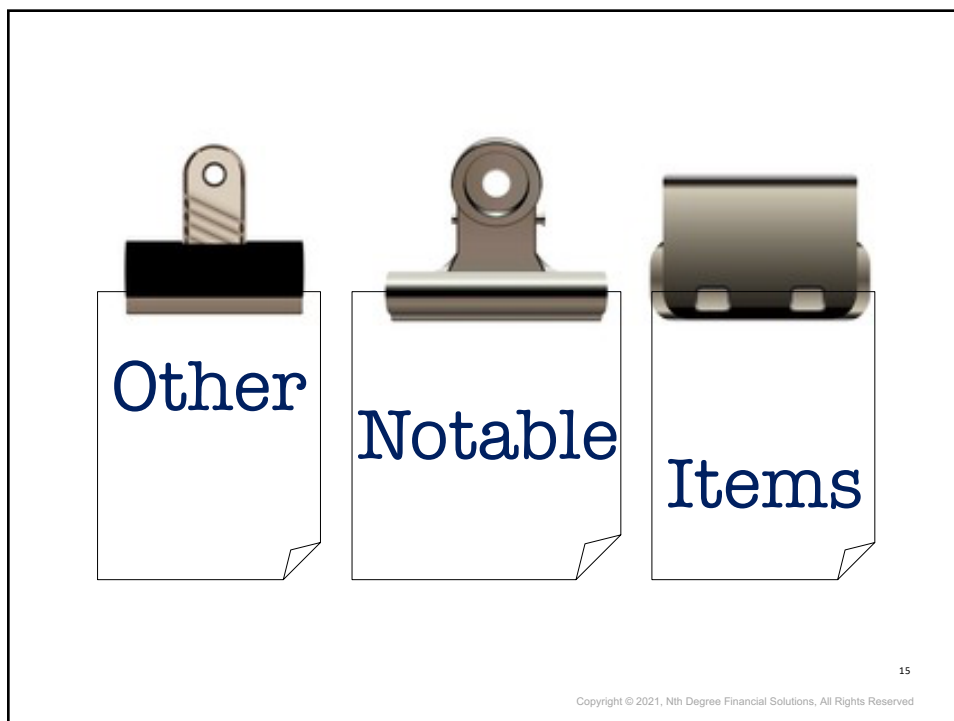
Statement for Banks:

- The publication of the AML/CFT Priorities does **not** create an immediate change to BSA requirements or supervisory expectations for banks
 - Within 180 days FinCEN will promulgate regulations regarding these Priorities
 - ↳ No later than December 31, 2021
 - Banking Agencies will revise regulations to incorporate the Priorities into BSA requirements
 - ↳ Banks are not required to incorporate Priorities into BSA programs until regulations promulgated
- However, banks may wish to start considering how they will incorporate the Priorities into their risk-based BSA compliance programs
 - Incorporation of AML/CFT Priorities, as appropriate, into a bank's risk-based BSA compliance program, will be included as a measure on which a bank is supervised and examined
- In other words, banks will be examined on the Priorities once regulations take effect
- Available at:
 - ↳ [https://www.fincen.gov/sites/default/files/shared/Statement%20for%20Banks%20\(June%2030%2C%202021\).pdf](https://www.fincen.gov/sites/default/files/shared/Statement%20for%20Banks%20(June%2030%2C%202021).pdf)

14

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14



15

FinCEN Rule for Banks Lacking Federal Regulator

- Last year FinCEN published a final rule implementing sections 352, 326 and 312 of the USA PATRIOT Act
 - Removed exemption for state-chartered banks, which includes stand-alone state-chartered public trust companies
- The rule requires all state-chartered banks to establish and implement AML programs that meet the minimum standards and extends CIP and beneficial ownership requirements to those banks

Compliance Due Date was **March 15, 2021**

16

FinCEN Rule for Banks Lacking Federal Regulator

- **What this means:**
- Effective March 15, 2021 state-chartered banks must comply with the customer due diligence requirements of the Beneficial Owner Rule
- Compliance requires:
 - (1) Identifying the beneficial owners of an Account opened for an Entity;
 - (2) Obtaining the minimum identifying information for such beneficial owners;
 - (3) Verifying those beneficial owners where there is a risk the Company may not have reasonable belief it knows their true identity; and
 - (4) Maintaining the information on beneficial owners for any Account opened for an Entity on or after the effective compliance date
- Ask – are processes in place to comply with CDD requirements?

17

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FinCEN Rule for Banks Lacking Federal Regulator

- FinCEN did not specifically include **Section 314: Information Sharing** in the rule
 - Section 314(a) applies to financial institutions, as defined in 31 CFR Chapter X and 31 U.S.C. § 5312(a)(2), including state-chartered public trust companies
- To perform 314(a) searches, state-chartered banks must register with FinCEN to access the SISS, **however**, only federally regulated entities can register directly with FinCEN
 - The State Banking Divisions must facilitate registration for their state-chartered public trust companies
 - Texas, New Hampshire, Washington, South Dakota are among states that published guidance
- If unsure, check with your state regulator to determine whether compliance with 314(a) is required at this time

18

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18

FinCEN Final Rule for Banks Lacking Federal Regulator

- Section 314(b) Voluntary information sharing among financial institutions
 - A financial institution may, under the protection of the safe harbor from liability for disclosing such information, transmit, receive, or otherwise share information with any other financial institution regarding individuals, entities, organizations, and countries for purposes of identifying and reporting activities that the financial institution suspects may involve possible terrorist activity or money laundering

- This becomes a policy decision for the financial institution

19

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19

ANPRM on AML Program Enhancements

- Last year FinCEN published an Advance notice of proposed rulemaking (ANPRM) on AML Effectiveness
 - Scope includes all industries with AML requirements under FinCEN regulations
 - Among other things, FinCEN sought comment on whether it is appropriate to clearly define a requirement for an “**effective** and reasonably designed” AML program in BSA regulations

- By the close of the Comment period in November 2020 there were 111 public comments
 - However, no published rule to date

20

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20

Final Rule on Use of Supervisory Guidance

- FRB adopts final rule outlining and confirming use of supervisory guidance for regulated institutions
 - 12 CFR Appendix A to Part 262 - *Statement Clarifying the Role of Supervisory Guidance*
 - Codifies 2018 Interagency Statement Clarifying the Role of Supervisory Guidance, issued by FRB, OCC, FDIC, NCUA, and CFPB
 - Restated existing law and reaffirmed agencies' understanding that supervisory guidance does not create binding, enforceable legal obligations.
- Agencies expressed their intention to:
 - (1) limit use of numerical thresholds in guidance;
 - (2) reduce issuance of multiple supervisory guidance documents on the same topic;
 - (3) continue to make role of supervisory guidance clear in communications; and
 - (4) encourage supervised institutions to discuss concerns about supervisory guidance with their agency contact.
- Final rule became effective [May 10, 2021](#)

21

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21

Third Party Relationships: Risk Management

- July 19, 2021 the Agencies published a Proposed Interagency Guidance on *Third-Party Relationships: Risk Management*
 - Agencies have previously issued guidance for their respective supervised banking organizations addressing third-party relationships and appropriate risk management practices:
 - FRB 2013 guidance
 - FDIC 2008 guidance
 - OCC 2013 guidance and 2020 FAQs
- Proposed Guidance seeks to provide consistency in third-party risk management guidance and to clearly articulate risk-based principles on third-party risk management
 - The proposed guidance is based on OCC's existing third-party risk management guidance from 2013
 - The OCC's 2020 FAQs are included as an exhibit, separate from proposed guidance

22

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22

Miscellaneous

- January 12, 2021 Agencies published notice of proposed rulemaking for *Computer-Security Incident Notification Requirements for Banking Organizations and Their Bank Service Providers*

 - Available at: <https://www.federalregister.gov/documents/2021/01/12/2020-28498/computer-security-incident-notification-requirements-for-banking-organizations-and-their-bank>

- January 19, 2021 FinCEN and Agencies published FAQs Regarding SARs and Other AML Requirements

 - Available at: <https://www.fincen.gov/sites/default/files/202101/Joint%20SAR%20FAQs%20Final%20508.pdf>

- August 27, 2021 Agencies released a guide intended to help community banks assess risks when considering relationships with financial technology (fintech) companies

 - Available at: <https://www.federalreserve.gov/publications/files/conducting-due-diligence-on-financial-technology-firms-202108.pdf>

23

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23

Things That Go
Bump in the Night



24

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24

Things That Go Bump in the Night



25

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Summary of Key Takeaways

- Diligence required for IRA and other retirement accounts
- States implementing new (and varying) rules for e-wills and e-trusts
- FinCEN will continue to issue BSA/AML rules for banks
- As always, be alert for new and changing requirements
 - Be a lifetime student. Read. A lot.
 - Be curious. Ask questions, as many as you need to understand a concept.
 - Don't present a problem unless you're also presenting possible solutions.
 - Build relationships. When you have the chance, connect in person or verbally.
 - If you have a seat at the table, use it. Contribute to the conversation. Ask a question.

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

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26

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26