

# Sources of Information and the Role of FinCEN



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*Value Touches Everything*

1

## Learning Objectives:

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**TLO 13. Describe the various sources of information that would aid in financial investigations in the government, banking, and business environments.**

ELO 13.1 Identify various database sources of information for law enforcement.

ELO 13.2 List the documents that are located in the government.

ELO 13.3 Describe the changes in money laundering laws from the AMLA 2020.

ELO 13.4 Describe the federal construct of beneficial owner.

ELO 13.5 Describe the role of FinCEN in supporting financial investigations.



2

# FinCEN

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3

## FinCEN: Current Duties

1. Advise & make recommendations to the Undersecretary of the Treasury
2. Maintain a government-wide database of BSA reports
3. Analyze and disseminate intel from that database
4. Maintain a communication center for law enforcement
5. Furnish research, analytical, and informational services to the public and private
6. Assist law enforcement and regulators in combatting illegal information transfer systems
7. Support the tracking of foreign agents
8. Coordinate with foreign Financial Intelligence Units
9. Administer the requirements of the BSA

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## FinCEN: New Duties

Changes being made at FinCEN:

1. Promulgate regulations to implement the exam and supervision priorities of BSA/AML programs
2. Communicate regularly with the private sector, regulators, and law enforcement about the Government's AML/CFT exam and supervision priorities
3. Give and receive feedback to and from the private sector and State bank and credit union supervisors
4. Maintain money laundering and terrorist financing experts to support federal, civil, and criminal investigations
5. Maintain emerging technology experts



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## Law Enforcement Sources of Information

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6

## Law Enforcement Sources Of Information

- Treasury Enforcement Communication System (TECS) (DHS)
- Narcotics and Dangerous Drugs Information System (NADDIS) (DEA)
- National Crime Information Center (NCIC) (FBI)
- National Law Enforcement Telecommunications System (NLETS)
- Financial Crimes Enforcement Network (FinCEN) (Treasury)
- Data Analysis and Research for Trade Transparency System (DARTTS)
- Social Security Administration
- US Postal Service (mail covers, post office box information, MSB activities)
- US and State Court Systems, Criminal, Civil, Bankruptcy, etc. (Pacer.gov)
- Commercial Databases (Lexis/Nexis, Dun&Bradstreet, etc.)
- Credit Agencies (Equifax, Transunion, Experian)

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7

## Treasury Enforcement Communication System (TECS)

- Over 90,000 users
- Provided to border security and law enforcement
- Shares information about people who are inadmissible or may pose a threat to the security of the US
- Provides traveler processing and screening, investigations, case management, and intelligence functions to federal, state and local agencies.

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## Narcotics and Dangerous Drugs Information System (NADDIS)

- Data relevant to DEA drug investigations
- Contains financial related data if relevant to DEA cases
- Can be accessed through El Paso Intelligence Center (EPIC)

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## National Crime Information Center (NCIC): Essentially Two Categories Of Files

- NCIC Persons Files
  - Wanted Person File
  - Missing Person File
  - Foreign Fugitive File
  - Immigration Violation File
  - Protection Order File
  - National Sex Offender Registry
  - Supervised Release File
  - Identity Theft File
  - Gang File
  - Know or Suspected Terrorist File
  - Protective Interest File
  - National Instant Criminal Background Check System Denied Transaction File
  - Violent Person File
  - Image File
  - Unidentified Person File
  - Case Subject List
- NCIC Property Files
  - Article File (stolen item \$500+)
  - Gun File (stolen, recovered, lost, used in crime)
  - License Plate (stolen cars)
  - Vehicle File (stolen cars)
  - Securities File (stolen, embezzled, ransom counterfeited)
  - Boat File (Stolen)
  - Vehicle/Boat Part File
  - Originating Agency Identifier

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10

## Data Analysis And Research For Trade Transparency System (DARTTS)

- DARTTS is situated within the Trade Transparency Unit (TTU) which is positioned within the National Targeting Center
- DARTTS contains data from the various forms prepared for the Customs and Border Patrol with respect to trade (import/export) activity
- TTU is responsive to requests for data but according to a recent GAO report, they are not engaged in proactive analysis to identify TBML risks.

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11

## Private Sector Leads

### Acceptable Level of Risk

Think about the questions that are asked in the normal course of business

- What are the due diligence actions taken in business
- Leasing Process - car rentals, apartments, and other rentals
- Prepaid Access and Gaming Card programs
- Loans
- Pawn shops and similar businesses

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12

# Financial Reporting Documents At FinCEN

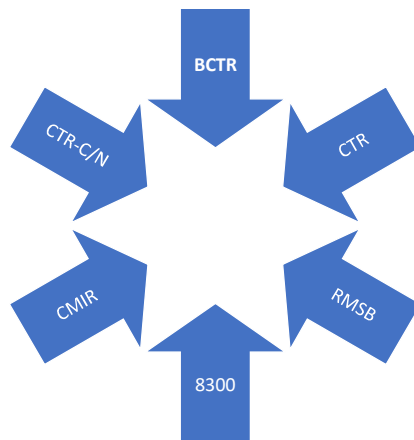
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13

## Disrupting the Flow of Cash



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# At \$10,000: Currency Transaction Report

The image shows the top portion of the Currency Transaction Report (Form 104). It includes the title 'Currency Transaction Report', the instruction 'Previous editions will not be accepted after September 2011', and the 'Part I: Persons Involved in Transactions' section. This section is divided into 'Section A: Person(s) on Whose Behalf Transaction(s) is Conducted' and 'Section B: Individual(s) Conducting Transaction(s) (if other than above)'. Each section contains fields for name, address, city, state, ZIP code, country, and occupation. There are also checkboxes for 'Doing business as (DBA)', 'Individual', 'Partnership', 'Trust', 'Estate', 'Trustee', 'Executor', 'Administrator', 'Agent', 'Attorney-in-fact', 'Power of attorney', 'Agent for collection', 'Agent for sale', 'Agent for lease', 'Agent for mortgage', 'Agent for other purpose', and 'Other (specify)'. The form also includes a signature line for the preparer and a date field.

## Internal Screening Process Results

- Any concerns if we move forward?
- Did you find any inconsistencies?
- Should we consider as a PEP?
- Do we set up a relationship?
- Is this a high-risk customer?

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15

The image shows the Report of Cash Payments Over \$10,000 Received in a Trade or Business (Form 8300). It includes the title 'Report of Cash Payments Over \$10,000 Received in a Trade or Business', the instruction 'Previous editions will not be accepted after September 2011', and the 'Part I: Identify Individual From Whom the Cash Was Received' section. This section is divided into 'Section A: Person on Whose Behalf This Transaction Was Conducted' and 'Section B: Individual(s) Conducting Transaction(s) (if other than above)'. Each section contains fields for name, address, city, state, ZIP code, country, and occupation. There are also checkboxes for 'Doing business as (DBA)', 'Individual', 'Partnership', 'Trust', 'Estate', 'Trustee', 'Executor', 'Administrator', 'Agent', 'Attorney-in-fact', 'Power of attorney', 'Agent for collection', 'Agent for sale', 'Agent for lease', 'Agent for mortgage', 'Agent for other purpose', and 'Other (specify)'. The form also includes a signature line for the preparer and a date field.

## Who must file?

Each person engaged in a trade or business who, in the course of that trade or business, receives more than \$10,000 in cash in one transaction or in two or more related transactions.

**Exceptions:** A cashier's check, money order, bank draft, or traveler's check is not considered received in a designated reporting transaction if it constitutes the proceeds of a bank loan or if it is received as a payment on certain promissory notes, installment sales contracts, or down payment plans.

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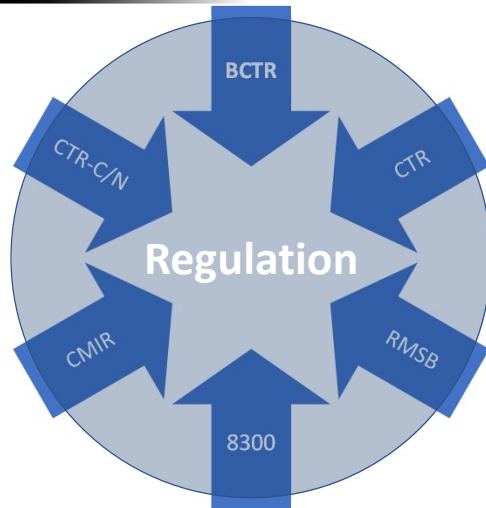
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16



## Disrupting the Flow of Cash



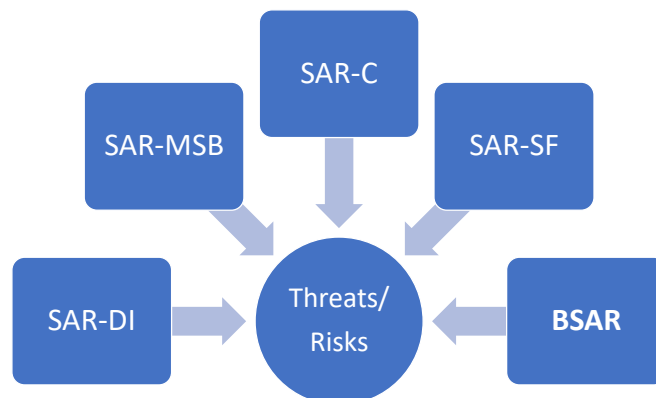
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17

## Identifying the threats



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18

# Who Files SARs?

**Part I Subject Information**

1. Report type:  Suspicious Activity Report (SAR)  Suspicious Activity Report (SAR) - Multiple subjects (over time transactions)

2. Institution type:  Publicly traded company  Publicly traded company  Publicly traded company  Publicly traded company  Publicly traded company

3. Address: \_\_\_\_\_

4. City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP Code: \_\_\_\_\_ Country Code: \_\_\_\_\_

5. Government report identification (if available):  None  Pending  Other (specify): \_\_\_\_\_

6. Date of report: \_\_\_\_\_

**Part II Suspicious Activity Information**

7. Total amount involved in suspicious activity: \_\_\_\_\_

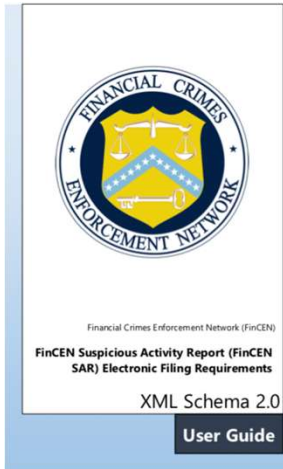
8. Categories of suspicious activity (check all that apply):  Money laundering  Structuring  Reverse structuring  Other (specify): \_\_\_\_\_

9. Financial action described in the suspicious activity and description of the customer activity resulting (check one (check all that apply)):

Money transfer  Funds transfer  Other (specify): \_\_\_\_\_

10. Check all of the following that apply:

Allow transaction to avoid completing funds transfer record  Intentionally using multiple or false identification documents or other order or transfer record  Use or reuse individual or organizational identification  Use or reuse individual or organizational identification  Use or reuse individual or organizational identification  Use or reuse individual or organizational identification



- Casino/Card Club
- Depository Institution
- Housing Government Sponsored Enterprise (GSE)
- Insurance Company
- Loan or Finance Company
- Money Services Business (MSB)
- Other
- Securities/Futures

# Fincen query access to BSA

Cash	Context	Others
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> BCTR	<input type="checkbox"/> BSAR	<input type="checkbox"/> DOEP
<input type="checkbox"/> CMIR	<input type="checkbox"/> SAR-DI	<input type="checkbox"/> FBAR
<input type="checkbox"/> 8300	<input type="checkbox"/> SAR-MSB	<input type="checkbox"/> RMSB
<input type="checkbox"/> CTR	<input type="checkbox"/> SAR-C	
<input type="checkbox"/> CTR-C	<input type="checkbox"/> SAR-SF	
<input type="checkbox"/> CTR-CN		
<input type="checkbox"/>		

## At \$10,000 (Aggregate): Foreign Bank Activity Report (FBAR)

- FBAR is required because foreign financial institutions may not be subject to the same reporting requirements as domestic financial institutions.
- The FBAR is also a tool used to identify persons who may be using foreign financial accounts to circumvent United States law.
- **Who Must File the FBAR?**
  - **A United States person must file an FBAR** if that person has a financial interest in or signature authority over any financial account(s) outside of the United States and the aggregate maximum value of the account(s) exceeds \$10,000 at any time during the calendar year.
  - Under the Foreign Account Tax Compliance Act (FATCA) banks must report to the IRS as well (check against the US person disclosure)

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21

## Designation Of Exempt Person

- A bank may exempt certain types of customers from currency transaction reporting
- If approved CTRs would not be filed for that exempted entity
- If a bank chooses to use the exemption process, then it must designate an exempt person by filing a one-time Designation of Exempt Person (DOEP) report
  - The report must be filed electronically through the BSA E-Filing System
- Does require a risk assessment

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22

~8,000 Financial institutions

BSA Report	Amount Filed Per Year
BCTR	~15 Million
BSAR	~1.75 Million
FBAR*	~800,000
8300	~265,000
CMIR	~201,000
DOEP	~19,000
RMSB*	~17,000

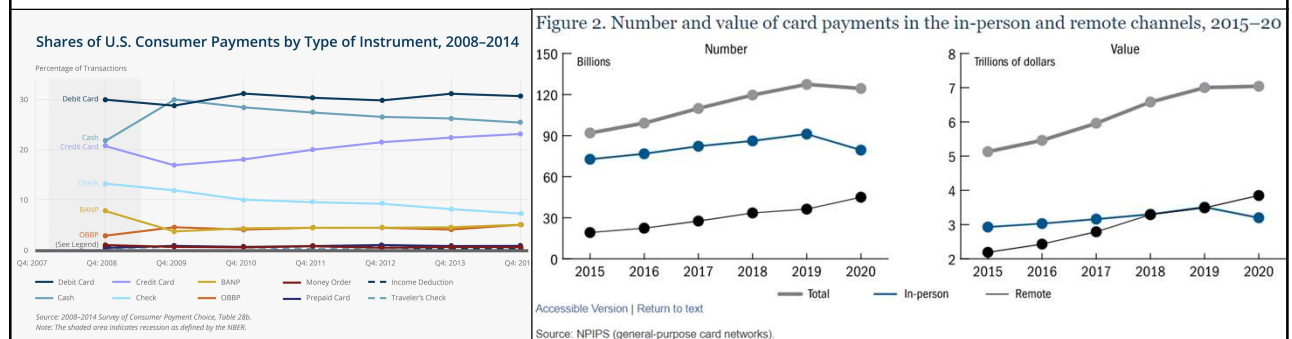
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23

## Customer Payments (Non Cash) 174.2 billion in 2018, with a value of \$97 trillion

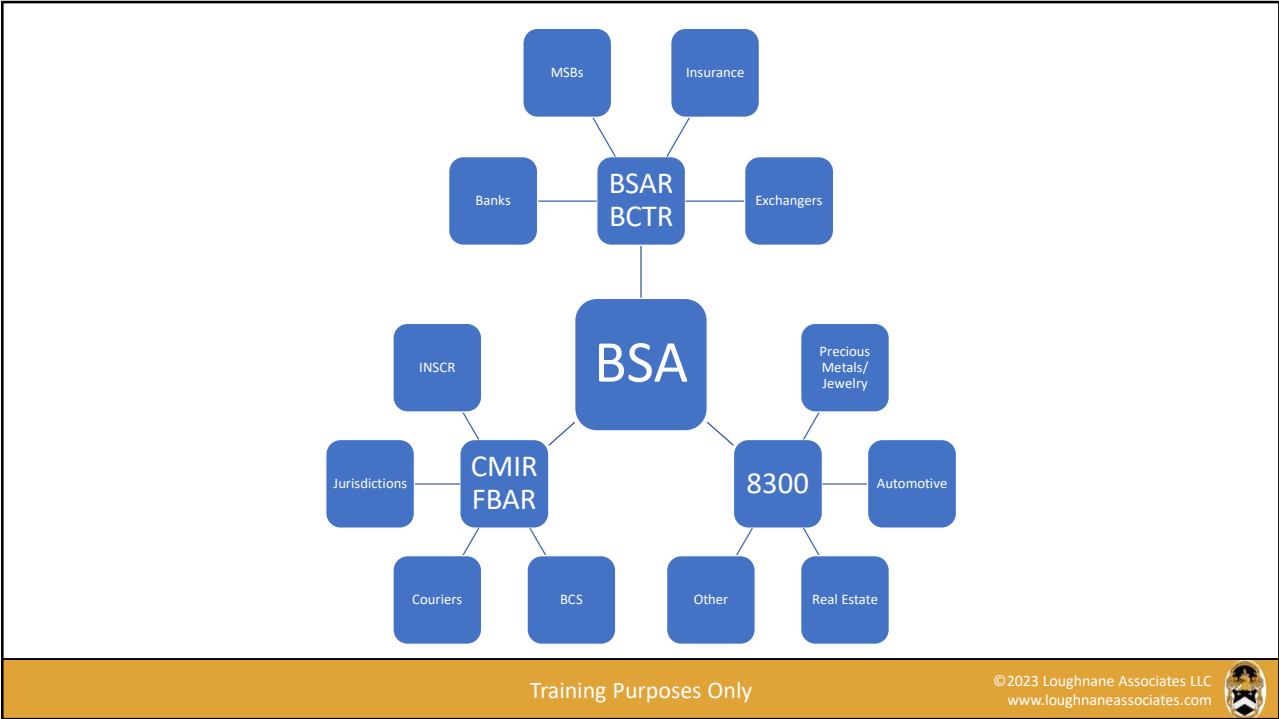


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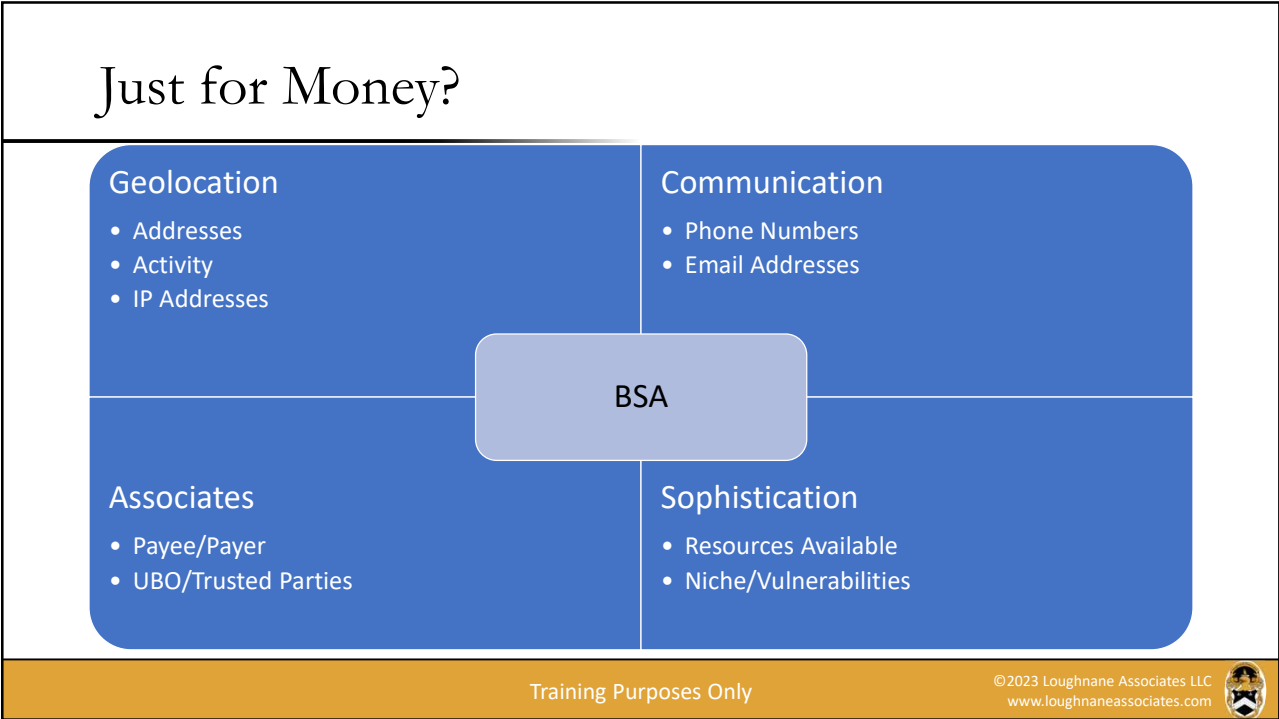
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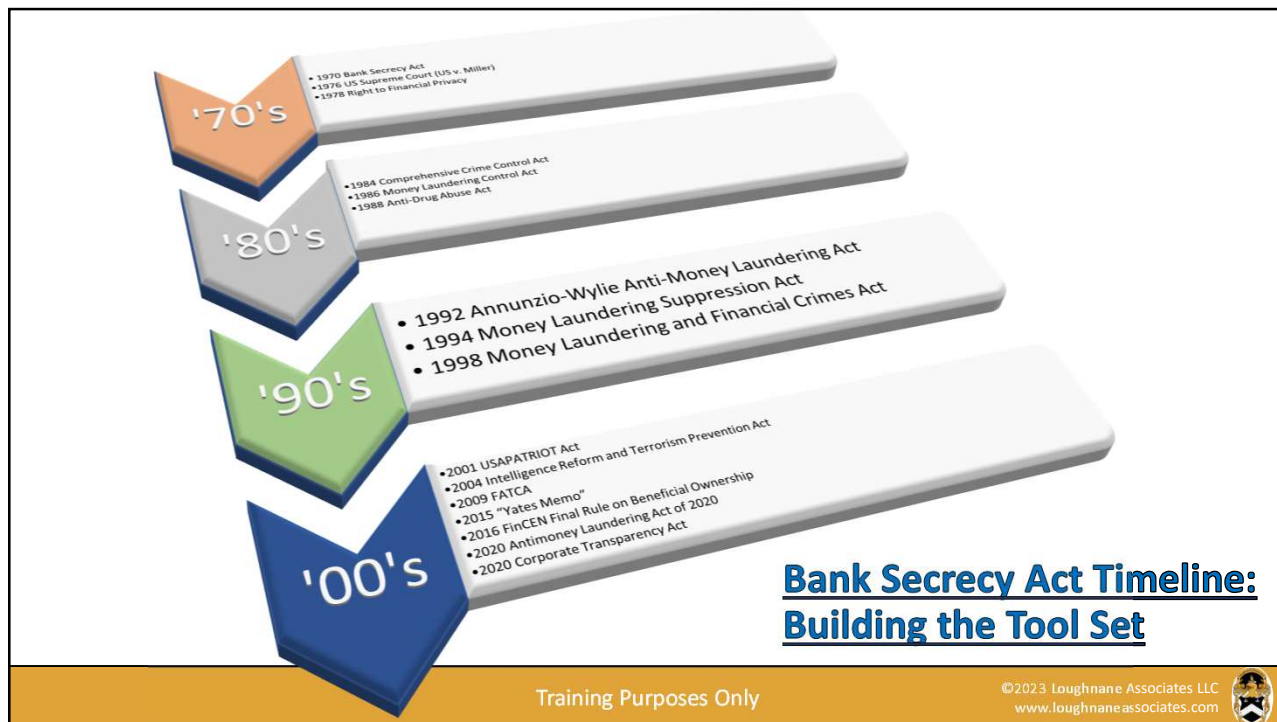
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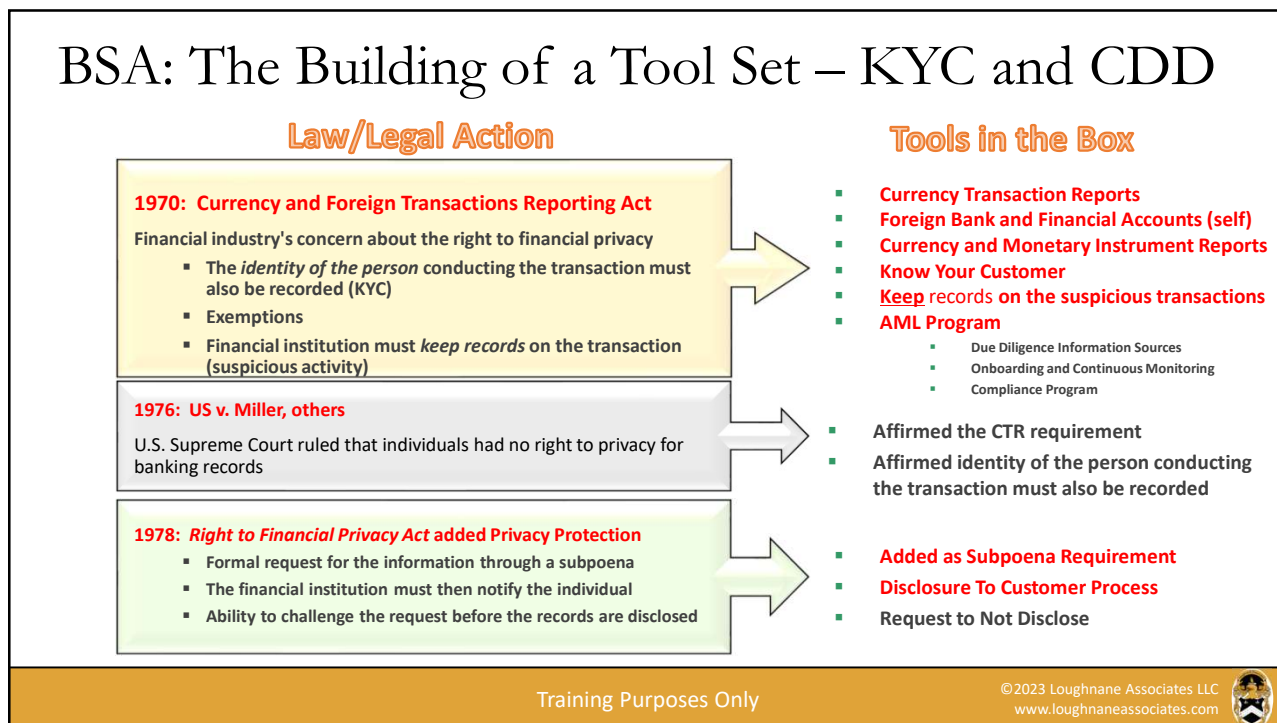
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26



27



28

# BSA: The Building Of A Tool Set –8300s & SUAs

## Law/Legal Action

**1984: Comprehensive Crime Control Act**

Established money laundering as a criminal activity covered under the RICO statutes

- Increased penalties for money laundering

**1984: Deficit Reduction Act**

**1986: Money Laundering Control Act**

Made it a federal crime to launder money

Specified unlawful activities (SUA)

The act makes it illegal to spend money derived from SUAs

Criminalizes the attempt to conceal the source of money through financial transactions

Bank regulators were directed to ensure that banks monitored compliance with money laundering laws

## Tools in the Box

- Associated money laundering with RICO allows for *seizure of the proceeds of criminal activities*
- International Transportation of cash over \$10,000 (CMIR)**
- Form 8300 – Report of cash over \$10,000 received in a trade or business**
- Broader application of money laundering and monitoring requirements
- Increased KYC and CDD capabilities**

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29

# Currency Or Monetary Instruments

**Report of International Transportation of Currency or Monetary Instruments**

This form is required to be completed by travelers when entering or departing the United States with more than \$10,000 in U.S. currency.

[Get Started](#)

Steps for Filling out Form

- 1 Get Started
- 2 Personal Information
- 3 Origin and Destination
- 4 Monetary Instruments
- 5 Review and Sign

- 1 Get Started
- 2 Personal Information
- 3 Import and Export
- 4 Monetary Instruments
- 5 Review and Sign

Get Started

Are you transporting currency or monetary instruments for personal or business purposes?

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Personal Information

Import/Export Information

Monetary Instrument Information

Review and Signature

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30

# BSA: The Building Of A Tool Set – SARs, Structuring, & GTO's

## Law/Legal Action

### 1986: Money Laundering Control Act (continued)

Revision to the Currency Transaction Report

- Dealt with right to financial privacy issue. A financial institution could not be held liable for releasing suspicious transactional information to law enforcement
- New CTR had a suspicious transaction check box at the top Title 3, 5324: Became an offense to *structure* any transaction to avoid reporting

### 1988: Anti-Drug Abuse Act (War on Drugs)

- Regulated the sale of financial instruments such as money orders and cashiers checks above \$3,000
- Financial institutions were prohibited from selling these instruments to non-customers without checking and tracking identification
- Allowed the government to require temporary enhanced GTR tracking in certain geographical regions

## Tools in the Box



- Active reporting of Suspicious Activity
- Protections in reporting
- Procedures to detect bulk cash



- Extension to MSBs and record keeping and/or reporting at lower levels
- Added KYC/CDD considerations for financial institutions
- **Government Tracking Orders**

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31

## GTO Example



Financial Crimes Enforcement Network  
U.S. Department of the Treasury

Washington, D.C. 20220

### GEOGRAPHIC TARGETING ORDER

The Director of the Financial Crimes Enforcement Network ("FinCEN") hereby issues a Geographic Targeting Order ("Order") requiring TITLE INSURANCE COMPANY to collect and report information about the persons involved in certain residential real estate transactions, as further described in this Order.

#### I. AUTHORITY

The Director of FinCEN may issue an order that imposes certain additional recordkeeping and reporting requirements on one or more domestic financial institutions or nonfinancial trades or businesses in a geographic area. See 31 U.S.C. § 5326(a); 31 C.F.R. § 1010.370; and Treasury Order 180-01. Pursuant to this authority, the Director of FinCEN hereby finds that reasonable grounds exist for concluding that the additional recordkeeping and reporting requirements described below are necessary to carry out the purposes of the Bank Secrecy Act ("BSA") or prevent evasions thereof.<sup>1</sup>

- Title Insurance Company and any of its subsidiaries and agents.
- \$300,000 purchase price
- Made without a bank loan or other similar form of external financing; and
- Made, at least in part, using currency or a cashier's check, a certified check, a traveler's check, a personal check, a business check, a money order in any form, a funds transfer, or virtual currency.
- Specific areas around the country

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32



# The Building Of A Tool Set – Whistleblowers & MSBs

## Law/Legal Action

## Tools in the Box

### 1992: Annunzio-Wylie Anti-Money Laundering Act

Introduced the Suspicious Activity Report (SAR)

- Financial institutions were prevented from disclosing to an individual that they were filing a SAR on them
- “Whistleblower” protection for individuals that file SARs
- Significant penalties were instituted for banks that were convicted of money laundering
  - Including monetary fines and loss of banking license

### ■ SAR Form

- CDD/KYC program changes

### 1994 - Money Laundering Suppression Act

Impacted Money Services Businesses (MSB)

- Required to register AML Compliance Officer
- Changed licensing of MSB as regulated at only the state level
  - The law makes it a federal crime to operate an unlicensed MSB
- Simplified some CTR requirements for banks

### ■ Compliance Officer

### ■ Designation of Exempt Persons

- MSB Licensing, KYC/CDD program changes

MSB was expanded to cover tribal casinos

Banks were also required to enhance their internal training and compliance programs

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33

# Automatic Exemptions (No CTRs)

## Five Categories of Phase I Exempt Persons:

A bank, to the extent of its domestic operations

A federal, state, or local government agency or department

Any entity established under federal, state, or local laws and exercising governmental authority on behalf of the United States or a state or local government

The domestic operations of any entity (other than a bank) whose common stock or analogous equity interests are listed on the New York Stock Exchange or the NYSE American or have been designated as a NASDAQ National Market Security listed on the NASDAQ Stock Market, with some exceptions (“listed entity”)

The domestic operations of any subsidiary (other than a bank) of any listed entity that is organized under U.S. law and at least 51 percent of whose common stock or analogous equity interest is owned by the listed entity

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# Ineligible For Exemption

## Phase II: Certain businesses are ineligible for treatment as an exempt non-listed business.

- Serving as financial institutions or agents of financial institutions of any type
- Practicing law, accounting, or medicine
- Pawn brokerage
- Trade union activities
- Real estate brokerage
- Auctioning of goods

- Chartering or operation of ships, buses, or aircraft
- Title insurance and real estate closings
- Investment advisory services or investment banking services
- Any other activity that may, from time to time, be specified by FinCEN, such as marijuana-related businesses

- Purchasing or selling motor vehicles of any kind, vessels, aircraft, farm equipment, or mobile homes
- Gaming of any kind (other than licensed parimutuel betting at racetracks)

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# Phase II Exemptions: Non-Listed Businesses

FD-110 Designation of Exempt Person form. The form includes sections for Filing Information, Exempt Person Information, Filer Information, and Biennial Renewal Certification. It contains checkboxes for various categories of exempt persons and filers, and a section for the filer's signature and date.

- Banks may designate an otherwise eligible non-listed business customer or payroll customer for exemption after the customer has within a year conducted five or more reportable transactions in currency
- The customer may be eligible for exemption after maintaining a transaction account for two months
- Can be less if the bank conducts a risk-based analysis to form a reasonable belief that the customer has a legitimate business purpose for conducting frequent or regular large currency transactions

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## Uniting & Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001

### Law/Legal Action

#### 2001: USAPATRIOT Act (Title III) International Money Laundering Abatement and Anti-Terrorist Financing Act

Added many additional aspects to money laundering law

- Minimum CDD for Private Banking controls
  - Beneficial Ownership accountability in accounts over \$1million
- Minimum CDD for Politically Exposed Persons Accounts
- KYC Verification Requirements
- Prohibition of Foreign Shell Banks
- Established 250 Specified Unlawful Activities for money laundering statute
- **Correspondent banks relationships with foreign banks requiring banks to gather the same type of KYC correspondent customers**
- Ability to issue subpoenas for records of correspondent banks to aid in the seizure of funds held outside the country
- 314(a) Cooperative, secure communication process
- 314(b) Potential lead information that might otherwise never be uncovered
  - Provides *financial institutions* with the ability to share information with one another, under a safe harbor that offers protections from liability
- Illegal Money Transmitting Businesses (state license knowledge)
- Bulk Cash Smuggling Statute 31 USC § 5332

### Tools in the Box

- **312: CDD Policies, Procedures, Controls**
- **Beneficial Ownership (\$1M) Foreign**
- **313: No Foreign Shells**
- **314(a) "Blast"**
- **314(b) Disclosure and Sharing**
- Money Laundering as added charge to domestic laws
- **319 & 319(b) Broader subpoena authority & 120-hour compliance**
- Foreign recordkeeping requirements
- Forfeiture Enforcement and Seizure
- Repatriation of Assets
- Reach to Foreign Banks
- **Illegal Money Transmitting Businesses Enforcement (state knowledge element)**
- **Bulk Cash an offense**

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37

## 314(a) Blast

### 95% have contributed to arrests or indictments

- Federal, state, local, and foreign (European Union) law enforcement agencies
- Ability to canvas the nation's financial institutions for potential lead information that might otherwise never be uncovered
- Provides lead information only – still need subpoena or other
- **Process: Must submit a form certifying that the investigation is based on credible evidence of terrorist financing or money laundering**
  - **Documentation must show the magnitude or impact of the case**
  - **Seriousness of the underlying criminal activity**
  - **The importance of the case to a major agency program**
  - **Any other facts demonstrating its significance**

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38

# The Building Of A Tool Set – FATCA & FinCEN

## Law/Legal Action

## Tools in the Box

### 2004: Intelligence Reform and Terrorism Prevention Act

- Funding for technology improvement at the Financial Crimes Enforcement Network (FinCEN)
- Support the national anti-money laundering strategy efforts

### 2009 Foreign Account Tax Compliance Act (FATCA)

- Requires United States persons, including individuals who live outside the United States, to report their financial accounts held outside of the United States, and requires foreign financial institutions to report to the Internal Revenue Service (IRS) about their U.S. clients

### 2016 FinCEN Final Rule: Customer Due Diligence Requirements for Financial Institutions

- Requires covered financial institutions to adopt due diligence procedures to identify and verify a legal entity customer's beneficial owner(s) at the time a new account is opened.
- Two prongs: Ownership and Control
- Amends AML Program Requirement for risk-based procedures for CDD

- No significant change for Financial Institutions

- IRS Form 8938
- FATCA Reporting

- Onboarding information with possibly more verification information

- Customer Risk Profile

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# Personal IRS Form 8938

## Identifies/Reports Account Holders

<h2 style="font-size: 2em; margin: 0;">CRS</h2> <p style="font-size: 0.8em; margin: 0;">Common Reporting Standard</p> <p style="font-size: 0.8em; margin: 0;">Aims to identify the tax residency of <b>each and every</b> one of its account holders</p> <p style="font-size: 0.8em; margin: 0;">Tax information is required for <b>ALL</b> account holders and is sent to <b>ALL</b> complying countries</p>	v s	<h2 style="font-size: 2em; margin: 0;">FATCA</h2> <p style="font-size: 0.8em; margin: 0;">Foreign Account Tax Compliance Act</p> <p style="font-size: 0.8em; margin: 0;">Aims to identify whether an account holder is a <b>U.S. person</b> using citizenship and tax residency</p> <p style="font-size: 0.8em; margin: 0;">Tax information is collected for <b>U.S.</b> account holders and resides in the <b>U.S.</b></p>
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**Form 8938** Statement of Specified Foreign Financial Assets

OMB No. 1545-0047  
2019  
Department of the Treasury  
Internal Revenue Service

If you have attached continuation statements, check here  Attach to your tax return

1 Name(s) shown on return \_\_\_\_\_ 2 Taxpayer identification number (TIN) \_\_\_\_\_

3 Type of filer  
 Specified individual     Partnership     Corporation     Trust

4 If you checked box 3a, sign this line 4. If you checked box 3b or 3c, enter the name and TIN of the specified individual who closely holds the partnership or corporation. If you checked box 3d, enter the name and TIN of the specified person who is a current beneficiary of the trust. (See instructions for definitions and what to do if you have more than one specified individual or specified person to list.)  
 a. Name \_\_\_\_\_ b. TIN \_\_\_\_\_

**Part I Foreign Deposit and Custodial Accounts Summary**

1 Number of deposit accounts reported in Part VI \_\_\_\_\_  
 2 Maximum value of all deposit accounts \_\_\_\_\_ \$  
 3 Number of custodial accounts reported in Part VI \_\_\_\_\_  
 4 Maximum value of all custodial accounts \_\_\_\_\_ \$  
 5 Were any foreign deposit or custodial accounts closed during the tax year?  Yes  No

**Part II Other Foreign Assets Summary**

1 Number of foreign assets reported in Part VII \_\_\_\_\_  
 2 Maximum value of all assets reported in Part VII \_\_\_\_\_ \$  
 3 Were any foreign assets acquired or sold during the tax year?  Yes  No

**Part III Summary of Tax Items Attributable to Specified Foreign Financial Assets** (see instructions)

(a) Asset category	(b) Tax item	(c) Amount reported on form or schedule	Where reported	
			(d) Form and line	(e) Schedule and line
1 Foreign deposit and custodial accounts	a. Interest	\$		
	b. Dividends	\$		
	c. Royalties	\$		
	d. Other income	\$		
	e. Gains (losses)	\$		
2 Other foreign assets	f. Deductions	\$		
	g. Credits	\$		
	a. Interest	\$		
	b. Dividends	\$		
	c. Royalties	\$		
	d. Other income	\$		
	e. Gains (losses)	\$		
	f. Deductions	\$		
	g. Credits	\$		

**Part IV Excepted Specified Foreign Financial Assets** (see instructions)  
 If you reported specified foreign financial assets on one or more of the following forms, enter the number of such forms filed. You do not need to include these assets on Form 8938 for the tax year.  
 1. Number of Forms 3520 \_\_\_\_\_ 2. Number of Forms 3520-A \_\_\_\_\_ 3. Number of Forms 5471 \_\_\_\_\_  
 4. Number of Forms 8621 \_\_\_\_\_ 5. Number of Forms 8865 \_\_\_\_\_

**Part V Detailed Information for Each Foreign Deposit and Custodial Account Included in the Part I Summary**  
 (see instructions)

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# Antimoney Laundering Act of 2020

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41

## Anti-Money Laundering Act of 2020: Purpose

1. Require certain reports or records for:
  - A. Criminal, tax, or regulatory investigations, risk assessments or proceedings
  - B. Intelligence or counterintelligence activities to protect against terrorism
  - C. Domestic terrorism added
2. Establishment of reasonably designed risk-based programs
3. Improve tracking of money sourced through criminal activity or intended to promote criminal or terror activity
4. Assess the money laundering, terrorism finance, tax evasion, and fraud risks to financial institution to protect the financial system from criminal abuse and safeguard the national security
5. Establish an appropriate framework for information sharing among financial institutions and others

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42

# Anti-Money Laundering Act of 2020

1. Expands the BSA to include national security
2. Formalizes the risk-based compliance programs
3. Encourage technology innovation
4. Greatly expands FinCEN duties, powers, and functions
5. Reinforce current AML and CFT policies, procedures, controls
6. Establish uniform Beneficial Ownership in reporting requirements
7. Establish a secure nonpublic database at FinCEN for beneficial ownership information
8. Calls for multiple studies
9. Increases civil and criminal penalties for BSA violations
10. Increases law enforcement investigative powers

## Tools in the Box (Coming)

- TBD
- Better Risk Assessments
- Improved Technology
- Information Sharing
- National Security Inclusion
- Additional FinCEN Roles
- FinCEN Exchange improvement
- Foreign Correspondent Account Subpoena Authority
- Beneficial Ownership Registry
- Domestic Terrorism Added

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# AMLA: Change in the purpose of the BSA

- Included as part of the National Defense Authorization Act of 2020
- This may be the biggest change in purpose since USAPATRIOT Act added counterterrorism to its purpose.
- Effects and full implementation will not be realized for years

## Anti-Money Laundering Act of 2020

1. Expands the BSA to include national security
2. Formalizes the risk-based compliance programs
3. Encourage technology innovation
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44

## The National Priorities? – No Surprise

- Corruption
- Cybercrime
- Cybersecurity
- Virtual Currency
- Foreign Terror Finance
- Domestic Terror Finance
- Fraud
- Transnational Criminal Organizations
- Drug Trafficking Organizations
- Human Trafficking
- Human Smuggling
- Proliferation Financing

*Aligns to the Money Laundering Strategy Report  
What about other financial crime activity?*

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45

## Anti-Money Laundering Act of 2020 (AMLA)

- Significant enhancement to obtain information from a foreign entity
- **Agencies can subpoena records from foreign entities if that entity merely maintains a correspondent bank account in the US**
- **Records from any bank account** of that entity at that foreign institution can be subpoenaed
  - Including records that are kept outside of the US
  - Not merely for the records that relate to the correspondent account
  - Need to relate to certain types of investigations
- **Subpoenas can be for any criminal investigation**, not just money laundering or civil forfeiture
  - Must be potential violations of BSA or any US criminal law or civil forfeiture

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46

## 2020 AMLA Prohibitions & Penalties

Foreign bank may petition to modify or quash subpoena and prohibition on disclosure

- However, “assertion that compliance with a subpoena” would conflict with foreign bank secrecy or confidentiality law cannot form the “sole basis” for modifying or quashing
- Still to be worked out if a conflict between the subpoena and foreign law is sufficient

Violators are subject to steep penalties up to double the amount of “suspected criminal proceeds sent through the correspondent account or, if no suspected criminal proceeds can be identified, up to \$250,000.”

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47

## 2020 AMLA Prohibitions & Penalties

- The AMLA provides that a non-U.S. bank that does not comply with a subpoena may be liable for a civil penalty of up to **\$50,000 per day** of noncompliance, with additional penalties if noncompliance continues beyond 60 days.
- In addition, noncompliance may result in the DOJ or Treasury **terminating the correspondent banking relationship** by written notice to the U.S. bank providing the correspondent banking services.

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48



# Beneficial Ownership

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49

## Corporate Transparency Act

Beneficial Ownership, defined:

(A) . . . with respect to an entity, **an individual** who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise:

- (i) exercises substantial control over the entity; **or**
- (ii) owns or controls not less than 25% of the ownership interests of the entity

States will begin to collect this information as provided by submitter

No expectation of verification by states

Goal - Ban anonymous shells in the US



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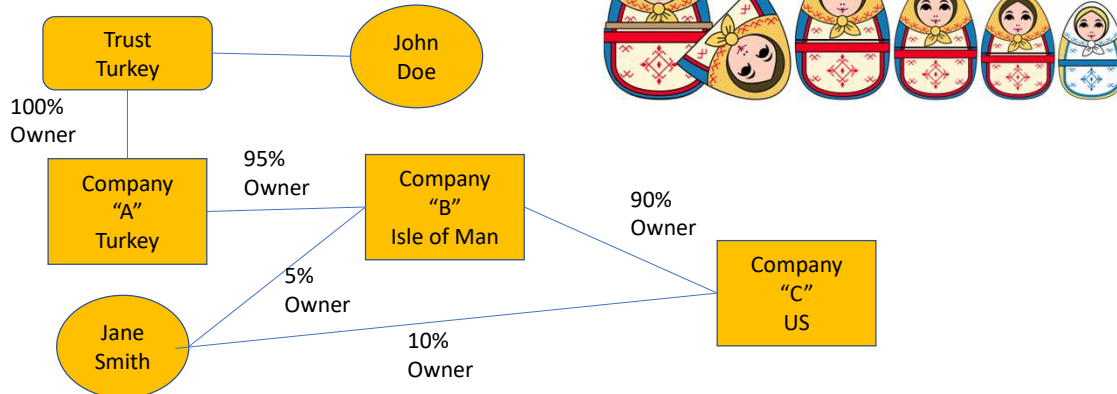
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50

## Hidden Beneficiary Owner Scenario

How much ownership does John Doe own in Company "C" ?



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51

## Beneficial Owner Database

- Centralized database maintained by FinCEN
- There are some "loopholes"
- Individual providing beneficial ownership identified and certifies
- There are no verification requirements
- Status at time of registration - updating not addressed
- Creation of a FinCEN identifier in system to replace SSN, Driver's License, or Passport number
- Input by states' secretaries of state responsible for incorporation, tribal authorities
- Law enforcement access (state/local requires a court order)
- No or very limited public access (some financial institutions)

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52

## Beneficial Owner Information

- Full name
- Date of Birth
- Address
- Either SSN, Passport Number, or Driver's License Number
- Or a "FinCEN Identifier"
- Exempt Entities
  - Only list the name of the exempt entity

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53

## Corporate Transparency Act "Loopholes"

- Wall Street investment vehicles do not have to report
  - Hedge funds, private equity firms
  - Other types of pooled investment vehicles
- Big business is exempt
  - More than \$5 million in annual revenue
  - More than 20 employees
  - Physical address in the US
- Trusts
  - A contract dictating how wealth in the trust will be allocated
  - Certain types of charitable and semi-charitable trusts specifically exempted
- Art dealers are not included at this time

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54

## Beneficial Ownership Disclosures

- “(A) federal agency engaged in national security, intelligence, or law enforcement activity, for use in furtherance of such activity”
- “Upon receipt of a request from a State, Tribal or local law enforcement **with a court order**”
- “Request from a federal agency on behalf of a **foreign government** pursuant to a treaty, mutual legal assistance treaty...”
- Upon receipt “a request made by a **financial institution subject to customer due diligence requirements**, with the consent of the reporting company, to facilitate the compliance of the financial institution with customer due diligence requirements under applicable law”
- Upon receipt of a request from a Federal functional regulator

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## Changes In SAR Reporting

- Notification Prohibition strengthened – cannot provide ANY information that would reveal a transaction has been reported
- Covered institution to establish streamlined processes to submit the noncomplex categories of SARs
  - Consider priorities established under the BSA
- One year pilot of sharing SAR related information with foreign branches and affiliates



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56

# Documents at FinCEN

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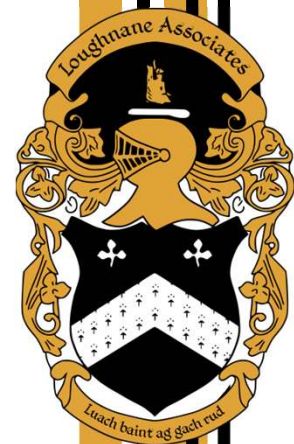
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57

# Questions?

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58