

WHEN COMPLIANCE AND PUBLIC POLICY COLLIDE: DE-RISKING AND THE IMPORTANCE OF FINANCIAL INCLUSION

Jim Vilker, NCCO, CAMS
VP of Professional Services

AuditLink

GAO REPORT TEARS THE BANDAGE OFF

[HTTPS://WWW.GAO.GOV/ASSETS/700/690310.PDF](https://www.gao.gov/assets/700/690310.pdf)



GAO U.S. Government Accountability Office

Keyword
Advanced Se

Reports & Testimonies Bid Protests & Appropriations Law Key Issues About GAO

BANK SECRECY ACT:
Derisking along the Southwest Border Highlights Need for Regulators to Enhance Retrospective Reviews
GAO-18-263: Published: Feb 26, 2018. Publicly Released: Feb 26, 2018.

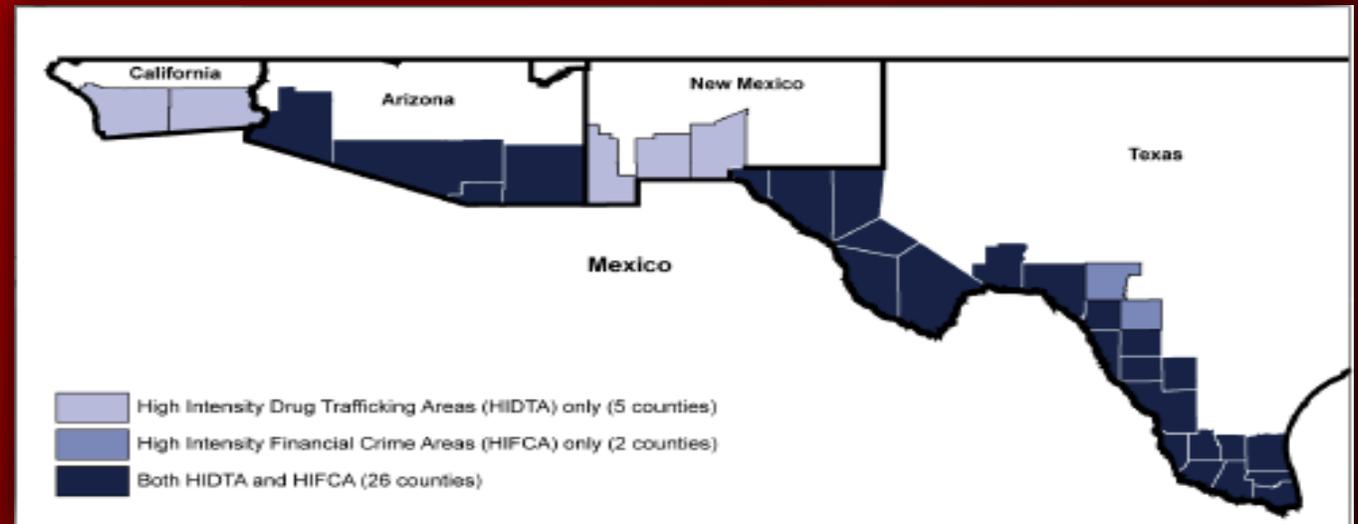
DE-RISKING

“De-risking” is the practice of banks limiting certain services or ending their relationships with customers to, among other things, avoid perceived regulatory concerns about facilitating money laundering.



REASONING “PERCEIVED OR REAL”

- Cross boarder transactions
- High Drug Trafficking High Intensity Financial Crime
- Foreign account holders
- Large amount of cash related transactions



FINDINGS

- Filed 2 ½ times more SARs than other banks in found in non boarder HITDA and HIFCA regions
- Filed 2 times more CTR's
- 80% terminated accounts for BSA/ALM activity
- Spent more time analyzing transactional activity
- Closed more accounts due to activity
- Closed branches based upon activity

EVIDENCE SITED

“The second most common reason—cited by 80 percent of Southwest border banks—for limiting, or not offering, accounts to certain types of businesses considered high risk for money laundering and terrorist financing, was that the customer type **drew heightened BSA/AML regulatory oversight**—behavior that could indicate de-risking.”

“For example, some Southwest border bank representatives we spoke with as part of this review, as well as other banks and credit unions we spoke with in a previous review, told us that they have **filed SARs to avoid potential criticism during examinations**, not because they thought the observed activity was suspicious.”

CONCLUSIONS

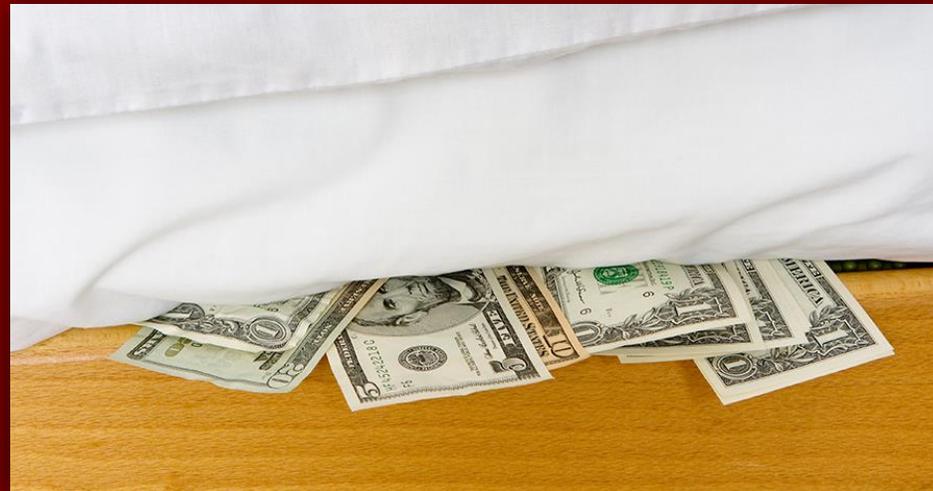
“BSA/AML regulations have helped to detect money laundering and other financial crimes, but there are also real concerns about the unintended effects, such as de-risking, that these regulations and their implementation may be having”.

GAO CONCLUSIONS

“BSA/AML regulations have helped to detect money laundering and other financial crimes, but there are also real concerns about the unintended effects, such as de-risking, that these regulations and their implementation may be having”.

GAO CONCLUSIONS

“While it is important to evaluate how effective BSA/AML regulations are in helping to identify money laundering, terrorist financing, and other financial crimes, it is also important to identify and attempt to address any unintended outcomes. We have found that reduced access to banking services can have consequential effects on local communities”.



RECOMMENDATION

“The four agency heads should jointly conduct a retrospective review of BSA/AML regulations and their implementation for banks with FDIC, OCC, and FinCEN. This review should focus on how banks’ regulatory concerns may be influencing their willingness to provide services. In conducting the review, FDIC, the Federal Reserve, OCC, and FinCEN **should take steps, as appropriate, to revise the BSA regulations or the way they are being implemented to help ensure that BSA/AML regulatory objectives are being met in the most effective and least burdensome way**”.

BRINGING IT FULL CIRCLE IN OUR WORLD

- How many would admit to filing SAR's because the regulator stated you were not filing enough
- How many would admit that regulators influence your CIP and account termination procedures
- How many would admit to closing an account only because they were concerned what a regulatory body would say about it
- How many would admit that the work is just too much for higher risk types of accounts regardless of account reasoning

FINANCIAL INCLUSION IS BUILT INTO OUR CHARTERS



VOLUNTARY AND OPEN MEMBERSHIP	1
DEMOCRATIC MEMBER CONTROL	2
MEMBERS' ECONOMIC PARTICIPATION	3
AUTONOMY AND INDEPENDENCE	4

EDUCATION, TRAINING AND INFORMATION	5
COOPERATION AMONG COOPERATIVES	6
CONCERN FOR COMMUNITY	7

FIELD FINDINGS

DOES THIS SOUND LIKE CONCERN FOR COMMUNITY, ECONOMIC PARTICIPATION,
FINANCIAL INCLUSION?

- We did a loan that we could not allow them to open a transaction account.....
MSB's
- We closed the account because of excessive cash related activity... In a
Mennonite community
- We closed the account because of excessive check deposit activity... grocery
store in rural Missouri.... Tyson
- We wouldn't open up the account because of potential cross border
transactions... In a college town
- We kinda have an MSB and do not have the manpower to manage these types
of accounts... The only convenience store in the county

ACCOUNT OPENING

WHAT ARE WE OVERLOOKING BASED UPON THE DE-RISKING MINDSET

- **Begin with Risk Based Approach**
 - Geographical – example do you have a large population of migrant labor in your community
 - Transactional – do you have a population of members who by virtue of their upbringing, religion, or heritage bank in cash
 - Products – are you missing products the community needs but are unwilling to provide because of perceived risk
 - Membership – have you evaluated all types of communities in your field of membership based upon MSA statistics
 - Review non-documentary policy – Does it de-risk people in your community

ACCOUNT TERMINATION

- Begin with a risk based approach for process
 - Document the types of activity that elevate risk based upon geography, products, membership
 - Gain a full understanding of what the member/business is doing, do not assume the worst first
 - Document the number of times the activity can occur before the member is contacted or SAR is filed
 - Develop a risk assessment relative to the account demographics, transactional activity, relationship, and impact on community....

MSB'S NOT THE DEVIL INCARNATE

EVEN THOUGH REGULATORY AGENCIES WOULD MAKE YOU BELIEVE SO

- In many communities they supply vital services for the unbanked or under banked
- MSB's supply valuable services including remittance transfers, check cashing, prepaid store value cards, money orders, and travelers checks
- In many cases the remittance transfers are cross border and used to feed families in impoverished areas of the world
- Financial instructions have been blanketly derisking MSB's since 2004

MSB'S AND DE-RISKING

- Financial institutions have been de-risking MSB's for over a decade
 - Based upon fines to institutions
 - Based upon fines to MSB's
 - Regulatory scrutiny
 - Understanding of ongoing monitoring... they are not all alike

FINCEN ON MSB'S

[HTTPS://WWW.FINCEN.GOV/NEWS/NEWS-RELEASES/STATEMENT](https://www.fincen.gov/news/news-releases/statement)

Statement

 20141110.pdf

42

Contact: Contact: Steve Hudak (703) 905-3770

Immediate Release: November 10, 2014

FinCEN Statement on Providing Banking Services to Money Services Businesses

The Financial Crimes Enforcement Network ("FinCEN"), as the agency primarily responsible for administering the Bank Secrecy Act, is issuing this Statement to reiterate expectations regarding banking institutions' obligations under the Bank Secrecy Act for money services businesses.

FINCEN ON MSB'S

“Money services businesses (“MSBs”),¹ including money transmitters important to the global flow of remittances, are losing access to banking services, which may in part be a result of concerns about regulatory scrutiny, the perceived risks presented by money services business accounts, and the costs and burdens associated with maintaining such accounts”.

FINCEN ON MSB'S

“Refusing financial services to an entire segment of the industry can lead to an overall reduction in financial sector transparency that is critical to making the sector resistant to the efforts of illicit actors. This is particularly important with MSB remittance operations”.

FIELD FINDINGS ON MSB'S

- Kinda have an MSB
- An existing account just became one
- Examiner convinced you that you have one and you agreed to back file
- CIP does not expressly say you will do business with them or not
- Agreements do not reflect actions you take if an existing account becomes one
- We close them the instant we find them

DRINKING THE KOOL-AID

- MSB's require too much time to manage and monitor
- MSB's require sophisticated monitoring platforms
- It is difficult to determine what to charge for MSB accounts
- The assessment process to determine is too complex and will draw scrutiny from the regulator
- The annual reviews of the MSB adherence to BSA requirements are exhaustive

FINCEN EXPECTATIONS

- Apply the banking organization's Customer Identification Program;⁵
- Confirm FinCEN registration, if required;
- Confirm compliance with state or local licensing requirements, if applicable;
- Confirm agent status, if applicable; and
- Conduct a basic Bank Secrecy Act/Anti-Money Laundering risk assessment to determine the level of risk associated with the account and whether further due diligence is necessary.

RISK ASSESSMENT

”As with any business account, in determining how much, if any, further due diligence would be required for any money services business customer, the banking organization should consider the following basic information:”

- Types of services or products
 - Agent or Agents
 - Primary business or ancillary products
- Locations and markets served
 - Domestic or international
 - Residential
- Anticipated account activity
 - What services will be used
 - Types of transactions to expect
- Purpose of accounts
 - Types of remittances, principal or passthrough

LOW RISK INDICATORS

- primarily markets to customers that conduct routine transactions with moderate frequency in low amounts;
- offers only a single line of money services business product (for example, only check cashing or only currency exchanges);
- is a check casher that does not accept out of state checks;
- is a check casher that does not accept third-party checks or only cashes payroll or government checks;
- is an established business with an operating history;
- only provides services such as check cashing to local residents;
- is a money transmitter that only remits funds to domestic entities; or
- only facilitates domestic bill payments.

HIGH RISK INDICATORS

- allows customers to conduct higher-amount transactions with moderate to high frequency;
- offers multiple types of money services products;
- is a check casher that cashes any third-party check or cashes checks for commercial businesses;
- is a money transmitter that offers only, or specializes in, cross-border transactions, particularly to jurisdictions posing heightened risk for money laundering or the financing of terrorism or to countries identified as having weak anti-money laundering controls;⁶
- is a currency dealer or exchanger for currencies of jurisdictions posing heightened risk for money laundering or the financing of terrorism or countries identified as having weak anti-money laundering controls;
- is a new business without an established operating history; or
- is located in an area designated as a High Risk Money Laundering and Related Financial Crimes Area or a High-Intensity Drug Trafficking Area.⁷

DUE DILIGENCE FOR HIGH RISK MSB'S

THE LARGEST FALLACY

“However, it is not the expectation of FinCEN or the Federal Banking Agencies that banking organizations will uniformly require any or all of the actions identified below for all money services business customers:”

- review the money services business’s anti-money laundering program;
- review results of the money services business’s independent testing of its anti-money laundering program;
- conduct on-site visits;
- review list of agents, including locations, within or outside the United States, that will be receiving services directly or indirectly through the money services business account;
- review written procedures for the operation of the money services business;
- review written agent management and termination practices for the money services business; or
- review written employee screening practices for the money services business.

PRICING

NOT AS DIFFICULT AS ONE MAY THINK

- One price does not fit all
 - Make it variable in nature and disclose the pricing
 - Base it on time and have a monthly fee for the following:
 - Conduct Ongoing Monitoring
 - Performing Transactional Activity
 - Site Visits
 - CTR Filing
- Disclose the pricing and disclaim that it can change month by month

TAKE AWAYS

- Take the thought of de-risking to this years BSA risk assessment
- Take a deeper dive into the communities you serve
- Understand who you are turning away
- Incorporate a sense of community and financial inclusion into entire BSA process

THANK YOU

REFERENCES

- <https://www.fincen.gov/resources/statutes-regulations/guidance/interagency-interpretive-guidance-providing-banking>
- <https://www.acams.org/aml-white-paper-de-risking-msbs/>
- <https://www.irs.gov/businesses/small-businesses-self-employed/money-services-business-msb-information-center>
- https://www.ffiec.gov/bsa_aml_infobase/documents/BSA_AML_Man_2010.pdf