

FFIEC Updates BSA/AML Examination Manual

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On April 15, 2020, the Federal Financial Institutions Examination Council (FFIEC) released updates to the Bank Secrecy Act (BSA)/Anti-Money Laundering (AML) Examination Manual (the Manual).

The FFIEC, which is composed of five banking regulators, is the leading U.S. government interagency charged with providing uniform standards in supervising financial institutions (FIs). The FFIEC's Manual is viewed as the industry "bible" for examining and setting standards for AML programs.

While the Manual is revered as the leading authority on AML programs, there has been some industry confusion with respect to the AML program standards it sets forth – specifically, which standards are merely encouraged or recommended as a matter of sound banking practice as opposed to those that are required under the regulations. Furthermore, FIs are only required to have risk-based AML programs (*i.e.*, programs that are based on FIs' unique risks posed by customers, geographic areas of operation, services, products, and entities), but the Manual was not very clear with respect to how those risks should be evaluated and considered. As a result, some financial institution examiners and auditors may have been incorrectly using the Manual and holding the examinee to each standard set forth in the Manual, regardless of the FI's unique business type or risk. If used in this way, the Manual indeed imposes harsh standards for all FIs, which can be expensive, excessive, inefficient, and frustrating for the examinee.

The April 15, 2020 update to the Manual clarifies that AML programs and bank examinations must be risk-based. In other words, bank examiners should not take a "one size fits all" approach to its examinations and the examiners must consider each FI's BSA/AML program based on its specific risks for money laundering, terrorist financing, and other illicit activity. The update also clarifies what standards are regulatory requirements as opposed to supervisory expectations.

Overall, the update to the Manual does not impose new requirements on FIs – instead, the update provides welcome clarifications and reminders regarding the flexibility of institutions and examiners with respect to AML programs and AML program examination. Finally, with much applause from FIs, the Manual reminds examiners that "minor weaknesses, deficiencies, and technical violations alone are not indicative of an inadequate program."

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