

The Impact of COVID-19 on Financial Institutions' BSA/AML Risks



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COVID-19 has caused a global pandemic, with devastating consequences across nations and industry sectors, but it has not deterred criminals. The FBI and Interpol have noted an increase in risk of COVID-19-related financial crimes and expectations of increased criminal activity. FinCEN and banking regulators have maintained their expectations for Bank Secrecy Act (BSA) and anti-money laundering (AML) compliance programs. Financial institutions are expected to continue to follow a risk-based approach and adhere diligently to their BSA/AML obligations.

Regulators have not lowered expectations, although they have made changes to financial institutions' requirements to ease compliance obligations in recognition of the operational challenges associated with COVID-19:

- 1) FinCEN suspended implementation of the February 6, 2020,¹ ruling on Currency Transaction Report (CTR) filing obligations when reporting transactions involving sole proprietorships and entities operating under a "doing business as" (DBA).²
- 2) FinCEN also exempted beneficial ownership requirements for the Cares Act Paycheck Protection Program (PPP) small business loans. Banking regulators, including the Office of the Comptroller of the Currency (OCC), confirmed their support of the FinCEN changes and approach during the pandemic.

The risk for criminal activity has never been higher. As noted by directors in the FBI and Secret Service, "The more catastrophic the event, the more active the fraudsters," and the crisis "provides criminal opportunities on a scale likely to dwarf anything seen before."³ Measures to contain COVID-19 are impacting the criminal economy. FinCEN issued an advisory on medical scams and an advisory notice on July 7, 2020, warning that financial institutions should be wary of impostor and money mule scams.⁴ These scams are perpetrated by impostors who impersonate federal government agencies, international organizations, and charities. Crime typologies emerging from COVID-19 that Interpol has identified include:

- Advance payment fraud ("I have surgical masks. Do you want to purchase today?")
- Donation fraud (cryptocurrency payment is available)
- Telephone fraud/phishing (Department of Health officer: "I require your details to conduct contact tracing.")
- Vaccine and testing kit fraud ("We are exporting testing kits for COVID-19.")
- Business email compromise fraud ("Due to the pandemic, transactions have to be made to a new account from now on.")

1 FinCEN, "FinCEN CTR (Form 112) Reporting of Certain Currency Transactions for Sole Proprietorships and Legal Entities Operating Under a "Doing Business As" ("DBA") Name," FIN-2020-R001 (February 10, 2020), available at: https://www.fincen.gov/sites/default/files/administrative_ruling/2020-02-10/FinCEN_CTR_Form112_508_1.pdf

2 FinCEN, "The Financial Crimes Enforcement Network Provides Further Information to Financial Institutions in Response to the Coronavirus Disease 2019 (COVID-19) Pandemic" (April 3, 2020), available at: <https://www.fincen.gov/news/news-releases/financial-crimes-enforcement-network-provides-further-information-financial-ftn2>

3 Michael D'Ambrosio and Terry Wade, "There's another coronavirus crisis brewing: Fraud," *Washington Post* (April 14, 2020), available at: <https://www.washingtonpost.com/opinions/2020/04/14/theres-another-coronavirus-crisis-brewing-fraud/>

4 FinCEN, "Advisory on Impostor Scams and Money Mule Schemes Related to Coronavirus Disease 2019 (COVID-19)," FIN-2020-A003 (July 7, 2020), available at: [https://www.fincen.gov/sites/default/files/advisory/2020-07-07/Advisory %20Impostor and Money Mule COVID 19 508 FINAL.pdf](https://www.fincen.gov/sites/default/files/advisory/2020-07-07/Advisory%20Impostor%20and%20Money%20Mule%20COVID%2019%20508%20FINAL.pdf)

In addition to the increased financial crimes activity and continued regulatory scrutiny, the pandemic has affected financial institutions' operations and customer expectations. As more employees are working from home and branches are closed, and with the increase in digitization, customers are changing the way they interact with financial institutions. For example, higher online banking usage is driving the need for virtual verification and online security protocols. This has led to increased BSA/AML risks related to:

- Misuse of online financial services and virtual assets' movement to conceal illicit funds
- Criminals identifying new ways to bypass customer due diligence (CDD) measures
- Operational delays resulting in non-timely filing of Currency Transaction Reports (CTRs) and Suspicious Activity Reports (SARs)
- Meeting AML requirements associated with new customers obtaining PPP loans and accessing the Main Street Lending Program

There is no singular solution to combating these risks, especially with increased demands on financial institutions during the COVID-19 crisis. It will take several measures, including enhanced communications with regulators, continued diligence and monitoring, a continued focus on a risk-based approach, and innovative new solutions.

Financial institutions should focus their efforts and resources on risk-mitigating activities, including:

- Communicating proactively with regulators, including a new FinCen online contact mechanism⁵
- Continued monitoring of FinCEN and regulatory alerts about COVID-19
- Updating banks' red flag indicators based on FinCEN's alert recommendations
- Applying simplified due diligence measures where lower risks are identified (e.g., accounts created to facilitate government payments to individuals or businesses with existing relationships)
- Creating innovative solutions for identifying customers during onboarding processes (e.g., leveraging digital IDs consistent with Financial Action Task Force digital ID guidance)
- Implementing artificial intelligence and data analytics to improve customer due diligence and transaction monitoring, whenever feasible

Although the pandemic is unique in our lifetime, financial institutions have gone through significant crises before. Regulatory expectations evolve given the risks presented, and financial institutions should evolve their risk management programs too.

⁵ See <https://www.fincen.gov/contact>

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