

FinCEN Pronouncement of Note - 2017

BSA Graduate School

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Section 1: FinCEN Launches “FinCEN Exchange” to Enhance Public-Private Information Sharing

This article is included as published, with only minor omissions.

December 04, 2017

WASHINGTON — The United States Department of the Treasury’s Financial Crimes Enforcement Network (FinCEN) launched the FinCEN Exchange program today to enhance information sharing with financial institutions. As part of this program, FinCEN, in close coordination with law enforcement, will convene regular briefings with financial institutions to exchange information on priority illicit finance threats, including targeted information and broader typologies. This will enable financial institutions to better identify risks and focus on high priority issues, and will help FinCEN and law enforcement receive critical information in support of their efforts to disrupt money laundering and other financial crimes.

“Strong public-private partnerships and two-way information sharing is a crucial component of our efforts to combat the sophisticated money laundering methods and evolving threats we face today,” said Sigal P. Mandelker, Treasury Under Secretary for Terrorism and Financial Intelligence. “FinCEN Exchange will bring together law enforcement, FinCEN, and different types of financial institutions from across the country to share information that can help identify vulnerabilities and disrupt terrorist financing, proliferation financing and other financial crimes.”

Private sector participation in FinCEN Exchange is strictly voluntary, and the program does not introduce any new regulatory requirements. It also does not replace or otherwise affect existing mechanisms by which law enforcement engages directly with the financial industry. It is part of Treasury’s broader objective of strengthening the anti-money laundering framework by encouraging, enabling, and acknowledging more regular industry focus on high-value and high-impact activities. Operational briefings under the FinCEN Exchange program will begin in the coming weeks.

Additional Information about FinCEN Exchange

Law enforcement relies on the financial industry to report important data to fight financial crime through mechanisms such as Suspicious Activity Reports (SARs) and Currency Transaction Reports (CTRs). The government, in turn, provides feedback to the private sector, including through FinCEN Advisories, SAR Statistics, briefings, and other forms of information to guide and encourage industry efforts.

Since 2015, FinCEN has convened over a dozen special briefings in five cities with over 40 financial institutions and multiple law enforcement agencies. In connection with these briefings, FinCEN, working closely with law enforcement, issues requests pursuant to Section 314(a) of the USA PATRIOT Act related to investigations and provides associated financial typologies. Information provided after the briefings by financial institutions through SARs has helped the public sector map out and target weapons proliferators, sophisticated global money

laundering operations, human trafficking and smuggling rings, corruption and trade-based money laundering networks, among other illicit actors. The briefings also have proved useful to financial institutions, helping them focus on specific priorities and better identify risks.

FinCEN Exchange will build on the success of these efforts by convening more regularly scheduled and as-needed operational briefings across the nation with law enforcement, FinCEN, and financial institutions to exchange information on priority illicit finance and national security threats. In consultation with law enforcement, FinCEN will invite financial institutions to participate based on a variety of factors, including whether they may possess information relevant to a particular topic. While the contours of each briefing will vary, the information shared, whether through Section 314(a) of the USA PATRIOT Act or other authorities, will often include information intended to support specific lines of investigation or broader typologies related to a particular illicit finance threat. After receiving information at a FinCEN Exchange operational briefing, financial institutions will be better equipped to incorporate responsive information into SARs.

FinCEN encourages financial institutions to voluntarily share, as appropriate, information with other FinCEN Exchange participants as well as other financial institutions or associations of financial institutions pursuant to Section 314(b) of the USA PATRIOT Act.

Section 2: Memorandum on Financial Institution and Law Enforcement Efforts to Combat Elder Financial Exploitation

Footnotes have been removed and the text has been reformatted. No other material changes were made.

August 30, 2017

Consumer Financial Protection Bureau
United States Department of the Treasury
Financial Crimes Enforcement Network (FinCEN)

Introduction

Elder financial exploitation (EFE), the illegal or improper use of an older person's funds, property or assets, has emerged as one of the most significant frauds against individual persons. It is the most common form of elder abuse in the United States. Despite its growing prominence, however, only a small fraction of incidents are detected and reported. Older Americans are attractive targets in part because of their assets and regular sources of income, increasing the need for effective interventions. Older people may also be particularly vulnerable due to factors such as isolation, cognitive decline, physical disability, health problems, and bereavement. Thus, their ability to protect themselves from individuals seeking to exploit them may be limited. Once victimized, they often experience not only financial insecurity, but also loss of their dignity and quality of life.

Role of Financial Institutions

Financial institutions can play a key role in detecting, responding to, and preventing EFE. Financial institutions are often well positioned to detect when older account holders have been targeted or victimized. In recognition of this, in 2011, the Financial Crimes Enforcement Network (FinCEN) issued an *Advisory to Financial Institutions on Filing Suspicious Activity Reports Regarding Elder Financial Exploitation ("Advisory")*. The Advisory provided potential "red flag" indicators and instructions on how to report EFE activity through Suspicious Activity Reports (SARs).

Once such threats have been detected, financial institutions should report to law enforcement and the state or local Adult Protective Service agency (APS). Timely reporting of suspicious EFE activity, regardless of whether reporting is mandatory or voluntary under state or federal law, is critical in engaging entities that may have complementary information on the victim or the perpetrator from other sources and may be well positioned to collaborate on investigations. In 2013, eight federal regulatory agencies issued interagency guidance clarifying that reporting suspected financial abuse of older adults to appropriate authorities does not generally violate the privacy provisions of the Gramm-Leach-Bliley Act.

Collaboration among Financial Institutions, Law Enforcement and APS

Prevention and response to EFE is improved when financial institutions, law enforcement and APS develop collaborative relationships. Financial institutions and law enforcement can share information about each organization's policies and procedures for detecting, assessing, and reporting EFE. Such relationships can facilitate timely response to reports and ensure that staff at each stakeholder organization has appropriate points of contact when questions or challenges arise. When appropriate, financial institutions can provide expert consultation on banking and finance documents, processes, and procedures to assist law enforcement and APS with case investigations.

In various locations around the country, key stakeholders convene as multidisciplinary networks to successfully address the problem of elder abuse including financial exploitation. These networks engage in activities such as education, training, and individual case review. Financial institutions are encouraged to participate in these local networks and can identify such networks in their area by contacting the APS agency, the local Area Agency on Aging (AAA), or a senior information and assistance hotline. The Eldercare Locator, supported by the U.S. Department of Health and Human Services, enables users to search for their local APS agency or AAA and is accessible at www.eldercare.gov. Financial institutions may also provide a list of these points of contact and sources of information to their older account holders and to caregivers.

Law Enforcement Use of Suspicious Activity Reports

One resource that may aid law enforcement investigations of EFE, even at the local level, is Suspicious Activity Reports (SARs) that financial institutions file with FinCEN. A financial institution may be required to file a SAR if it knows, suspects, or has reason to suspect a transaction conducted or attempted by, at, or through the financial institution:

- involves funds derived from illegal activity or attempts to disguise funds derived from
- illegal activity,
- is designed to evade regulations promulgated under the Bank Secrecy Act (BSA),
- lacks a business or apparent lawful purpose, or
- involves the use of the financial institution to facilitate criminal activity.

On SAR forms, financial institutions include essential facts about the reported suspicious activity, including dates, location, and transaction amounts. Further, narratives within the SAR may include account numbers and references to supporting documentation, as well as information about individuals suspected to be involved in the suspicious activity. SARs can play an important role in the fight against EFE by providing information and references to any supporting documentation that can trigger an investigation, support an ongoing investigation, or identify previously unknown subjects and entities.

FinCEN's 2011 advisory highlighted the issue of EFE to SAR filers. Additionally, FinCEN's new electronic filing form launched in 2013 includes a specific check box indicating that the filer suspects elder financial exploitation, thereby providing a streamlined process for law enforcement agencies to access SARs filed on this type of suspicious activity.

Access to SARs and their use is restricted under federal law. Knowledge concerning the existence of a SAR is strictly confidential and is generally limited to law enforcement and financial regulatory authorities.⁸ If a law enforcement agency does not have direct access to FinCEN's database through a Memorandum of Understanding with FinCEN, the agency can contact FinCEN at frc@fincen.gov for referral to an appropriate state or regional point of contact, who can assist the investigator with a SAR-related inquiry. Learn more about the limitations on the use and disclosure of SARs by reading FinCEN Advisory FIN-2010-A014, *Maintaining the Confidentiality of Suspicious Activity Reports*. If an investigator has a question on the use and disclosure of a SAR, they can contact the FinCEN Resource Center at FRC@fincen.gov.