

Appendix C

History of the Bank Secrecy Act

The Bank Secrecy Act comprises 12 separate legislative acts stemming from 1970 to the present, including the USA PATRIOT Act, passed in 2001. In order to understand the development of this legislation and to determine what legislative and regulatory changes might be appropriate to recommend at this point in time, it is important to review this legislation, its original intent and its history.

“The Bank Secrecy Act” (1970)

On December 9, 1968, the House Committee on Banking and Currency held a one-day investigative hearing on the legal and economic impact of foreign banking in the United States.¹ Among other things, the hearing concluded that some Americans were using secret foreign bank accounts and foreign financial institutions as part of illegal schemes and that the use of these secret foreign accounts were the “underpinning of organized crime in the United States.”²

On that day, Chairman Wright Patman announced his intention to introduce what became the “Banks Records and Foreign Transactions Act,”³ which was passed on 10/26/70 and is better known by its informal name, the “Bank Secrecy Act.”⁴ This name stems from the fact that one of the primary focuses of the Act was the secrecy of the banking laws of some foreign countries and the use by Americans of secret foreign bank accounts for illegal purposes.⁵

Background and Purpose of the Legislation

As set forth in the Congressional reports, this initial legislation dealt with two major problem areas in law enforcement:

The first is that of financial recordkeeping by domestic banks and certain other domestic financial institutions. The second is the use by American residents of foreign financial facilities located in jurisdictions with various types of secrecy law.⁶

With regard to the first issue, pertaining to financial recordkeeping, Congress noted that some large banks had stopped or had reduced the practice of photocopying checks and similar instruments and that that had impeded a number of criminal prosecutions:⁷

The importance of photocopies of checks to effective law enforcement, especially where white-collar crimes are concerned, simply cannot be overestimated. The recipient of a direct or indirect bribe, for example, will make no record of his receipt of the money, and the person who wrote the check will take pains to see that it is totally destroyed after cancellation. In many instances, payments by check which are not necessarily illegal in and of themselves may constitute the only way that the prosecution can establish the existence of a relationship or pattern of conduct which may be essential to making its case.⁸

With regard to the second issue, pertaining to foreign secret bank accounts, Congress noted that:

Considerable testimony was received ... about serious and widespread use of foreign financial facilities located in secrecy jurisdictions for the purpose of violating American law. Secret foreign bank accounts and secret foreign financial institutions have permitted

proliferation of “white collar” crime; have served as the financial underpinning of organized criminal operations in the United States; have been utilized by Americans to evade income taxes, conceal assets illegally and purchase gold; have allowed Americans and others to avoid the law and regulations governing securities and exchanges;⁹

Congress determined that the existence of bank accounts in foreign countries with strict secrecy laws greatly impeded the ability of law enforcement agencies to bring financially-related prosecutions because they could not obtain the necessary evidence.¹⁰ The foreign countries frequently refused to provide requested documents, or made the process extremely burdensome and time-consuming.¹¹ In addition, countries like Switzerland refused to provide any information unless it pertained to a matter which was also a crime under their own laws. As Congress noted:

U.S. law enforcement officials have been able to obtain access to bank accounts in Switzerland, but only when the information is needed pursuant to a crime which would be a criminal offense under Swiss law. Since tax evasion, securities manipulation, or other so-called fiscal crimes are generally not criminal offenses under Swiss law, our law enforcement authorities have been frustrated in their investigations of U.S. citizens who can shield their financial activities through the use of a Swiss numbered bank account.¹²

Further, U.S. financial institutions themselves had refused to honor subpoenas for the information if in doing so they would be in violation of governing foreign law.¹³

Burden of the Legislation

The reporting and recordkeeping responsibilities, other than the infrequent need for an individual to report a foreign bank account or the transportation of a large amount of cash into or out of the country, fell upon U.S. financial institutions which were required to file Currency Transaction Reports and to maintain certain records.

In spite of this one-sided burden, Congress, in enacting the Bank Secrecy Act, repeatedly professed the desire to not burden the financial industry or to disrupt international commerce.¹⁴ In fact, in its legislative report, Congress claimed that it was actually using a conservative and non-burdensome approach.¹⁵

Further, Congress cited the flexibility built into the law and the contention that most financial institutions were already doing what the legislation would require:

It should be noted that the Secretary has ample authority to limit recordkeeping and reporting requirements to those which will be useful to carry out the purposes of the Act and not unduly burdensome to legitimate business.¹⁶

Administrative agencies are given the flexibility to avoid the imposition of unwarranted and burdensome reporting and recordkeeping requirements. Most of the records required to be maintained under the bill are already kept by most financial institutions, so the regulations should impose almost no additional expense upon those affected.¹⁷

The photocopying requirements of the bill will not significantly increase the cost to the affected financial institutions. Most banks and other financial institutions already maintain the types of records contemplated by the bill. In addition, the cost of microfilming checks and similar drafts is minimal.¹⁸

The overall theme of the lack of burden was echoed by a number of witnesses testifying at the hearings that led up to the passage of the legislation. As stated by the Department of Justice: “Our purpose, I said, should be to detect and prosecute crime, not build a mountain of paper.”¹⁹

Congress ended up hearing testimony on both sides of the issue of burden and ultimately determined that the need for the legislation outweighed any potential burden, concluding:

Many of these records are already kept by financial institutions and it is not the committee's intent to encumber these institutions with a substantial volume of additional paperwork. The committee has, however, received testimony from law enforcement officials on the high degree of importance of having access to copies of checks drawn on commercial banks.²⁰

Further, in addition to providing the agencies with flexibility in implementing the requirements of the legislation, Congress provided the Secretary of the Treasury with exemptive powers as a supposed way to reduce any undue burden:²¹

For that reason, the Secretary of the Treasury . . . [was] given broad exemptive authority which the committee expects will be applied whenever the law enforcement benefits are not sufficient to outweigh the cost of implementation.²²

Provisions of the Act

The legislation in essence authorized the Secretary of the Treasury to issue regulations requiring various reports and recordkeeping of insured and uninsured financial institutions and individuals, primarily relating to Currency Transaction Reports (CTRs), Reports of International Transportation of Currency or Monetary Instruments (CMIRs) and Reports of Foreign Bank and Financial Accounts (FBARs).²³ In addition, the legislation provided for civil and criminal penalties, primarily at the level of \$1,000.²⁴

In 1972, Treasury issued regulations implementing the provisions of the Bank Secrecy Act. A summary of these and other BSA-related regulations is set forth in Appendix D.

General Summary of the Act

The legislation provided for the following:

- Authorized the Secretary of the Treasury to prescribe regulations requiring insured banks:
 - to maintain records concerning the identity of its customers,²⁵ and authorized the Secretary to make appropriate exemptions to this requirement;
 - to make copies of checks and deposits and similar instruments;²⁶
 - to maintain evidence of the identity of an individual to any transaction with the bank;
 - to maintain such records and evidence as the Secretary may prescribe to carry out the purposes of this section; and
 - to retain records for not more than six years.
- Authorized the Secretary to prescribe regulations requiring “other financial institutions”:²⁷
 - to submit reports with respect to ownership or management of the institution and any changes therein; and
 - to maintain records and procedures determined to have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.
- Authorized the Secretary to assess “other financial institutions” a civil penalty for each willful violation of any regulation under the regulations pertaining to “other financial institutions” in the amount of \$1,000 per violation.

- Authorized a criminal penalty of whoever willfully violated any regulation pertaining to “other financial institutions” of \$1,000/1 year.
- Authorized an additional criminal penalty, if the willful violation was in furtherance of a Federal felony, of \$10,000/5 years.
- Authorized the Secretary to delegate responsibility to ensure compliance with the regulations pertaining to insured banks and “other financial institutions” to the appropriate federal bank regulatory agency.
- Authorized the Secretary to prescribe such regulations as he deemed appropriate to carry out the purposes of this title pertaining to the “Currency and Foreign Transactions Reporting Act.”
- Authorized the Secretary to delegate the responsibility to ensure compliance with the requirements of the “Currency and Foreign Transactions Reporting Act” to the appropriate federal bank regulatory agency.
- Authorized the Secretary by regulation to require domestic financial institutions to maintain procedures to ensure compliance with the “Currency and Foreign Transactions Reporting Act.”
- Authorized the Secretary to make exemptions from the requirements of the “Currency and Foreign Transactions Reporting Act.”
- Authorized the Secretary to assess a civil penalty for each willful violation by any domestic financial institution of the “Currency and Foreign Transactions Reporting Act” (pertaining to CTRs, CMIRs and FBARs) in the amount of \$1,000.
- Authorized a criminal penalty for a willful violation of the “Currency and Foreign Transactions Reporting Act” of \$1,000/ 1 year.
- Authorized an additional criminal penalty – if the willful violation was in furtherance of the commission of any other violation of Federal law, or part of a pattern of illegal activity involving > \$100,000 within 12 months – of \$500,000/5 years.
- Authorized the Secretary to establish, by regulation, conditions and procedures to make any information in reports filed pursuant to the “Currency and Foreign Transactions Reporting Act” available to any other Federal agency upon request.
- Authorized the Secretary to issue regulations requiring domestic financial institution to file reports of currency transactions, or other monetary instrument as the Secretary may specify, in amounts he determined.
 - As set forth in the legislation, the reports were to be signed both by the financial institution and one or more of the other parties to the transaction, as the Secretary determined.
- Required reports (CMIRs) of monetary instruments in amounts > \$5,000 transported into or out of the country.²⁸
 - Authorized the Secretary to determine the timing, form and content of the reports.
- Authorized the Secretary to assess a civil penalty against whoever failed to file a CMIR, or who filed a CMIR with a material omission or misstatement, in an amount not to exceed the amount of the monetary instrument.
- Authorized the Secretary to prescribe regulations requiring a person to maintain records or to file reports setting forth the following information with regard to transactions or relationships with a foreign financial agency:
 - Identities and addresses of the parties to the transaction or relationship.
 - The legal capacities of the parties.
 - A description of the transaction or relationship.

In-depth Summary of the Act

Title I – Financial Recordkeeping.

Chapter 1. Insured banks and institutions.

- § 101. Retention of records by insured banks:
- Established a new Section 21 of FDI Act that:
 - Authorized the Secretary to prescribe regulations when he determined that the maintenance of appropriate types of records and other evidence had a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.
 - Required each bank to maintain such records as the Secretary required of the identity of each person having an account in the U.S. and of each individual authorized to sign checks. Authorized the Secretary to make such exemptions as were consistent with the purpose of this section.
 - Required each bank to make, to the extent that the regulations required, a microfilm or other copy of each check, etc., presented for payment and a record of each check, etc., for deposit.
 - Required each bank to retain, to the extent that the regulations provided, evidence of the identity of an individual engaged in any transaction with the bank.
 - In addition to or in lieu of the records and evidence otherwise referred to in this section, required each insured bank to maintain such records and evidence as the Secretary may prescribe to carry out the purposes of this section.
 - Provided for the retention of records, not to exceed six years.

Chapter 2. Other financial institutions.

- § 122. Granted authority to the Secretary to require reports with respect to ownership or management of any uninsured bank or institution.
- § 123. Granted authority to the Secretary to require recordkeeping and procedures determined to have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings of an uninsured bank or uninsured institution or person engaged in the business of:
 - Issuing or redeeming checks, money orders, travelers' checks or similar instruments.
 - Transferring funds domestically or internationally.
 - Operating a currency exchange.
 - Operating a credit card system.
 - Performing similar functions as specified by the Secretary.

With regard to any civil or criminal penalty under this paragraph, a violation was to be calculated per day and per location.

- § 125. CMPs.
 - (a) For each willful violation of any regulation under this chapter (dealing only with "other financial institutions"), authorized a CMP not exceeding \$1,000 per violation.
- § 126. Criminal penalty.

- For each willful violation of a regulation under this chapter (dealing with other financial institutions), authorized a criminal fine of \$1,000/1 year per violation.
 - § 127. Additional criminal penalty.
- For each violation of a regulation under this chapter that was in furtherance of a Federal felony, authorized a criminal fine of \$10,000/5 years.
- §128. Delegation.
 - Authorized the Secretary to delegate the authority to ensure compliance with the Act to the appropriate federal supervisory agency.

Title II – Reports of Currency and Foreign Transactions.

Chapter 1 – General.

- § 201. Short title: “Currency and Foreign Transactions Reporting Act.”
- § 202. Purpose.
 - It was the purpose of this title to require certain reports or records where such reports or records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.
- § 204. Regulations.
 - Authorized the Secretary to prescribe such regulations as he deemed appropriate to carry out the purposes of this title.
- § 205. Compliance.
 - Authorized the Secretary to delegate compliance responsibility to the banking agencies.
 - Authorized the Secretary to require, by regulation, domestic financial institutions to maintain procedures to ensure compliance with this title.
- § 206. Exemptions.
 - Authorized the Secretary to make exemptions from the requirements of this title.
- § 207. Civil penalty.
 - For each willful violation by any domestic financial institution of this title (pertaining to reports and including Chapters 1-4), authorized a CMP of \$1,000.
- § 209. Criminal penalty.
 - For each willful violation of this title, authorized a criminal penalty of \$1,000/ 1 year.
- § 210. Additional criminal penalty.
 - For each willful violation of this title that was in furtherance of the commission of any other violation of Federal law, or part of a pattern of illegal activity involving > \$100,000 within 12 months, authorized a criminal fine of \$500,000/5 years.
- § 212. Availability of information to other Federal agencies.
 - Authorized the Secretary, pursuant to regulation, to make any information in reports filed pursuant to this title available to any other Federal agency upon request.

Chapter 2. Domestic Currency Transactions.

- § 221. Reports of currency.
 - Authorized the Secretary to issue regulations requiring reports of currency transactions, or other monetary instrument as the Secretary may specify, in amounts he determined.
- § 222. Persons required to file reports.
 - Required reports filed under this chapter to be signed both by the financial institution and one or more of the other parties to the transaction, as the Secretary determined by regulation.

Chapter 3. Reports of Exports and Imports of Monetary Instruments.

- § 231. Reports required (CMIRs).
 - Required reports of monetary instruments in amounts > \$5,000 transported into or out of the country.
- § 233. Civil liability.
 - Authorized a civil penalty against whoever failed to file a report required by § 231, or who filed a report with a material omission or misstatement, not to exceed the amount of the monetary instrument.

Chapter 4. Foreign Transactions.

- § 241. Records and reports required (FBARs).
 - Authorized the Secretary – while requiring the Secretary to have due regard to avoid impeding the export or import of currency or other monetary instrument and to avoid placing unreasonable burdens on legitimate transactions with foreign financial agencies – to issue a regulation requiring a person to maintain records or to file reports setting forth the following information with regard to transactions or relationships with a foreign financial agency:
 - Identities and addresses of the parties to the transaction or relationship.
 - The legal capacities of the parties.
 - A description of the transaction or relationship.
 - Provided for a person to not have to disclose contents of records except in compliance with a subpoena or as otherwise required by law.

“Money and Finance” (1982)

In 1982, Congress passed legislation, entitled “Money and Finance,” which revised and reissued the Bank Secrecy Act within Title 31 with only, at best, one substantive change.²⁹ The one substantive change was the additional authority provided to the Secretary of the Treasury to require “Reports on foreign currency transactions.”³⁰ This was in addition to the authority provided to the Secretary in 1970 that led to the regulation issued in 1972 requiring the filing of FBARs.³¹ While this additional section was more specific with regard to the authority to require FBARs, it did not result in any additional regulations being issued.

Provisions of the Act

The result of the restructuring of the statute in U.S.C. Title 31 was as follows:

- § 5313 – CTRs.
- § 5314 – FBARs.
- § 5315 – Reports on foreign currency transactions.
 - Congress found that additional authority should be provided to collect information on capital flows under section 5(b) of the Trading With the Enemy Act (50 U.S.C. § 5(b)) and section 8 of the Bretton Woods Agreement Act (22 U.S.C. § 286(f)).
 - Authorized the Secretary to require reports on foreign currency transactions.
- § 5316 – CMIRs.
- § 5317 – Forfeiture of monetary instruments.
 - Provided that monetary instruments not reported (or which were the subject of a report which had a material omission or misstatement) under § 5316 were subject to seizure and forfeiture.
- § 5318. Compliance and exemptions.
- Authorized the Secretary to (except for § 5315):
 - delegate authority to an appropriate supervising agency;
 - require financial institutions to maintain appropriate procedures to ensure compliance; and
 - exempt certain requirements.
- § 5321. Civil penalties.
 - (a)(1) For each willful violation by a domestic financial institution or employee of a domestic financial institution of this subchapter or a regulation issued pursuant to this subchapter (except § 5315), authorized a CMP of \$1,000/per day/ per location.
 - Under § 5318(2) (requiring bank compliance procedures), provided that a separate violation occurred each day and each location.
 - (a)(2) Authorized the Secretary to impose an additional CMP under § 5316 (CMIRs) up to the amount of the monetary instrument.
 - (a)(3) For a person not filing a report under § 5315 (foreign currency transactions) or not complying with an injunction under § 5320, authorized a CMP of up to \$10,000.
- § 5322. Criminal penalties.
 - For each willful violation of this subchapter (except for § 5315), authorized a criminal penalty of \$1,000/ 1 year.
 - For each willful violation of this subchapter (except for § 5315) while violating another federal law, or as part of a pattern of illegal activity involving > \$100,000 within 12 months, authorized a criminal penalty of \$500,000/ 5 years.
 - For each violation of § 5318(2) (failure to maintain a BSA program), provided that a separate violation occurs for each day and each location.

“Currency and Foreign Transactions Reporting Act Amendments” (1984)

In 1984, Congress passed the “Comprehensive Crime Control Act of 1984.” Chapter IX of that Act was entitled “Currency and Foreign Transactions Reporting Act Amendments” and accomplished five basic things:

1. It increased the dollar amount of civil penalties under BSA from \$1,000 to \$10,000.
2. It increased the dollar amount of criminal penalties under BSA from \$1,000/ 1 year to \$250,000/ 5 years.
3. It increased the reporting threshold for CMIRs from \$5,000 to \$10,000.
4. It made an attempt to evade the reporting requirements pertaining to the filing of a CMIR a crime.
5. It authorized the Secretary of the Treasury to pay rewards to “an individual who provides original information which leads to a recovery (criminal fine, civil fine or forfeiture) which exceeds \$50,000.” The reward was limited to 25% of the net recovery, up to \$250,000.

Background of the Legislation

The need for the legislation was in part due to the fact that law enforcement agencies were having difficulty in prosecuting violations of the reporting requirements associated with the filing of CMIRs. Specifically, some courts had held that the law was not violated “until the person [was] on the verge of boarding the plane or other mode of transportation at the final call for departure.”³² As a result, according to law enforcement, “customs agents must, regardless of the exigencies and inconvenience of the developing situation, stand by helplessly until virtually the last moment of departure before apprehending the suspect.”³³

In addition, the legislation was focused on the need to deter money launderers – as opposed to financial institutions – by imposing increased penalties:

While the full scope of these provisions is broad, it is important to recognize that they are primarily directed at persons who make a lucrative career in the illicit drug trade and organized crime. As such, the [existing] penalties are far too low to deter and punish such activity. Indeed, the modest penalties now applicable may simply be written off as a cost of doing business. Accordingly, section 901(a) of the bill raises the basic civil penalty for a willful violation from \$1,000 to \$10,000 and section 901(b) increases the criminal penalty for such a violation from a one year misdemeanor with a fine of up to \$1,000 to a five year felony with a fine of up to \$250,000.³⁴

In 1970, when Congress passed the initial Bank Secrecy Act, it recognized that the established penalties were “modest,” but believed at that time that they were sufficient to ensure compliance with BSA and its implementing regulations.³⁵ Fourteen years later, the perception had obviously changed.

Last, the Act increased the threshold for the filing of CMIRs from \$5,000 to \$10,000 in order to focus law enforcement efforts more on the relatively large transactions.³⁶

Purpose of the Legislation

The overall purpose of the legislation was to amend “The Currency and Foreign Transactions Reporting Act to strengthen the ability of law enforcement officers to control illegal currency

transactions involved in narcotics trafficking and organized crime activities.”³⁷ Obviously, the addition of an attempt provision for CMIR violations and the increased penalties both improved law enforcement’s ability to bring successful prosecutions under BSA and enhanced the deterrence effect of the Act. Further, the increased threshold for CMIR filings, as noted above, improved the efficiency and risk-based nature of the Act.

In order to give some financial benefit to those assisting the money laundering effort, Congress also provided for the payment of rewards and noted that:

This provision is a critical tool in combating drug trafficking. It is important to remember that we are dealing with a multibillion-dollar industry. Law enforcement authorities need some tool to combat the great financial attraction that remains in the drug trafficking industry.³⁸

Provisions of the Act

The specifics of the legislation were as follows:

- § 901
 - Amended 31 U.S.C. § 5321(a) to increase the civil penalty from \$1,000 to \$10,000.
 - Amended 31 U.S.C. § 5322 to increase the criminal penalty from \$1,000/ 1 year to \$250,000/ 5 years.
 - Amended 31 U.S.C. § 5316 to insert “or attempts to transport ...” with regard to CMIRs.
 - Amended 31 U.S.C. § 5316 to increase the threshold for filing CMIRs from \$5,000 to \$10,000 in order to “focus enforcement efforts on relatively large transactions.”³⁹
 - Added 31 U.S.C. § 5323 to authorize the Secretary to pay a reward to an individual who provided original information which led to a recovery (criminal fine, civil fine or forfeiture) which exceeded \$50,000. The reward could be up to 25% of the net recovery up to \$150,000.
 - Authorized funds to be appropriated for paying rewards.

“Money Laundering Control Act of 1986”

In 1986, Congress passed the “Anti-Drug Abuse Act of 1986.” Title I of the Act was entitled the “Anti-Drug Enforcement Act,” and Subtitle H of that Title was entitled the “Money Laundering Control Act of 1986.” This law supplied a broad new series of components to the BSA regime that are prominent in today’s administration of the Act.

Need for the Legislation

A major concern relating to the effectiveness of BSA leading up to the passage of the “Money Laundering Control Act of 1986” was the inability of the Government to prosecute money launderers for structuring. As noted in the testimony: “The money launderer who complies with the recordkeeping and reporting requirements of the Bank Secrecy Act, as has often been done, cannot be prosecuted unless it has been proven that he has violated another Federal statute.”⁴⁰

What appeared to concern Congress the most in this regard was the case involving the Bank of New England where the bank was convicted and fined \$1.24 million for failing to file CTRs.⁴¹ The individual charged with money laundering in that case, however, who allegedly had structured \$817,000 in deposits over the course of 14 months, was acquitted due to his lack of an obligation to file a CTR and the Government’s inability to otherwise prove that he had committed a crime.⁴²

In response, Congress made structuring a violation and criminalized money laundering itself in this legislation.⁴³ It also increased the penalties once more to further deter money launderers, as well as financial institutions that facilitated money laundering.⁴⁴

In addition to the concern that led to these legislative changes, Congress was upset over the fact that it believed that the bank regulatory agencies and the banking industry had done little to implement or comply with BSA over the previous 16 years.⁴⁵ The House Report accompanying the legislation summed up the concern and frustration as follows:

Unfortunately, the hearings on money laundering, beginning with the Bank of Boston hearing in April 1985, have shown that a major law enforcement tool has been rendered a virtual nullity by an industry that didn't seem to care and by a regulatory structure that proved to be ineffective.

Although there had been a marked increase in compliance after the extensive publicity surrounding the case involving the First National Bank of Boston, which resulted in a \$500,000 criminal fine in 1985,⁴⁶ Congress was concerned that it had taken too long for the banking industry to start to comply with BSA.⁴⁷ Further, Congress was concerned that, while the fine against the First National Bank of Boston was large, it was only a small fraction of the \$1.22 billion the bank had allegedly allowed to be laundered over the course of 1,163 separate transactions.⁴⁸ In addition, the fine represented only half of the bank's profit from engaging in the suspicious activity.⁴⁹

Faced with an apparent history of lax enforcement by the agencies, lax compliance by the banking industry and relatively small fines, Congress decided that it was time to take strong legislative action. Consequently, it included in the Money Laundering Control Act of 1986 the requirement for the bank regulatory agencies to issue regulations for financial institutions to have compliance procedures,⁵⁰ the requirement that the bank regulatory agencies include a review of BSA during each examination and the requirement that the agencies issue cease and desist orders to address banks' noncompliance with BSA and failure to correct noted deficiencies.⁵¹

Yet another concern of Congress at the time was the lack of authority on the part of Treasury to demand needed information. While some focus was placed on the need for such authority with regard "to the 3,000 miscellaneous nonbank financial institutions such as casinos, foreign currency brokers, and others for which examination responsibility has been delegated to the IRS,"⁵² an additional concern was Treasury's inability to obtain timely information from the bank regulatory agencies and the Department of Justice in order to proceed with cases, even important cases, such as the one involving the First National Bank of Boston.⁵³

Last, there was a perceived need to tighten the provisions relating to prohibiting attempted evasions of the requirement to file a CMIR, resulting in a modification of the statutory language by striking the word "attempts" and replacing it with "is about to transport."

Purpose of the Legislation

The purpose of the legislation was to make money laundering a crime, to close the loophole involving structuring and to eliminate the difficulty in enforcing violations of the CMIR reporting requirements. In addition, the legislation was to further deter the act of money laundering by increasing the civil and criminal penalties. Last, the legislation was drafted with the intent of dealing with the perceived lack of enforcement by the bank regulatory agencies and lack of compliance by the banking industry by requiring the agencies to take certain regulatory and enforcement steps.

Provisions of the Act

The Act provided for the following changes to BSA in order to accomplish the stated purposes and to address the concerns set forth above:

- Made money laundering a crime through the creation of 18 U.S.C. §§ 1956 and 1957, imposing a criminal penalty of \$500,000 or twice the value of the transaction, whichever was greater, and/or 20 years and a civil penalty of \$10,000 or twice the value of the transaction, whichever was greater.
- Made structuring a violation.
- Gave the Secretary of the Treasury summons authority over financial institutions.
- Increased civil penalties for willful violations by financial institutions from \$10,000 to \$25,000 or the amount of transaction, whichever was greater, up to \$100,000.
- Authorized civil money penalty authority for a financial institution who failed to maintain procedures to ensure compliance with BSA.
- Authorized civil money penalties of \$500 for negligent violations.
- Increased criminal penalties from 5 years to 10 years (leaving the dollar amount unchanged at \$250,000).
- Further clarified the attempt provision for violations of CMIR reporting requirements.
- Required the bank regulatory agencies to issue regulations requiring financial institutions to establish and maintain procedures reasonably designed to ensure and monitor compliance with BSA.
- Required the bank regulatory agencies to include a review of a bank's BSA procedures during the course of each examination.
- Required the bank regulatory agencies to issue cease and desist order if a bank had:
 - Failed to establish and maintain required BSA procedures; or
 - Failed to correct any problem with the procedures previously reported to the bank by the agency.
- Added new sections for civil and criminal forfeiture.

In-depth Summary of the Act

- § 1352 – Made money laundering a criminal offense.
 - Added 18 U.S.C. § 1956. “Laundering of monetary instruments”
 - Provided for a criminal penalty of \$500,000 or twice the value of the transaction, whichever was greater, and/or 20 years.
 - Provided for a civil penalty of \$10,000 or twice the value of the transaction, whichever was greater.
 - Added 18 U.S.C. § 1957. “Engaging in monetary transactions in property derived from specified unlawful activity.”
- § 1354 – Structuring transactions to evade reporting requirements and attempt to evade reporting requirements [CTRs] prohibited.
 - Added 31 U.S.C. § 5324:

- No person shall, for the purpose of evading the reporting requirements of 31 U.S.C. § 5313(a), with respect to such transaction:
 - (1) cause or attempt to cause a domestic financial institution to fail to file a report required under section 5313(a);
 - (2) cause or attempt to cause a domestic financial institution to fail to file a report required under § 5313(a) that contained a material omission or misstatement or fact; or
 - (3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.
- § 1355 – Seizure and civil forfeiture.
 - Amended 31 U.S.C. § 5317 to authorize the seizure and forfeiture of monetary instruments or property traceable to funds not reported or not properly reported in a CMIR.
- § 1356 – Compliance authority for Secretary.
 - (a) Amended 31 U.S.C. § 5318 in connection with BSA investigations or civil enforcement to:
 - Give the Secretary authority to examine the books and records of domestic financial institutions relating to BSA reporting and recordkeeping; and
 - Give the Secretary authority to issue summons a financial institution.
 - (b) Amended provision for exemptions to:
 - Provide that the financial institution had to prepare and maintain a detailed statement describing why customer was qualified for an exemption.
 - Provide that the customer had to sign a statement supporting the basis for the exemption.
- § 1357 – Penalties.
 - Authorized the Secretary to impose CMP for a willful violation of 31 U.S.C. § 5324 (new offense of structuring/attempt) up to the amount of transaction.
 - Increased the amount of a CMP under 31 U.S.C. § 5321(a)(1) for a domestic financial institution or employee for a willful violation of this subchapter (dealing with reports and recordkeeping), except for 31 U.S.C. § 5314 (records and reports on foreign financial agency transactions) and 31 U.S.C. § 5315 (reports on foreign currency transactions), from \$10,000 to \$25,000 or the amount of transaction, whichever was greater, up to \$100,000.
 - Increased the amount of a CMP under 31 U.S.C. § 5321(a)(5) for a willful violation of 31 U.S.C. § 5314 (foreign financial agency transactions) from \$10,000 to \$25,000 or the amount of transaction, whichever was greater, up to \$100,000.
 - Increased the amount of a CMP under 31 U.S.C. § 5321(a)(5) for a willful violation of 31 U.S.C. § 5314 for failure to report the existence of an account or any required identifying information from \$10,000 to \$25,000 or an amount equal to balance of the account, whichever was greater, up to \$100,000.
 - Authorized a new CMP under 31 U.S.C. § 5321(a)(6) of \$500 for a negligent violation by any financial institution of any provision of this subchapter.
 - Stated that a CMP may be imposed notwithstanding the imposition of a criminal penalty.

- Increased the criminal penalty from 5 years to 10 years (the dollar amount being left unchanged at \$250,000).
- § 1358 – Monetary Transaction Reporting Amendments.
 - Amended the attempt provision of 31 U.S.C. § 5316 (CMIRs) by striking “attempts” and inserting “is about to transport.”
- § 1359 – Banking Regulatory Agency Supervision.
 - Amended 12 U.S.C. § 1818(s) to:
 - Direct the agencies to issue regulations requiring financial institutions to establish and maintain procedures reasonably designed to ensure and monitor compliance with BSA.
 - Require each examination to include a review of BSA procedures.
 - Require the agencies to issue a cease and desist order if a bank had:
 - › Failed to establish and maintain required BSA procedures; or
 - › Failed to correct any problem with the procedures previously reported to the bank by the agency.
 - Amended 12 U.S.C. § 1818(i) to give CMP authority to agencies with regard to banks’ failure to maintain compliance procedures.
- § 1363 – International Information Exchange System: Study of Foreign Branches of Domestic Institutions.
 - Directed the Secretary to initiate discussions with the central banks of other countries and to propose that an information exchange system be established to assist the efforts to eliminate the international flow of money derived from illicit drug operations and other criminal activities.
 - Directed the Secretary to report to Congress in nine months on the results of these discussions.
 - Directed the Secretary, together with the Attorney General and the Federal Reserve, to study:
 - The extent to which foreign branches of U.S. banks were used to facilitate illicit transfers of currency and monetary instruments or to evade CMIR reporting requirements.
 - The extent to which U.S. law was applicable to the activities of foreign branches of U.S. banks.
 - Methods for obtaining the cooperation of the country where the U.S. foreign branch was located with respect to transfers and reports on monetary instruments in and out of the U.S.
- § 1366 – Forfeiture.
 - Added 18 U.S.C. §§ 981 and 982 pertaining to civil and criminal forfeiture.

“Money Laundering Prosecution Improvements Act of 1988”

In 1988, Congress passed the “Anti-Drug Abuse Act of 1988.” Title VI of the Act was entitled the “Anti-Drug Abuse Amendments Act of 1988,” and Subtitle E of that Title was called the “Money Laundering Prosecution Improvements Act of 1988.”

Need for the Legislation

At this time, there was a continuing concern that a person who did not have an account at a bank (thus avoiding the identification process entailed in opening an account) and who kept his or her currency transactions below the \$10,000 reporting threshold, could avoid detection by the government and the financial institution.⁵⁴ Consequently, there was a perceived need to specifically require financial institutions to obtain and verify identification in the sale of certain monetary instruments.

In addition, there was a perceived need for amendments to the agencies' civil money penalty authority due to the fact that there was, at that time, no penalty for willful violations of recordkeeping regulations for insured financial institutions and only a \$1,000 a day fine for non-insured financial institutions.⁵⁵ Congress correctly viewed the BSA recordkeeping requirements as being just as important as the reporting requirements.⁵⁶ In addition, it was noted during the enactment of the 1986 legislation that the civil money penalty for violations of 31 U.S.C. § 5318, pertaining to the requirement that banks have BSA programs to ensure compliance, was inadvertently dropped and needed to be reinstated.⁵⁷

Also, Congress recognized that additional authority was “necessary in order to target those geographic areas and those specific financial institutions which may be more prone to be abused by organized crime, and especially narcotics trafficking.”⁵⁸ Consequently, Congress included in this Act legislation authorizing the Secretary to issue Geographic Targeting Orders in order to “provide law enforcement authorities with additional tools to combat money laundering operations associated with organized crime and drug trafficking.”⁵⁹

Purpose of the Legislation

The overall purpose of the legislation, in keeping with the original intent of the 1970 legislation, was set forth by Congressman St Germain, then Chairman of the House Banking Committee:

[T]his committee reopens its efforts to protect against U.S. banks being used, wittingly or unwittingly, to launder the profits from international drug trafficking. We intend to make these laundering operations as difficult and costly as possible. We cannot allow financial institutions, insured by the U.S. Government, to be used whether by accident or design.⁶⁰

Provisions of the Act

The legislation was designed to:

- Require appropriate identification for the purchase of money orders, cashier's checks and related instruments equal to or greater than \$3,000.
- Authorize the issuance of Geographic Targeting Orders.
- Increase some civil money penalties and allow for penalties for gross negligence.
- Allow law enforcement to obtain the records of bank insiders suspected of criminal wrongdoing without notification under the Right to Financial Privacy Act (RFPA).⁶¹

In-depth Summary of the Act

- § 6815
 - Added 31 U.S.C. § 5325 – Identification required to purchase certain monetary instruments.
 - For the sale of a bank check, cashier's check, traveler's check, or money order for currency (or other monetary instrument designated by the Secretary) of \$3,000 or more, provided that a financial institution shall:

- › Verify that the individual is an account holder and maintain a record of the verification; or
- › Verify the identity of the non-account customer in accord with Treasury's regulations and maintain a record of the verification.
- Provided that a financial institution shall provide Treasury with the information recorded upon request.
- Added 31 U.S.C. § 5326 – Records of certain domestic coin and currency transactions.
 - Authorized the Secretary to issue Geographic Targeting Orders.
- Amended civil penalty authority by adding new subsection (j) to 12 U.S.C. § 1829b for insured banks which:
 - Authorized civil money penalty of \$10,000 for willful or gross negligent violation of any regulation issued pursuant to 12 U.S.C. § 1829b(b).
 - Stated that a separate violation occurred each day the violation continued and at each location.
- For institutions subject to BSA recordkeeping requirements, increased CMPs from \$1,000 to \$10,000 and amended provision to include violations caused by gross negligence (12 U.S.C. § 1953(b)).
- § 6186 – Right to Financial Privacy Act Amendments.
 - Amended RFPA to exclude insiders of a financial institution who were the subject of referrals to the DOJ.

“Crime Control Act of 1990”

In 1990, Congress passed the “Crime Control Act of 1990.” Title XXV of the Act, the most relevant for our purposes, was known as the “Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990,” and Subtitle H of that title was known as the “Financial Institutions Anti-Fraud Enforcement Act of 1990.”

Background of the Legislation

The overriding focus of the hearings leading up to the passage of the “Crime Control Act of 1990” was the need to provide the Federal bank regulatory agencies with the authority to revoke the charters of financial institutions that were convicted of money laundering and to prohibit individuals who were convicted of money laundering from serving as an officer, director or employee of an insured financial institution. The concern that led to this focus was Congress’ belief that the action taken against the Bank of Credit and Commerce International (BCCI) for extensive money laundering had been far too lenient.⁶²

In that case, two affiliates of BCCI, an international bank located in Luxembourg, were required to forfeit 14.8 million dollars in alleged drug profits, but Congress’ concern was that the bank could have been subject to fines up to \$40 million.⁶³ Moreover, the charters were not revoked. Congress viewed the resolution of the case as merely a “slap on the wrist.”⁶⁴

In addition, Congress was concerned that no financial institution in the United States had ever been closed because of a conviction on money laundering charges.⁶⁵

Purpose of the Legislation

The initial legislation that was proposed would have made charter revocation automatic upon conviction of money laundering, but various government and trade witnesses convinced Congress that that would be a bad idea.⁶⁶ They noted, for instance, that a money laundering violation by a financial institution could be triggered by a single, low-level, employee, that the loss of a rural bank could bring about economic hardships for the community and that prosecutors might be inclined to only bring charges against a bank in the most serious of cases if they knew that a conviction would result in a death knell for the bank.⁶⁷ On the other hand, there was little controversy with the more or less automatic removal of individuals from the banking industry upon conviction of money laundering.⁶⁸ The resulting legislation, thus, addressed the removal of individuals convicted of money laundering, but the provision concerning revocation of bank charters did not pass until 1992, as part of the “Annunzio-Wylie Anti-Money Laundering Act.”

The 1990 legislation also attempted to increase the dollar amount for civil money penalties for negligent violations from \$500 to \$5,000 where the institution was found to have engaged in a pattern and practice of negligent violations.⁶⁹ However, this provision, too, was not passed until 1992, as part of the “Annunzio-Wylie Anti-Money Laundering Act.”

Last, while it was the 1984 legislation that provided for the payment of awards in connection with a recovery of a civil or criminal fine or forfeiture, there was lengthy testimony in 1989 concerning the benefits of awards.⁷⁰ In spite of the obvious benefits, it was pointed out that the provision for granting awards in 1984 had never been funded.⁷¹ Consequently, while some awards had been given out⁷² — primarily by Customs through its forfeiture fund⁷³ — the 1984 provision had not been actively used. There was also some discussion about eliminating the 25% or \$150,000 cap on the amount of awards, as well as providing for a minimum award amount,⁷⁴ but, ultimately, there were no legislative changes enacted with regard to rewards for information leading to money laundering convictions. There were, however, some legislative changes for reward provisions for other financial crimes.

Provisions of the Act

- § 2502 – Prohibition on control of or participation in depository institution by certain convicted persons.
 - Amended 12 U.S.C. § 1829(a) to basically prohibit anyone convicted of money laundering from owning or from serving as an officer, director or employee of an insured financial institution except with the permission of the FDIC. For certain crimes, including 18 U.S.C. § 1956, the prohibition was for a minimum of 10 years, unless a lesser amount was requested by the FDIC and was agreed to by the sentencing court.
- § 2504 – Increasing bank fraud and embezzlement penalties.
 - Amended various criminal provisions to increase criminal sentences for various bank-related crimes, such as bank fraud and embezzlement, from 20 years to 30 years.
- § 2569 – Financial Institution Information Award Fund.
 - Provided for a special fund for 18 U.S.C. § 3059A to pay awards relating to various financial crimes, not including money laundering. The appropriated amount for this fund was \$5 million. This provision, however, was repealed on 11/2/02.
- § 2586 – Rewards for information leading to recoveries, civil penalties, or prosecutions.
 - Amended legislation enacted in 1989 (Pub. L. 101-73), 12 U.S.C. § 1831k(a), by striking the requirement that the recovery exceed \$50,000 before an award was permitted, thus allowing awards for the recovery of a criminal fine, restitution or civil

penalty up to 25% of the recovery, or \$100,000, whichever was less. The rewards were for information that led to various financial crimes, not including money laundering. This legislation is still on the books.

- § 2587 – Reward for information leading to possible prosecutions.
 - This section added 18 U.S.C. § 3059A, which provided for special rewards up to \$50,000 to be paid by the Attorney General in connection with prosecutions under various criminal statutes. However, as noted above, this provision was later repealed.

“The Annunzio-Wylie Anti-Money Laundering Act” (1992)

In 1992, Congress passed the “Annunzio-Wylie Anti-Money Laundering Act.” It focused on some issues that had been previously raised but that were not enacted.⁷⁵ These included the provision giving the agencies the authority for charter revocation and deposit insurance termination upon conviction of a money laundering offense.⁷⁶ They also included a provision to authorize a civil money penalty of \$500 against financial institutions for negligent BSA violations and a civil money penalty of \$50,000 for any financial institution found to have engaged in a pattern of negligent violations.⁷⁷

In passing the legislation there was also an increasing recognition that money laundering was being conducted through the use of international wires.⁷⁸ As noted by the ABA in its Congressional testimony:

Where the transaction involves currency or other monetary instruments, the banks have voluminous requirements and have driven away money launderers. Therefore, wire transactions have emerged as the primary method by which high volume launderers ply their trade because of their use in the international community.⁷⁹

The growing concern was highlighted by the fact that a criminal prosecution — dubbed Operation Polar Cap — (which was uncovered and brought to light by Wells Fargo, Security Pacific and Bank of America) was the largest money laundering case to date and involved the use of wire transfers to assist in the laundering of \$1.2 billion.⁸⁰ As the result of the case, 684 bank accounts, which contained \$350 million in cocaine proceeds, were frozen.⁸¹ Consequently, there was a perceived need to obtain and record more information with respect to the issuance of wire funds transfers.⁸²

In addition, the “Annunzio-Wylie Anti-Money Laundering Act” added the suspicious activity reporting requirement⁸³ and associated safe harbor. The safe harbor surrounding this reporting was a major recognition of the importance of, and the need to protect and encourage, industry cooperation in the effort to combat the full range of financial crimes.

The Act also provided Treasury with the authority to issue regulations requiring financial institutions to establish and maintain an anti-money laundering program that included what we now refer to as the “four pillars”: development of internal policies, procedures and controls; designation of a compliance officer; on-going training; and an independent audit. The “four pillars” compliance program requirement became the cornerstone for banks to build a tailored set of internal controls and to institute a self-identifying and self-correcting compliance process.

The Act also added structuring and attempt provisions to the verification requirements pertaining to the purchase of certain monetary instruments and to the CMIR filing requirements. In addition, it prohibited illegal money transmitting businesses.

Last, in order to enhance cooperation and coordination between the government and the private sector, Congress added a provision into the Act requiring the establishment of a “Bank Secrecy Act

Advisory Group consisting of representatives of the Department of the Treasury, the Department of Justice, and the Office of National Drug Control Policy and other interested persons and financial institutions subject to the [BSA] reporting requirements ...”⁸⁴ The formation of the group, known by its acronym, BSAAG, was announced on 5/24/93⁸⁵ and conducted its first meeting on 4/8/94.⁸⁶ The creation of this group arose from a long-standing ABA recommendation⁸⁷ and was designed to “serve as a think tank for ideas on how both Government and financial institutions should exercise their responsibilities for prevention and detection of money laundering.”⁸⁸ Currently, the BSAAG includes as its members FinCEN, the federal bank regulatory agencies and many prominent BSA experts from the private sector, as well as the above-listed entities.

Provisions of the Act

- § 1512 – Prohibition of illegal money transmitting businesses.
 - Added 18 U.S.C. § 1960 prohibiting the conduct, control, management, etc. of an illegal money transmitting business.
- § 1515 – Provisions relating to recordkeeping with respect to certain funds transfers.
 - Amended 12 U.S.C. § 1829b(b) to give the Secretary and the Federal Reserve joint authority to issue regulations setting forth certain recordkeeping rules for domestic and international wires.
- § 1517 – Suspicious transactions and financial institution anti-money laundering programs.
 - Added subsection “(g) Reporting of Suspicious Transactions” to 31 U.S.C. § 5314.
 - Added subsection “(h) Anti-money laundering programs” to 31 U.S.C. § 5314, authorizing the Secretary of the Treasury to issue regulations requiring financial institutions to establish anti-money laundering programs that included the “four pillars”: development of internal policies, procedures and controls; designation of a compliance officer; on-going training; and an independent audit.
- § 1518 – International Money Laundering Reports.
 - Added, among other things, a requirement that Treasury file a report on the major money laundering countries.
- § 1525 – Structuring transactions to evade CMIR requirements.
 - Amended 31 U.S.C. § 5324 to:
 - Add an attempt provision to the requirement relating to the filing of CMIRs.
 - Add a structuring provision to the requirement relating to the filing of CMIRs.
- § 1529 – Awards in money laundering cases.
 - Added to 28 U.S.C. § 524(c)(1)(B) a reward provision relating to money laundering convictions under 18 U.S.C. §§ 1956 and 1957 and 31 U.S.C. §§ 5313 and 5324.
- § 1535 – Amendments to the Bank Secrecy Act.
 - Amended 31 U.S.C. § 5324, to include in the coverage of that section’s attempt and structuring prohibitions the requirements contained in 31 U.S.C. § 5325 – pertaining to the identification required to purchase certain monetary instruments.
- § 1561 – Civil Money Penalties.
 - Added authority under 31 U.S.C. § 5321 for the Secretary to:
 - Issue a civil money penalty of \$500 against a financial institution for a negligent violation of BSA.

- Issue a civil penalty of \$50,000 against a financial institution for a pattern of negligent violations of BSA.
- § 1562 – Authority to order depository institutions to obtain copies of CTRs.
 - Amended 31 U.S.C. § 5326 to grant authority to the Secretary to order depository institutions to obtain copies of CTRs from customers that are unregulated businesses.
- § 1564 – Advisory Group on Reporting Requirements.
 - Required the Secretary to establish a “Bank Secrecy Act Advisory Group” to advise the Secretary on how to modify reporting requirements to enhance law enforcement and to inform the private sector on the uses of reported information.

“The Money Laundering Suppression Act of 1994”

One of the driving forces of the 1994 Act was the effort to simplify and streamline the CTR filing process and to “reduce the number and size of [CTR] reports consistent with effective law enforcement.”⁸⁹ At that time, there was concern about the overwhelming volume and burden posed by CTR filing requirement. Even the Department of the Treasury, in its Congressional testimony, noted that the system for CTR exemptions had become “cumbersome and difficult to understand”⁹⁰ and that the “current system [did] not provide banks with strong incentives to exempt customers.”⁹¹ The general consensus was that it was often simpler to file a CTR than to try to obtain an exemption.⁹² In addition, there was industry-wide concern about the risks of using the exemption process because there had been two instances in the previous year where banks had been assessed large penalties due to errors involving exemptions.⁹³

The problem from Congress’ perspective was that many CTR filings had no enforcement value, were expensive to file and were impeding law enforcement by cluttering up Treasury’s CTR database:⁹⁴

Last year banks filed more than 1,000 ... CTRs on each of the 657 largest businesses in the United States. These filings accounted for 2.3 million CTRs, or 25 percent of all CTRs filed. Those CTRs, filed on reputable and well-known retailers, supermarkets, and others, have no enforcement value.⁹⁵

As stated by Congressman Gonzalez, who was then head of the House Banking Committee:

Today there are about 50 million CTRs on file and the General Accounting Office estimates that the data base will grow to 92 million by 1996. According to the General Accounting Office, 30-40 percent of the 9 million CTRs being filed annually could be exempted because they do not add to law enforcement efforts to detect money launderers. For example, ... banks routinely filed about 80,000 CTRs valued at \$9 billion on the currency transactions of one retail business with numerous stores throughout the county⁹⁶

To counter this ever-growing number of unnecessary CTR filings, Congress directed the Secretary of the Treasury to “seek to reduce, within a reasonable period of time, the number of reports required to be filed in the aggregate by depository institutions ... by at least 30 percent of the number filed during [1993].”⁹⁷ As the result of this legislative directive, Treasury implemented the mandatory and discretionary exemption process we have today, but the volume of CTRs has nevertheless steadily increased. At the end of fiscal year 2007, the annual volume of CTRs reported was over 16 million and rising,⁹⁸ as compared to the 9 million forms back in 1993.⁹⁹

With regard to CTR filings, Congress included in the 1994 legislation a limited safe harbor provision.

Specifically, the provision sought to protect depository institutions from being assessed a penalty for the failure to file a CTR with respect to an exempt customer, unless the institution knowingly filed false or incomplete information or had reason to believe that the exemption was granted or the transaction was engaged in without meeting the criteria for an exemption.¹⁰⁰

To further simplify and reduce the burden with regard to CTR filings, the legislation called upon the Secretary to publish at least annually a list of all entities whose transactions were exempt from CTR filing.¹⁰¹ As the Congressional report explained:

First, the bill requires that the Treasury develop and publish a list of persons on whom no CTRs need to be filed. This will enable banks to know without a doubt that they need not file any CTRs on supermarket X or retailer Y.¹⁰²

Even though both the ABA and the IBAA strongly supported this provision and noted that it would assist in reducing the volume of CTR filings,¹⁰³ it was never implemented.

Other provisions of the 1994 Act were designed to reduce the burden of the BSA requirements and to improve the efficiency of the overall process. Specifically, there was a provision in the Act calling for each regulatory agency to review and enhance its training and examination procedures to improve the identification of money laundering schemes in banks.¹⁰⁴ According to the Congressional Report accompanying the legislation, the purpose of this provision was to “focus supervisory efforts on identifying money laundering schemes rather than checking whether institutions are filling out forms correctly.”¹⁰⁵ This obviously was designed to expedite — while also improving — the examination process.

Another aspect of the legislation designed to enhance the BSA regime was the Act’s directive to Treasury and law enforcement to provide the bank regulatory agencies, on a regular basis, with information regarding money laundering schemes and activities.¹⁰⁶ Although there was considerable testimony for the need for more feedback to also be given to the banking industry,¹⁰⁷ the legislatively mandated feedback did not go that far.

In order to improve the functioning of the BSA enforcement process and to counteract the lack of timely processing of cases at that time by the Office of Financial Enforcement (the precursor to FinCEN), Congress added a provision to the 1994 Act that the Secretary of the Treasury delegate civil money penalty authority to the federal bank regulatory agencies, “subject to any term or condition imposed by the Secretary.”¹⁰⁸ However, in spite of assurance from Treasury that it agreed with this provision and that “serious consideration should be given to delegation of penalty assessment not only to the Federal banking agencies, but also to IRS for the non-bank financial institutions and to Customs for CMIR violators’,”¹⁰⁹ no delegation ever occurred.

Congress also included provisions in the Act for the registration of Money Service Businesses (MSBs) triggered primarily by a finding that MSBs were “particularly vulnerable to money laundering schemes ... due to the fact that the level of BSA compliance is generally lower at money transmitters than at depository institutions ...”¹¹⁰ Along with the registration requirement, there was a “sense of Congress” incorporated into the Act to the effect that States should license and regulate MSBs.¹¹¹

To enhance the authority of law enforcement in bringing BSA-related prosecutions, Congress used the 1994 legislation as a means to overturn an adverse decision in a then-recent Supreme Court case entitled *Ratzlaf v. United States*, 510 U.S. 135 (1994). In that case, an individual owed a gambling debt to a casino in the amount of \$160,000 that he wanted to repay. When he attempted to repay \$100,000 of the debt in cash, he was informed that the casino would have a reporting

obligation. He indicated that he would not like to have any report filed. Accordingly, the casino made a limousine and a casino employee available to him so he could visit a number of banks where he purchased a series of cashiers checks, each in the amount of \$9,500. According to the facts of the case, the individual knew that the banks had the same CTR reporting requirements as the casino. However, in spite of the obvious structuring to avoid CTR filing requirements,¹¹² the Court held that “the government must prove not only that the defendant acted with the purpose of evading a financial institution’s reporting requirement under 31 U.S.C. § 5324, but also that the defendant knew his or her conduct to be unlawful.”¹¹³ Congress corrected this result by amending 31 U.S.C. § 5324:

This [amendment] restores the clear Congressional intent that a defendant need only have the intent to evade the reporting requirement as the sufficient mens rea for the offense. The prosecution would need to prove that there was an intent to evade the reporting requirement, but would not need to prove that the defendant knew that structuring was illegal.¹¹⁴

Provisions of the Act

General Summary of the Act

The 1994 Act covered the following:

- Directed the Secretary to try to reduce CTR filings by 30% in order to reduce the reporting burden and to improve the manageability of the Federal currency transaction report database.
- Directed the Federal banking agencies to enhance training and examination procedures to improve the ability of bank examiners to identify money laundering schemes.
- Expanded BSA reporting requirements for negotiable instruments drawn on foreign banks.
- Directed Treasury to delegate to the Federal banking agencies the authority to assess civil money penalties on depository institutions in money laundering cases.
- Expressed the sense of Congress that the States should develop and adopt uniform laws to license and regulate businesses – other than depository institutions – which provide check cashing and other money transmittal services.
- Established registration requirements for businesses which provide check cashing and other money transmittal services.
- Amended the criminal provision relating to structuring to delete requirement for proving willfulness.

In-depth Summary of the Act

- § 402 – Reform of CTR exemption requirements to reduce number and size of reports consistent with effective law enforcement.
 - Amended 31 U.S.C. § 5313 to:
 - Require the Secretary to institute certain mandatory exemptions from the CTR reporting requirements.
 - Authorize the Secretary to exempt certain qualified businesses.
 - › Qualified businesses were defined as those which:
 - » Maintain a transaction account;
 - » Frequently engage in transactions subject to reporting; and

- » Meet other criteria the Secretary establishes.
- › Regulations issued by the Secretary were to require:
 - » An annual review by the financial institution of the exemptions.
 - » Submission to the Secretary by the financial institutions each year of designated information about the exemptions.
- Protect depository institutions from penalties for the failure of the institutions to file a CTR with respect to a customer for whom an exemption was given unless the institution:
 - › Knowingly filed false or incomplete information; or
 - › Had reason to believe that the exemption was granted or the transaction engaged in did not meet the criteria for exemption.
- Require the Secretary to publish at least annually a list of all entities whose transactions were exempt from CTR filing.
- Direct the Secretary, in implementing mandatory and discretionary exemptions, to seek to reduce, within a reasonable period of time, the filing of CTRs by at least 30% of the number filed in 1993.
- § 403 – Single designee for reporting of suspicious transactions.
 - Amended 31 U.S.C. § 5318(g) to require the Secretary to designate a single officer of agency to receive and disseminate SARs.
- § 404 – Improvement of identification of money laundering schemes.
 - Required each agency to review and enhance training and examination procedures to improve the identification of money laundering schemes involving depository institutions.
 - Required Treasury and each law enforcement agency to provide, on a regular basis, information regarding money laundering schemes and activities involving depository institutions to each banking agency in order to enhance each agency's ability to examine for and identify money laundering activity.
- § 405 – Negotiable instruments drawn on foreign banks subject to recordkeeping and reporting requirements.
 - Amended the definition of negotiable instruments contained in 31 U.S.C. § 5312(a)(3) by adding "checks, drafts, notes, money orders, and other similar instruments which are drawn on or by a foreign financial institution and are not in bearer form."
- § 406 – CMPs by Federal banking agencies.
 - Directed the Secretary to delegate cmp assessment authority to the Federal banking agencies "subject to any term or condition imposed by the Secretary," including a limitation on the amount of the penalty.
- § 407 – Uniform State licensing and regulation of check cashing, currency exchange, and money transmitting businesses.
 - Set forth the sense of Congress that States should establish uniform laws for licensing and regulating such businesses.
 - Directed the Secretary to conduct a study of the progress made by the States in developing and enacting a model statute which requires such licensing.

- § 408 – Registration of money transmitting businesses to promote effective law enforcement.
 - Set forth Congress' finding that money transmitting businesses are subject to BSA, but are largely unregulated and are frequently used in sophisticated schemes to launder money.
 - Required all money transmitting businesses to register with Treasury.
- § 409 – Uniform federal regulation of casinos.
 - Added to 31 U.S.C. § 5312(a)(2) casinos with annual revenue of more than \$1mm.
- § 410 – Authority to grant exemptions to States with effective regulation and enforcement.
 - Amended 31 U.S.C. § 5318(a) by adding transactions subject to requirements substantially similar to those imposed under this subchapter.
- § 411 – Criminal and civil penalties for structuring domestic and international transactions.
 - Amended 31 U.S.C. § 5324 to provide for criminal penalties without a requirement for a showing of willfulness.
 - Made technical amendments relating to civil penalties.
- § 412 – GAO study of cashiers' checks.
 - Directed the GAO to conduct a study of the vulnerability of cashiers' checks in money laundering schemes.
 - Directed the GAO to make recommendations regarding additional recordkeeping requirements and/or additional regulations.

“Money Laundering and Financial Crimes Strategy Act of 1998”

The “Money Laundering and Financial Crimes Strategy Act of 1998” concentrated on accomplishing two things, both related to strategy:

- Requiring Treasury to develop and implement a national strategy to combat money laundering and related financial crimes.
- Authorizing Treasury to designate selected localities, financial systems, industries and financial institutions as high-risk entities eligible for increased Federal assistance to combat money laundering and related financial crimes.

National Strategy

The first purpose of the Act was to require the President, acting through the Secretary of the Treasury, to develop a national strategy for combating money laundering and related financial crimes starting in 1989 and continuing through 2003.¹¹⁵ As set forth in the Congressional Report accompanying the legislation:

The legislation authorizes the Secretary of the Treasury, in consultation with the Attorney General, to promulgate a National Money Laundering Strategy, to be submitted to Congress on an annual basis. The Strategy would, among other things, (1) establish comprehensive, research-based goals, objectives and priorities for reducing money laundering; (2) coordinate efforts by Federal government agencies, state and local law enforcement authorities, and the private financial sector to prevent money laundering and related

financial crimes; (3) describe operational initiatives to improve detection of money laundering and related financial crimes; ... (7) identify any additional information needed to ascertain trends in financial crimes¹¹⁶

In developing this annual strategy, the Secretary was required to consult with the Attorney General, the bank regulatory agencies and “representatives of the private financial services sector, to the extent appropriate.”¹¹⁷ In fact, as part of the development of the National Strategy, the Secretary was specifically directed to consider the “[e]nhancement of the role of the private financial sector in [the] prevention [of money laundering and related financial crimes]”:¹¹⁸

The enhancement of partnerships between the private financial sector and law enforcement agencies with regard to the prevention and detection of money laundering and related financial crimes, including providing incentives to strengthen internal controls and to adopt on an industrywide basis more effective policies.¹¹⁹

High-risk Money Laundering and Related Financial Crime Areas

As a complement to the National Strategy, the legislation sought to build on the success of “Geographic Targeting Orders,” specifically the GTO used in the New York City area in 1996-1997, and to apply that concept on a national basis.¹²⁰ As set forth by the Congressional Report accompanying the legislation:

Because money laundering and related financial crimes are frequently concentrated in particular geographic areas, financial systems, industry sectors, or financial institutions, and because these crimes have a destructive influence on many local communities, the legislation authorizes the Secretary of the Treasury, in consultation with the Attorney General, to designate certain regions as high risk money laundering areas.¹²¹

In designating these high-risk areas, the legislation envisioned that more Federal attention and financial support would be provided to them:

The legislation provides for the designation of high risk money laundering areas for the purpose of providing these localities with increased Federal assistance and access to information relating to money laundering and other financial crimes.¹²²

In-depth Summary of the Act

- Added 31 U.S.C. § 5341. National money laundering and related financial crimes strategy.
 - Directed the President, acting through the Secretary, to develop a national money laundering and related financial crimes strategy that considered:
 - Goals, objectives and priorities – Comprehensive, research-based goals, objectives and priorities for reducing money laundering and related financial crime.
 - Prevention – Coordination of regulatory and other efforts to prevent the exploitation of financial systems in the U.S. for money laundering and related financial crimes.
 - Detection and prosecution initiatives – A description of operational initiatives to improve detection and prosecution of money laundering and related financial crimes.
 - Enhancement of the role of the private financial sector – The enhancement of partnerships between the private financial sector and law enforcement agencies with regard to the prevention and detection of money laundering and related financial crimes, including providing incentives to strengthen internal controls and to adopt on an industrywide basis more effective policies.

- Enhancement of intergovernmental cooperation.
- Designated areas – A description of geographical areas designated as “high risk money laundering and related financial crime areas.”
- Consultations – Required consultations with various Federal and State entities, as well as “representatives of the private financial services sector, to the extent appropriate.”
- Added 31 U.S.C. § 5342. High-risk money laundering and related financial crime areas.
 - Set forth the following two Congressional findings:
 - “Money laundering and related financial crimes frequently appear to be concentrated in particular geographic areas, financial systems, industry sectors, or financial institutions.”
 - “While the Secretary has the responsibility to act with regard to Federal offenses which are being committed in a particular locality or are directed at a single institution, because modern financial systems and institutions are interconnected to a degree which was not possible until recently, money laundering and other related financial crimes are likely to have local, State, national and international effects wherever they are committed.”
 - Set forth the following “Element of National Strategy”: “The designation of certain areas as areas in which money laundering and related financial crimes are extensive or present a substantial risk.”
 - Set forth the procedures for the designation of “any geographical area, industry, sector, or institution in the United States in which money laundering and related financial crimes are extensive or present a substantial risk as a ‘high-risk money laundering and related financial crimes area’.”
 - Set forth a list of 16 factors for the Secretary to consider in the designation of high-risk money laundering and related financial crime areas.
- Added 31 U.S.C. § 5351. Establishment of financial crime-free communities support program.
 - Directed the Secretary, in consultation with the Attorney General, to “establish a program to support local law enforcement efforts in the development and implementation of a program for the detection, prevention, and suppression of money laundering and related financial crimes.”
- Added 31 U.S.C. § 5352. Program authorization.
 - Set forth the criteria for a State, local law enforcement agency or prosecutor to be eligible to receive an initial grant or a renewal grant under this Act.

“USA PATRIOT Act”

The USA PATRIOT Act¹²³ was passed shortly after the tragic events of September 11, 2001. However, many of the provisions of Title III of the Act, entitled the “International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001,” were in draft form way before 9/11.¹²⁴ For instance, a very detailed draft of the provisions which became § 311¹²⁵ of the USA PATRIOT Act was set forth by Treasury in a Congressional hearing in March, 2000 in proposed legislation that was entitled “The International Counter Money Laundering Act of 2000.”¹²⁶ In addition, issues pertaining to private banking,¹²⁷ correspondent banking,¹²⁸ offshore banks,¹²⁹ shell banks,¹³⁰ concentration

accounts¹³¹ and bulk cash smuggling¹³² — all of which made it into the USA PATRIOT Act — were all addressed continuously prior to 2001.

Further, it should be noted that there were eight Congressional Reports and 41 Congressional hearings associated with the USA PATRIOT Act. However, only four reports and seven hearings post dated 9/11/01. With regard to the reports associated with the anti-money laundering and counter-terrorist financing provisions of the Act, two of the three reports were issued after 9/11, while only one of the 19 hearings was held after 9/11.

Consequently, it is clear that the USA PATRIOT Act was responding not only to the events of 9/11, but also to various legislative proposals that were already before Congress in one form or the other. The two, however, dovetailed. In the hearing held shortly after 9/11, Congress focused on the fact that terrorists in general could gain access to the American banking system through the use of the correspondent banking system. As Senator Levin said at the start of that hearing: “we know already that the September 11 terrorists have used our banks, our financial institutions, to accomplish their ends.”¹³³ In addition, there was a specific focus on Osama bin Laden, noting that he owned or partly owned a bank in Sudan and that, in spite of the OFAC blocking of Sudan, money was able to be transferred from that bank to the U.S. through the indirect use of correspondent accounts.¹³⁴ There was also concern cited in this hearing about shell banks and offshore banks, as well as the need to have service of process authority over foreign correspondent banks.¹³⁵ As mentioned above, all of these issues were addressed in the USA PATRIOT Act.

Some of the more important sections of Title III of the Act included:

- § 311 – Authorized the Secretary of the Treasury to take certain special measures against foreign jurisdictions, banks, accounts or transactions found to be of primary money laundering concern. There was an extensive consulting process for all phases of this section.
- § 312 – Required certain due diligence and enhanced due diligence with regard to foreign correspondent accounts and large private banking accounts provided to non-U.S. persons.
- § 313 – Prohibited the establishment or maintenance of correspondent accounts for a foreign shell bank and required reasonable steps to be taken to ensure that other foreign correspondent accounts are not used indirectly by shell banks.
- § 314 – Authorized the Secretary of the Treasury to promulgate regulations for the sharing of information between the government and financial institutions and between financial institutions.
- § 319 – Authorized both the Secretary of the Treasury and the Attorney General to issue subpoenas to any foreign bank that maintains a correspondent account in the U.S. if the subpoena relates to records pertaining to the account, even if the records are held overseas. Required U.S. banks to maintain records identifying owners and agent of foreign banks maintaining a correspondent bank account at the U.S. bank.
- § 325 – Authorized the Secretary of the Treasury to issue regulations to ensure that concentration accounts are not used in a way that would “prevent association of the identity of an individual customer with the movement of funds of which the customer is the direct or beneficial owner.”
- § 326 – Authorized the Secretary of the Treasury to issue regulations setting forth minimum standards for financial institutions in identifying and verifying the identity of new account holders.

- § 352 – Directed the Secretary to issue regulations requiring the establishment of a BSA program by financial institutions not already under such a requirement.
- § 362 – Directed the Secretary to establish a “highly secure network” that allows financial institutions to file BSA reports and that provides financial institutions with alerts regarding suspicious activities.
- § 363 – Granted the Secretary the authority to issue civil BSA penalties under 31 U.S.C. § 5321(a) in an amount of two times the amount of the transaction, but not more than \$1 million, against any financial institution that violates orders issued pursuant to § 311 of the USA PATRIOT Act. Amended 31 U.S.C. § 5322 by authorizing a criminal penalty in an amount of two times the amount of the transaction, but not more than \$1 million, for violations of orders issued pursuant to § 311 or regulations issued pursuant to §§ 312 or 313 of the USA PATRIOT Act.
- § 371 – Set forth the Congressional finding that bulk cash smuggling was being used to avoid traditional financial institutions and CTR filings and that the penalties for violating currency reporting requirements were “insufficient to provide a deterrent to the laundering of criminal proceeds.” Accordingly, this provision added 31 U.S.C. § 5332 to provide for forfeiture of smuggled cash and 5 years imprisonment.¹³⁶

“Intelligence Reform and Terrorism Prevention Act of 2004”

The Intelligence Reform and Terrorism Prevention Act of 2004 was passed on 12/17/04 and, among other things, granted funding to FinCEN for technological improvements, including the creating of a new web-based system for accessing FinCEN data called “BSA Direct.” It also authorized FinCEN to promulgate new regulations pertaining to cross-border wires.

Provisions of the Act

Subtitle B. Money Laundering and Terrorist Financing.

- § 6101. Additional Authorization for FinCEN.
 - Granted \$16.5 million to FinCEN for BSA Direct – For technological improvements to provide authorized law enforcement and financial regulatory agencies with web-based access to FinCEN data, to fully develop and implement the highly secure network required under section 362 of Public Law 107-56 [the USA PATRIOT Act] to expedite the filing of, and to reduce the filing costs for, financial institution reports, including suspicious activity reports, collected by FinCEN.
 - Granted FinCEN another \$19 million for other IT improvements.

Subtitle D. Additional Enforcement Tools.

- §6302. Reporting of certain cross-border transmittal of funds.
 - Authorized Secretary to prescribe new regulations requiring financial institutions to report to FinCEN certain cross-border electronic transmittals of funds that the Secretary determined were necessary to conduct the anti-money laundering and counter-terrorist financing efforts.
 - Required the Secretary, before prescribing the regulations, to submit a feasibility report to Congress that:

- Identified the information in cross-border electronic transmittals of funds that may be reasonably necessary to identify money laundering and terrorist financing;
 - Outlined the form, content and frequency of the reports to be filed;
 - Identified the technology necessary for FinCEN to receive, analyze and disseminate the information; and
 - Discussed the information security protections required.
- Provided that the Secretary, in developing the feasibility report, may consult with BSAAG.
 - Directed that no regulations could be promulgated before FinCEN certified that it had the necessary technological systems.

“USA PATRIOT Improvement and Reauthorization Act of 2005”

The USA PATRIOT Improvement and Reauthorization Act of 2005 was passed on 3/9/06. Title IV of the Act is known as the “Combating Terrorism Financing Act of 2005” and accomplished the following:

- Increased penalties for terrorist financing from \$10,000 to \$50,000 and from 10 years to 20 years under the International Emergency Economic Powers Act (IEEPA) (50 U.S.C. § 1705).
- Added illegal money transmitters to the coverage of the RICO statute, 18 U.S.C. § 1961.
- Added the Foreign Corrupt Practices Act to the coverage of 18 U.S.C. § 1956(c)(7)(D) as a “Specified Unlawful Activity.”
- Authorized the seizure of assets of persons committing international terrorist acts.
- Amended 18 U.S.C. § 1956(a)(1) to include money laundering through Hawalas as a “financial transaction” covered by the statute.

Endnotes for Appendix C

- 1 1968 – I – 1 – 2; 1970 – IV – 8. (The convention for these types of citations in this Report relates to Appendix B. The Congressional reports and hearings are grouped in Appendix B by the date of the legislation they relate to. The Roman numeral refers to the Congressional report or hearing as numbered in Appendix B. The number at the end refers to the page in the report or hearing.)
- 2 1970 – IV – 8.
- 3 1970 – IV – 311.
- 4 This legislation, Public Law 91-508, is known officially as the “Bank Records and Foreign Transactions Act,” the first two titles of which are entitled: I. Financial Recordkeeping and II. Currency and Foreign Transactions Reporting Act, and, collectively, are known informally as the Bank Secrecy Act.
- 5 1990 – VII – 295.
- 6 1970 – I – 10. See also, 1970 – IV – 7.
- 7 1970 – I – 11; 1970 – II – 5.
- 8 1970 – I – 16.
- 9 1970 – I – 12.
- 10 1970 – I – 12; 1970 – II – 2; 1970 – IV – 27, 91.
- 11 1970 – I – 12.
- 12 1970 – II – 2.
- 13 1970 – IV – 19, 96.
- 14 1970 – I – 11, 15; 1970 – II – 4, 5, 7; 1970 – IV – 7, 55; 1970 – V – 57. The Congressional theme of minimizing the burden for financial institutions continued throughout the history of the legislative Acts comprising BSA. See, 1986 – I – 26; 1986 – VI – 880; 1986 – VII – 198; 1988 – II – 6-7; 1990 – I – 31.
- 15 1970 – I – 18.
- 16 1970 – I – 23.
- 17 1970 – I – 10.
- 18 1970 – I – 11.
- 19 1970 – V – 57.
- 20 1970 – II – 5.
- 21 1970 – IV – 16; 1970 – V – 181.
- 22 1970 – II – 4.
- 23 It should be noted that the requirement for currency transaction reports stems back to 1959 under the authority of the Trading with the Enemy Act (31 U.S.C. § 427). 1970 – I – 11; 1970 – II – 6. See 12 C.F.R. Part 102 (1972). However, “these reports [had] limited usefulness because of uncertainty as to when they [were] required and the extent of the banks’ responsibilities to report the identity of the person.” 1970 – IV – 61.
- 24 For failure to file CMIRs, the amount of the civil penalty was not to exceed the amount of the transactions. For criminal violations under Title I, chapter 2, that were in furtherance of a Federal felony, the penalty was \$10,000/ 5 years. For criminal violations under Title II, that were in furtherance of other Federal crimes, or involving more than \$100,000 within 12 months, the penalty was \$500,000/ 5 years.
- 25 Customers were identified as those with accounts or authorized to act on an account.
- 26 At the request of Treasury, a statutory limit (as opposed to a regulatory limit) of \$500 was deleted; as was a distinction between domestic and foreign checks as being too difficult to discern.
- 27 “Other financial institutions” were defined as those uninsured banks or uninsured businesses that were engaged in the business of:
 - issuing or redeeming checks, money orders, travelers’ checks or similar instruments;
 - transferring funds domestically or internationally;
 - operating a currency exchange;
 - operating a credit card system; or
 - performing similar functions as specified by the Secretary.
- 28 A suggestion of requiring reports of annual aggregate transactions of either \$10,000 or \$20,000 was deleted as being too difficult to monitor.
- 29 Specifically, 31 U.S.C. §§ 1051-62; 1081-83; 1101-05; 1121-22; 1141-43 were transferred to 31 U.S.C. §§ 5311-22.
- 30 This additional authority was set forth in 31 U.S.C. § 5315.
- 31 31 U.S.C. § 5314.
- 32 1984 – II – 301.
- 33 1984 – II – 301.
- 34 1984 – II – 302.
- 35 1970 – I – 21.
- 36 1984 – II – 302.

- 37 CIS Legislative History Abstract. The continued focus of the BSA legislation was on organized crime and drug traffickers and their use offshore banks in secrecy havens to hide ill-gotten gains. 1984 – II – 303. In fact, the Committee report quoted Senator Roth as noting: “it is these offshore bank secrecy laws that are the glue holding criminal operations together.” 1984 – II – 300.
- 38 1984 – II – 303.
- 39 CIS Legislative History Abstract.
- 40 1986 – X – 81. See also, 1986 – V – 59, 102.
- 41 1986 – VII – 42.
- 42 1986 – VII – 42.
- 43 The criminalization of money laundering was also recommended by the President’s Commission on Organized Crime in its report entitled Interim Report to the President and Attorney General, “The Cash Connection and Organized Crime, Financial Institutions and Money Laundering,” issued 10/84. 1986 – V – 67; 1986 – X – 73, 138.
- 44 1986 – XI – 30.
- 45 1986 – I – 15; 1986 – IV – 10; 1986 – V – 32.
- 46 1986 – VI – 975; 1986 – VII – 1, 25-26; 1986 – X – 65; 1986 – XI – 2, 7, 29, 96.
- 47 1986 – VI – 975.
- 48 1986 – V – 32; 1986 – VI – 205; 1986 – IX – 15.
- 49 1985 – I – 276.
- 50 The authority to issue these regulations was actually set forth in the 1970 Bank Secrecy Act. See § 205 of the 1970 Act. However, it was not until the passage of the Annunzio-Wylie Anti-Money Laundering Act in 1992 that such regulations were specifically called for and subsequently promulgated.
- 51 1986 – I – 14.
- 52 1986 – I – 30; 1986 – VI – 747; 1986 – VII – 20; 1986 – VII – 99.
- 53 1986 – V – 32; 1986 – VII – 2, 107; 1986 – X – 54.
- 54 1988 – II – 7.
- 55 1988 – II – 11.
- 56 1988 – II – 11.
- 57 1988 – III – 48.
- 58 1988 – II – 8.
- 59 1988 – II – 8. A similar provision had been proposed two years before, but did not survive the legislative process. 1988 – II – 8.
- 60 1988 – III – 1. Although the protection of financial institutions had been an implicit underpinning of BSA from the start, this was one of the few times it was clearly articulated. See, 1986 – VII – 1 – where Senator D’Amato stated he wished “to begin a new stage in our fight to cut off this lifeblood and to combat the abuse of our financial system by career criminals who launder the proceeds of their illegal activities through financial institutions in this country and abroad.”
- 61 1988 – III – 1.
- 62 1990 – I – 18.
- 63 1990 – I – 18.
- 64 1990 – IX – 17; 1992 – VIII – 7-9, 145.
- 65 1990 – VIII – 1.
- 66 1990 – I – 25; 1990 – VIII – 2, 14-32.
- 67 1990 – I – 25; 1990 – VIII – 14-15, 24.
- 68 1990 – I – 26; 1990 – III – 3.
- 69 1990 – I – 26, 31.
- 70 Passim, 1990 – VII.
- 71 1990 – VII – 104, 132.
- 72 1990 – VII – 105.
- 73 1990 – VII – 132-33.
- 74 1990 – VII – 175, 310.
- 75 1992 – IX – 1.
- 76 1992 – VIII – 2.
- 77 1992 – III – 36.
- 78 1986 – VI – 790; 1990 – I – 32; 1990 – IV – 181-82;
- 79 1990 – IV – 181-82.
- 80 1990 – I – 21; 1990 – VII – 122, 276; 1990 – IX – 16.
- 81 1990 – IX – 47.
- 82 1990 – I – 21, 32, 63; 1990 – VIII – 99; 1992 – VIII – 129-30; 1992 – IX – 41.
- 83 It should be noted that the requirement to file criminal referrals dates back to the 1970’s. See, 12 C.F.R. § 7.5225 (1975).
- 84 Section 1564 of the Annunzio-Wylie Anti-Money Laundering Act.

- 85 1994 – IV – 103.
- 86 1994 – VII – 3.
- 87 1994 – VII – 82.
- 88 1994 – VII – 3.
- 89 1994 – I – 10.
- 90 1994 – VI – 5; 1994 – I – 14; 1994 – II – 186.
- 91 1994 – I – 14.
- 92 1994 – IV – 111.
- 93 1994 – I – 14; 1994 – II – 186.
- 94 1994 – I – 14; 1994 – VI – 1; 1994 – VII – 1-2, 18.
- 95 1994 – VI – 1.
- 96 1994 – VI – 55.
- 97 1994 Act § 402(b)(1). [Emphasis added.]
- 98 FinCEN 2007 Annual Report.
- 99 1994 – VI – 55.
- 100 1994 – I – 10; Section 402.
- 101 1994 – VI – 2; Section 402(a).
- 102 1994 – VI – 2.
- 103 1994 – VI – 35; 1994 – VI – 84; 1994 – VII – 50-51
- 104 1994 – I – 16.
- 105 1994 – I – 17. As Treasury also noted at the time: “We would agree that currently too much examination time is spent on technical review of BSA compliance.” 1994 – VI – 64.
- 106 1994 – I – 11.
- 107 1994 – VI – 98; 1994 – VII – 54, 73-74, 93; 1994 – VIII – 299.
- 108 1994 – I – 18.
- 109 1994 – II – 191; 1994 – VI – 6; 1994 – VII – 38.
- 110 1994 – I – 19.
- 111 1994 – I – 11, 19.
- 112 The jury specifically found beyond a reasonable doubt that Ratzlaf knew of the financial institutions’ duty to report cash transactions in excess of \$10,000 and that he structured transactions for the specific purpose of evading the reporting requirements.
- 113 1994 – II – 194.
- 114 1994 – II – 194.
- 115 1998 – I – 7, 10.
- 116 1998 – I – 11-12.
- 117 1998 Act, § 5341(d)(16).
- 118 1998 Act, § 5341(b)(4).
- 119 1998 Act, § 5341(b)(4).
- 120 1998 – I – 7-8.
- 121 1998 – I – 12.
- 122 1998 – I – 7.
- 123 USA PATRIOT represents an acronym standing for “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism.”
- 124 2001 – XIX – 10.
- 125 Section 311 authorizes the Secretary of the Treasury to take certain special measures against foreign jurisdictions, institutions, accounts or transactions determined to be of primary money laundering concern.
- 126 2001 – XIII – 7-9.
- 127 2001 – I – 23; 2001 – IV – 67; 2001 – XI – 73, 104.
- 128 2001 – III – 71; 2001 – IV – 2; 2001 – XVI – 1-5, 51, 277-79.
- 129 2001 – IV – 2; 2001 – XVI – 2, 104, 277-79.
- 130 2001 – XVI – 2, 104, 277-79.
- 131 2001 – IX – 73.
- 132 2001 – III – 33, 37; 2001 – IX – 16, 19, 192-93.
- 133 2001 – XIX – 4.
- 134 2001 – XIX – 5-6.
- 135 2001 – XIX – 6, 28.
- 136 This provision was passed in order to override the Supreme Court decision in the case *United States v. Bajakajian*, 524 U.S. 321 (1998), in which the Court held that the forfeiture, under 31 U.S.C. § 5316, of \$357,144 being smuggled out of the U.S. violated the Excessive Fines Clause of the 8th Amendment. 2001 – III – 37; 2001 – IX – 19, 193.