

March 19, 2020

FinCEN Guidance in Response to COVID-19

FinCEN Issues BSA Reporting Guidance

BACKGROUND

On March 16, 2020, the Financial Crimes Enforcement Network (“FinCEN”) issued guidance (the “Guidance”) encouraging financial institutions to communicate concerns related to the timely filing of reports required under the Bank Secrecy Act (“BSA”) and identifying several patterns of fraudulent transactions that have emerged since the onset of the COVID-19 outbreak.¹

A. ONGOING BSA REPORTING REQUIREMENTS

FinCEN’s Guidance requests that financial institutions affected by COVID-19 communicate concerns related to the institution’s ability to file timely reports required under the BSA, including Suspicious Activity Reports and Currency Transaction Reports, to both FinCEN and the institution’s functional regulator, as soon as practicable. Financial institutions that anticipate delays in their ability to file BSA reports should contact FinCEN’s Regulatory Support Section.

The Guidance applies to any “COVID-19 affected financial institution,” but does not define what qualifies as “COVID-19 affected.” It seems likely, however, that financial institutions unable to meet the filing deadlines due to the illness or absence of key employees, delays in the ability to gather information for purposes of reporting, and delays associated with constrained staffing or technological resources should qualify. Financial institutions that believe that the COVID-19 outbreak has hampered their ability to timely file BSA reports should discuss their circumstances when they contact FinCEN.

Finally, the Guidance encourages financial institutions to apprise both FinCEN and their functional regulators of updates as their circumstances evolve.

B. EMERGING FRAUDULENT TRANSACTION TRENDS

The Guidance also flagged several trends with respect to malicious or fraudulent transactions that have emerged since the onset of the COVID-19 outbreak. In addition to the emerging trends listed below, financial institutions are encouraged to review FinCEN's earlier guidance with respect to disaster-related fraud and the relevant typologies including benefits fraud, charities fraud, and cyber-related fraud.² Financial institutions that observe suspicious transactions that could be associated with COVID-19 are encouraged to check the applicable box(es) associated with the typology in the Suspicious Activity Report template and to enter "COVID-19" in Field 2 of the template. The four emerging trends described in the Guidance are:

- **Imposter Scams:** This trend includes bad actors that impersonate government agencies (such as the Centers for Disease Control), international organizations (such as the World Health Organization), or healthcare organizations in order to solicit donations, steal personal information, or distribute malware.
- **Investment Scams:** This trend includes promotions that falsely claim that the products or services of a publicly traded company can prevent, detect or cure the coronavirus or COVID-19.
- **Product Scams:** This trend covers the sale of unapproved or misbranded products that make false health claims pertaining to COVID-19, including by companies that have received public warning letters or statements from the U.S. Federal Trade Commission and the U.S. Food and Drug Administration. The Guidance notes that FinCEN has also received reports relating to the fraudulent marketing of COVID-19 related supplies, including facemasks.
- **Insider Trading:** FinCEN has also received reports of suspected insider trading related to COVID-19.

Financial institutions should remain conscious of these emerging trends as they monitor for suspicious activity and prepare and file their Suspicious Activity Reports.

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ENDNOTES

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- ¹ <https://www.fincen.gov/news/news-releases/financial-crimes-enforcement-network-fincen-encourages-financial-institutions>.
 - ² See *FIN-2017-A007- Advisory to Financial Institutions Regarding Disaster-Related Fraud* (October 31, 2017) available at <https://www.fincen.gov/sites/default/files/advisory/2017-10-31/FinCEN%20Advisory%20FIN-2017-A007-508%20Compliant.pdf>.

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