



news from Washington  
brought to you by



# PAYMENTS REPORT

NEWS FROM WASHINGTON, BROUGHT TO YOU BY NEACH

VOLUME 2018-17

**The Payments Report** is a complimentary monthly newsletter included in your NEACH membership. It covers legislation and regulatory changes being considered by federal government agencies -- providing analysis of pending actions and inside political intelligence, Congressional priority of legislation, and intent of proposed language. Please share this publication with colleagues in your financial institution or ask them to request a copy by sending an email to [info@neach.org](mailto:info@neach.org).

## INSIDE THIS ISSUE

Federal Financial  
Regulators Encourage  
Banks to Share BSA  
Resources  
*page 1*

Visit us online at:  
[www.neach.org](http://www.neach.org)

**Author Information:**  
Craig Saperstein  
Deborah Thoren-Peden  
Pillsbury Winthrop Shaw  
Pittman LLP

## Federal Financial Regulators Encourage Banks to Share BSA Resources

**Overview:** Five federal banking agencies—the OCC, Federal Reserve Board, FDIC, NCUA, and FinCEN—issued a [joint statement](#) (the “Statement”) that provides guidance to financial institutions on using “collaborative arrangements” to share Bank Secrecy Act (“BSA”) resources. The Statement is intended to help these institutions manage their BSA and anti-money laundering (“AML”) obligations more efficiently and cost-effectively, particularly for community banks and smaller, lower-risk institutions.

### BSA/AML Programs and Collaborative Arrangements

Financial institutions are required to develop and maintain BSA/AML compliance programs commensurate with their risk profiles—an undertaking that can be quite expensive for smaller institutions. These programs must include specific measures, such as internal controls to ensure ongoing compliance, independent compliance testing, designating a responsible compliance officer, and training appropriate personnel. Some institutions may find it challenging to locate employees with the requisite BSA/AML expertise to adequately implement these measures and hiring outside professionals to do so can be expensive.

To reduce costs and improve compliance programs, the Statement encourages financial institutions to consider entering into collaborative arrangements with each other that allow them to pool human or technological resources and leverage specialized expertise. The Statement provides three examples of instances when using collaborative arrangements may be beneficial:

- **Sharing internal control functions.** Sharable functions may include developing and managing BSA/AML policies and procedures; implementing and reviewing customer identification and account monitoring procedures; and tailoring risk-based monitoring systems and reports.
- **Swapping personnel to conduct independent testing.** Financial institutions may coordinate in the scoping, planning, and performance of an independent BSA/AML compliance program, which could be carried out at one institution by personnel from the other. Appropriate safeguards would be needed to ensure the confidentiality of sensitive business information and to protect against potential conflicts of interest.
- **Providing training across multiple institutions.** To lower costs, financial institutions could jointly hire a qualified BSA/AML training instructor to cover topics like alert analysis and investigation techniques, alert trends and money laundering methods, and regulatory updates.

## Risks of Collaborative Arrangements

The Statement warns that collaborative arrangements may not be appropriate for all components of BSA/AML compliance. For instance, sharing one BSA officer between financial institutions can raise concerns not only with confidentiality, but also with effectiveness; it may be impossible for one individual to adequately coordinate and monitor multiple institutions' compliance programs at one time.

Moreover, financial institutions must be vigilant in ensuring that such arrangements remain consistent with sound corporate governance principles. Resource sharing considerations will differ depending on an institution's risk profile, size, and legal and compliance requirements. To mitigate these potential risks, the Statement directs financial institutions to:

- Ensure the board of directors provides for suitable oversight of BSA/AML collaborative arrangements in advance;
- Enter into written contractual agreements before sharing BSA/AML resources;
- Require periodic performance reviews and evaluations by management; and
- Reference relevant agency guidance on third-party relationships.

**Outlook:** BSA collaborative arrangements may provide smaller and more community-focused financial institutions with a more feasible way to implement adequate compliance programs. Still, institutions must retain full control over their own programs and be sure that they are fulfilling all of their BSA/AML obligations. According to the agencies, “[u]ltimately, each bank is responsible for ensuring compliance with BSA requirements. Sharing resources in no way relieves a bank of this responsibility.”

Craig Saperstein, a member of NACHA's Government Relations Advisory Group, is an attorney in the Public Policy practice of Pillsbury Winthrop Shaw Pittman LLP in Washington, D.C. In this capacity, he provides legal analysis for clients on legislative and regulatory developments and lobbies congressional and Executive Branch officials on behalf of companies in the payments industry. Deborah Thoren-Peden is a partner and member of the Financial Institutions Team at Pillsbury Winthrop Shaw Pittman LLP. She provides advice to financial institutions, bank and non-bank, and financial services companies. Andrew Caplan is an associate and member of the Financial Institutions Group and the Privacy, Data Security, and Information Use Focus Team at Pillsbury Winthrop Shaw Pittman LLP. He counsels and defends financial institutions, technology companies, and other clients that offer consumer products or services on a range of issues related to credit, payments, data privacy, cybersecurity, and e-commerce. The information contained in this update does not constitute legal advice and no attorney-client relationship is formed based upon the provision thereof.