

Anti-Money Laundering Compliance Frequently Asked Questions and Answers (FAQs)

The implementing regulations for recordkeeping and reporting requirements of the Bank Secrecy Act are codified at Title 31, Part 103 of the Code of Federal Regulations “31 C.F.C. §103”. These regulations are referred to throughout these FAQs and should be consulted for further details regarding these and other BSA compliance questions. The Financial Crimes Enforcement Network (FinCEN) also maintains a web page with FAQs and other helpful information. The address is <http://www.fincen.gov>

Anti-Money Laundering Statutes

Q1.) Are OFAC and BSA procedures inter-related and/or one in the same?

A1.) No. While both OFAC and BSA compliance are essential parts of a successful anti-money laundering program, compliance for each arises from distinct laws and regulations with different requirements. While they are different, some requirements for successful compliance are the same. A credit union must evaluate potential compliance risk due to BSA and OFAC requirements and take appropriate action to reduce this risk. A written policy defining responsibilities and processes for compliance should be established for both OFAC and BSA; these policies can be combined in one anti-money laundering policy, if that works best for a credit union. Every credit union, regardless of services offered, has both BSA and OFAC responsibilities.

OFAC compliance requires credit unions to take appropriate action to block, freeze, or prohibit transactions with persons and countries contained on the list of Specially Designated Nationals and Blocked Persons (SDN). Credit unions must take steps to download or otherwise obtain the SDN list from OFAC on a regular basis. The SDN list may be updated daily or hourly, and credit unions are responsible for having the most frequent list. The SDN list is not the same as the 314a list provided by FinCEN. The OFAC web site, <http://www.treas.gov/offices/enforcement/ofac/> provides helpful information about OFAC regulations.

BSA compliance requires credit unions to track cash transactions and purchases of cash equivalents, such as money orders, and to comply with other recordkeeping and reporting requirements. The forms used most frequently by credit unions to report transactions are the Currency Transaction Report (CTR) and the Suspicious Activity Report (SAR). BSA also requires the verification of member identity and response to the 314a information requests lists provided by FinCEN.

Information requests by FinCEN through the 314a list are part of law enforcement's ongoing efforts to combat terrorism and money laundering. The 314a list is confidential and usually provided every two weeks on Tuesday via fax or posting on FinCEN's secure web site. Occasionally, lists are provided more frequently. After FinCEN's posting of a list, credit unions usually have 10 days to check this list against the member database and provide an appropriate response to FinCEN. Infrequently, FinCEN will set a quick-turn around deadline and a credit union must respond in 3 or 4 days. While FinCEN makes the 314a list available, it is a credit union's responsibility to ensure the list is received. If a list is not received every two weeks (or more frequently), credit unions should investigate non-receipt by contacting FinCEN to inquire about list delivery

or taking other, appropriate action. The periodic 314a list is not the same as the SDN list provided by OFAC.

Independent Testing

Q2.) Who may complete independent testing of BSA compliance for a credit union?

A2.) Any qualified person may perform independent testing for the credit union. Independent testing for BSA compliance can be performed by an outside person, internal staff, or volunteer officials. To be qualified to test for compliance, the person conducting the testing must understand the requirements of BSA and be independent of the credit union's BSA program.

If you are seeking an organization or individual not associated with the credit union to conduct the testing, perform the same type of due diligence used to select the supervisory committee auditor. To make contact with someone able to perform adequate testing, you can read advertisements in trade publications, talk to other credit unions, contact the local league, or ask for a referral from your supervisory committee auditor. Many outside persons will perform this type of testing for a fee.

If you are trying to perform compliance tests internally, staff members not involved in the BSA program, such as internal auditors, or volunteer officials can conduct the tests.

Q3.) My credit union engaged an auditor to independently validate the BSA program as part of the annual audit (to occur within the next 3-6 months), but the credit union has not previously completed an independent validation. Is the credit union in violation of BSA?

A3.) Yes. Section 748.2(c) of NCUA's Rules and Regulations requires independent testing for compliance. Given the circumstances, your credit union has a significant BSA violation. The violation will persist until the auditor completes testing and provides written feedback to the board of directors or their delegate.

Q4.) Where can a credit union get information on how to conduct testing of a BSA compliance program?

A4.) To assist volunteers, NCUA issued the Bank Secrecy Act portion of the Compliance Self-Assessment Guide in October 2003 through Letter to Credit Union 03-CU-16, Bank Secrecy Act Compliance. The enclosures of Letter to Credit Unions 03-CU-16 include a checklist for BSA compliance. This checklist provides an example of the type of review that may be conducted. For large and complex credit unions, further steps may be needed.

Large or mentor credit unions may also be willing to share information about their internal controls and testing methods.

Training

Q5.) Where can credit union personnel obtain information or training regarding BSA, USA Patriot Act, and OFAC compliance?

A5.) Multiple sources of training material are available on the internet. The Bank Secrecy Act is found at Title 31, United States Code, Section 5311. Part 748 of the NCUA Rules and Regulations implements compliance with BSA.

NCUA provides information about the Bank Secrecy Act on the NCUA web site, <http://www.ncua.gov>. From the NCUA home page, select Resources for Credit Unions and Bank Secrecy Act. The AIREs questionnaires used by NCUA examiners to review BSA and OFAC are also available on the NCUA web site; from the NCUA home page, <http://www.ncua.gov>, select Resources for Credit Unions and AIREs.

FinCEN also provides information about BSA on its web site, <http://www.fincen.gov> under the Regulatory and Publication options. The text of the regulations that FinCEN issued to implement the Bank Secrecy Act is published in Title 31, Section 103, of the US Code of Federal Regulations.

OFAC provides information about the SDN list and OFAC statutes on its web site, <http://www.treas.gov/offices/enforcement/ofac/>

Training and information may also be available from the local league, national credit union organizations, and state regulators. In addition, various vendors offer training material for purchase.

Q6.) What is appropriate BSA training for credit union personnel?

A6.) Every credit union should perform at least annual training on BSA. Most credit unions will perform quarterly or monthly training. It is important that your training program educate employees about types of money laundering schemes and recordkeeping and reporting requirements, such as the completion of CTRs and SARs. Training should cover both the requirements of BSA and your credit union's policies and procedures used to comply with these requirements.

The type, breadth, and frequency of appropriate BSA training will vary between credit unions. To determine the kind of training that is appropriate for your credit union, you should evaluate the frequency of staff turnover, kinds of transactions handled by your credit union, types of products offered to your membership, and whether your credit union is located in a high risk money laundering and related financial crimes area (HIFCA) or high intensity drug trafficking area (HIDTA). Current HIFCAs include Chicago, San Francisco, New York/New Jersey, San Juan/Puerto Rico, Los Angeles, and a "Southwest Border systems HIFCA", designed to address cross-border currency smuggling in Texas/Arizona to and from Mexico. A list of HIDTAs is maintained at the following web site: <http://www.whitehousedrugpolicy.gov/hidta/index.html>

In addition to BSA, a credit union should also conduct regular training on OFAC. Employees should understand the purpose of the SDN list and how to evaluate whether a transaction will be subject to OFAC requirements.

Q7.) My credit union does not deal in cash. Can I get an exemption from BSA compliance? If not, what topics should my written BSA policy cover?

A7.) There are no exemptions from BSA compliance available for credit unions. Small credit unions, credit unions with limited services, and credit unions that do not accept or distribute cash must comply with applicable provisions of the Bank Secrecy Act and the implementing regulations.

As a credit union, your written Bank Secrecy Act policy must address the four required elements from Part 748 of the NCUA Rules and Regulations. These elements include:

- a system of internal controls to ensure ongoing compliance,
- independent testing,
- an individual responsible for coordinating and monitoring day to day compliance, and
- training for appropriate personnel.

Within the internal controls section of your policy, you should describe your process for responding to requests from FinCEN for information. These requests are often referred to as 314a requests, as the request process was established by Section 314a of the USA Patriot Act. You must also have a written policy for your Customer Identification Program (CIP). It can be incorporated into the internal controls section of your BSA policy. The CIP policy must address acceptable methods for verifying member identity and your process for providing the required CIP disclosure.

You are also required to file Suspicious Activity Reports as needed. Your policy should address when filing is appropriate and the confidential nature of SARs. You must also comply with the five year record retention requirements of BSA. Many of these requirements are referred to in the AIREs BSA Questionnaire available on the NCUA web site.

In addition, your written policy should address how your credit union will handle a situation where you inadvertently receive cash, such as a currency deposit by mail or payment of a loan. If appropriate, you would need to file a Currency Transaction Report.

Customer Identification Programs (CIP)

Q8.) Do I have to verify the identity of a minor when opening an account for the minor? If so, how can I do it?

A8.) Yes, when an account is opened by a minor, you must verify the identity of the minor. However, the applicable regulation defines a customer in part as “an individual who opens a new account for: (1) an individual who lacks legal capacity, such as a minor...” (31 CFR 103.121(a)(3)). If an adult or other person opens an account for a minor, you would only need to verify the identity of the person opening the account, not the minor.

Verification of a minor's identity can be done through documentary methods, if the minor has acceptable documentary evidence of identity, such as a work or driver's permit. If not, you could rely upon some form of non-documentary evidence. Examples of this type of evidence include verification of identity by an existing member; using public databases; calling the member at a phone number obtained independently from the

member, etc. Your CIP policy should address what types of non-documentary evidence of identity you will utilize, and the situations when you will accept such evidence.

Q9.) *We require two forms of identification upon opening an account. What must we do if two different addresses are presented by the same applicant?*

A9.) You must resolve any existing inconsistency and request other verifying information which would allow you to determine the current address of the applicant. An example might be a current utility or telephone bill in the applicant's name. Your Customer Identification Program notice should be general enough to permit asking for additional identifying information.

Recordkeeping

Q10.) *What information should be recorded in a monetary log? Do credit unions need to make a hand written monetary instrument log if the computer system does not maintain this information?*

A10.) By "monetary log", you mean a record to document the purchase in currency and issuance of a credit union check, cashier's check, money order, or traveler's check in amounts of \$3,000 to \$10,000 inclusive.

If the purchaser has a credit union account, you must verify that the accountholder is your depositor or verify the individual's identity. The monetary log must also capture the following data:

- Purchaser's name
- Date of purchase
- Type of instruments bought
- Serial number(s) of each instrument bought
- Dollar amount of each instrument purchased

If the purchaser does not have an account with your credit union, you must determine whether the individual qualifies for credit union membership and, if qualified, open an account and verify the identity of the person. If the purchaser is not qualified for credit union membership, the transaction should not be conducted.

Multiple purchases during one business day totaling \$3,000 or more are treated as one purchase. Similarly, purchases of different types of instruments totaling \$3,000 or more are treated as one purchase.

Your record of these transactions can be in either a manual or electronic format. The record must be kept for five years. If your computer system has the ability to generate a report that contains the required information, you do not need to maintain a separate log. However, you must be able to generate this report for any currency transaction for the purchase of credit union check, cashier's check, money order, or traveler's check. And, you must be able to aggregate these currency transactions to determine if a member or account made more than \$10,000 in transactions during a day.

Q11.) When must multiple currency transactions be aggregated and treated as a single transaction?

A11.) In the case of financial institutions, multiple currency transactions shall be treated as a single transaction if the financial institution has knowledge that they are by or on behalf of any person and result in either cash in or cash out totaling more than \$10,000 during any one business day. Deposits made at night or over a weekend or holiday shall be treated as if received on the next business day following the deposit.

Example: A member places one deposit bag into the night depository at a credit union on Friday night, two bags on Saturday and two on Sunday. Then on Monday morning, a teller processes all five deposit bags and deposit slips at the same time, but posts each individual deposit separately.

Because these deposits occurred at night and over the weekend they should be treated as a single transaction for reporting purposes, having been received on Monday, the following business day.

Example: Two employees representing the same small business in town each make a \$7,000 currency deposit to the company's account during the same business day. The deposits are made at different branches of the credit union. Because both deposits are on behalf of the same company and made at the same credit union, they are subject to aggregation. A CTR must be filed if the credit union is aware of both transactions.

Example: A member makes a \$4,000 deposit at Branch "1", a \$4,000 deposit at branch "2" and a \$3,000 deposit through an ATM machine. A CTR must be filed if the credit union is aware of the three transactions.

Q12.) My credit union would like to avoid filing CTRs by making a policy not to accept currency transactions of more than \$10,000; is that allowable? Can a credit union ever have a policy not to accept currency transactions of more than \$10,000?

A12.) Yes. A financial institution is not prohibited by the relevant BSA statutes or regulations from setting a limit on the dollar amount of transactions it accepts. The decision to limit the dollar amount of transactions is a business decision each institution may make. Limiting transactions to \$10,000 or less, even if done for the purpose of avoiding BSA reporting requirements, does not subject a credit union to charges of structuring as prohibited by 31 U.S.C. § 5324. There are, however, certain additional risks and burdens to the institution because of this policy.

While such a policy may seem to reduce the burden of filing Currency Transaction Reports (CTRs), it also has the effect of increasing the burden to monitor member activity to guard against structuring. The credit union remains subject to all of the requirements contained in Title 31 of the U.S. Code, including the requirement to report suspicious transactions. The credit union cannot turn a blind eye to potential structuring by its members simply by limiting the amount of cash transactions.

For example, a cash deposit of \$7,000 on one day by a member, followed by a \$4,000 deposit the next day by the same member may be sufficient to trigger an obligation to file a Suspicious Activity Report (SAR) for structuring. If the credit union has more than one

office where cash transactions occur, its cash limitation policy may encourage members to conduct transactions at more than one office. Thus, the credit union arguably has a greater duty to analyze transactions at all such offices and make certain they are properly aggregated for the purpose of determining if a CTR or SAR is required. Indeed the credit union may be facilitating structuring if it fails to adequately analyze member transactions and file SARs for suspected structuring.

Such a policy would also require the credit union to have a BSA training program for its employees that is sufficient for the additional risks resulting from its policy. This training program should be more detailed and comprehensive than the BSA training typically given to credit unions without a similar transaction limitation. Back office employees must be especially vigilant to monitor transactions occurring on subsequent days, as well as from multiple branches, in order to detect suspicious activity that would trigger the requirement to file a SAR.

Q13.) What entities can be exempted from CTR filings? When should we closely investigate a business before awarding a Phase II exemption?

A13.) The regulations that specify eligibility for exempt status are found at 31 C.F.R. § 103.22(d). Generally entities seeking an exemption from the requirements to file a CTR fall into three categories: (1) phase I; (2) phase II; and (3) non-eligible companies.

Phase I entities that may be eligible for exemptions include:

1. Credit unions, banks, listed companies on the stock exchange and their subsidiaries.
2. A department or agency of the United States, of any state, or of any political subdivision of any state.
3. Any entity established under the laws of the United States, of any state, or of any political subdivision of any state, or under an interstate compact between two or more states, that exercises governmental authority on behalf of the United States or any such state or political subdivision.

Credit unions must file a one-time Designation of Exempt Person form (TD F 90-22.53) to exempt a "Phase I" entity from currency transaction reporting. The exemption of a "Phase I" entity covers all transactions in currency with the exempted entity, not only transactions in currency conducted through an account. The form must be filed with the Internal Revenue Service (IRS) within 30 days after the first transaction in currency that the credit union wishes to exempt. The information supporting each designation of an exempt person must be reviewed and verified by the credit union at least once per year.

Phase II entities that may be eligible for exemptions include non-listed businesses and payroll customers. Non-listed businesses include companies that are not listed on the stock exchange and their subsidiaries.

In order to be eligible for an exemption a non-listed business must meet each of the following requirements:

1. Commercial entity;
2. Maintained an account for at least 12 months;
3. Frequently has currency transactions in excess of \$10,000;
4. Is incorporated or registered as a business in the US or a State;

And, the credit union must meet each of the following requirements:

5. Must report exemption within 30 days of the first exempted transaction; and
6. Must review status of non-listed business annually and revoke if no longer qualified.

Credit unions must make a biennial filing of Designation of Exempt Person Form (TD F 90-22.53) to exempt a non-listed business or payroll customer from currency transaction reporting. Biennial renewals must include a statement certifying that the credit union's system of monitoring the transactions in currency of an exempt person for suspicious activity has been applied as necessary but at least annually to the account of the exempt person to whom the biennial renewal applies. This means that the credit union must certify that it has monitored the account in question for suspicious activity. The credit union's obligation to monitor and report suspicious transactions on the account remains regardless of whether there is an exemption in place. Thus, for example, a sharp increase from one year to the next in the gross total of currency transactions made by an exempt customer may trigger the obligations of the credit union to file a suspicious activity report.

FinCEN no longer permits certain ineligible businesses be exempt from CTR reporting requirements.

Examples of companies or businesses that are generally not eligible for an exemption include those engaged in:

1. purchase or sale of motor vehicles of any kind;
2. purchase or sale of vessels, aircraft, farm equipment, or mobile homes;
3. the practice of law, accounting, or medicine;
4. Auctioneers;
5. Charter businesses;
6. Gaming businesses;
7. Real estate brokerage;
8. investment advisory or investment banking services;
9. title insurance and real estate closing; and
10. trade union activities.

Q14.) When a credit union requires the assistance of its corporate credit union to wire transfer funds, which party has responsibility for record keeping?

A14.) Both the credit union, as the originator of the wire transfer, and the corporate credit union, as an intermediary financial institution, have record keeping responsibilities per 31 C.F.R. §103.33(e) of the regulations implementing the Bank Secrecy Act.

The credit union as originator must maintain records of all wire transfers in the amount of \$3,000 or more with the following exceptions:

(a) Funds transfers where the originator and the beneficiary are any of the following:

- (1) a bank, thrift, or credit union;
- (2) a wholly-owned domestic subsidiary of a bank, thrift, or credit union chartered in the United States;
- (3) a broker or dealer in securities;
- (4) a wholly-owned domestic subsidiary of a broker or dealer in securities;
- (5) a futures commission merchant or an introducing broker in commodities;

- (6) a wholly-owned domestic subsidiary of a futures commission merchant or introducing broker in commodities;
- (7) the United States;
- (8) a state or local government; or
- (9) a federal, state or local government agency or instrumentality; and

(b) funds transfers where both the originator and beneficiary are the same person and the originator's bank, thrift, or credit union, and the beneficiary's bank, thrift, or credit union are the same.

The credit union originating the wire transfer must retain the original, a microfilm copy, or some other copy or electronic record of the following information:

- Name and address of the originator of the payment order;
- Amount of the payment order;
- Execution date of the payment order;
- Any payment instructions received from the originator;
- Identity of the beneficiary's financial institution; and
- As many of the following items as are received:
 - Name and address of the beneficiary
 - Account number of the beneficiary
 - Any other specific identifier of the beneficiary

The corporate credit union, when acting as an intermediary financial institution, must retain the original or a microfilm, other copy, or electronic record of the payment order for each payment order it accepts.

In addition, before completing the transaction and transmitting funds, each credit union has a responsibility to check the OFAC SDN list and to ensure there is no match.

Q15.) When is a credit union required to file a Suspicious Activity Report (SAR)?

A15.) In general, federally-insured credit unions must file a SAR whenever there is a known or suspected violation of a federal law, a pattern of criminal violations, or a suspicious activity committed or attempted against the credit union or involving a transaction or transactions through the credit union meeting the following criteria:

- Insider abuse involving any amount;
- Violations aggregating \$5,000 or more where a suspect can be identified;
- Violations aggregating \$25,000 or more regardless of a potential suspect; and
- Transactions aggregating \$5,000 or more that involve potential money laundering or violations of the Bank Secrecy Act

A credit union must file a SAR for any transaction conducted or attempted by, at, or through the credit union and aggregating \$5,000 or more in funds or other assets, if the credit union knows, suspects, or has reason to suspect that the transaction:

- May involve potential money laundering;
- Involves funds derived from illegal activities or is intended or conducted to hide or disguise funds or assets derived from illegal activities;
- Is designed to evade the Bank Secrecy Act or its implementing regulations; and

- Has no business or apparent lawful purpose, or is not the sort in which the member would normally be expected to engage, and the credit union knows of no reasonable explanation for the transaction after examining the available facts.

Per Section 748.1(c) of NCUA's Rules and Regulations and 31 C.F.R. §103.18 , federally insured credit unions must file the SAR (NCUA Form 2362) with FinCEN within 30 days after discovery of a suspicious activity. If no suspect can be identified, the time period for filing the SAR may be extended to 60 days. In all cases, the SAR must be filed within 60 calendar days following the detection of a reportable transaction.

Q16.) Are credit unions required to file Form 4790, Report of International Currency or Monetary Instruments (CMIR)?

A16.) 31 C.F.R. §103.23 establishes filing requirements for FinCEN Form 105 (formerly Customs Form 4790). Generally credit unions will not be required to file this form.

A person (member) must file whenever he / she:

- Physically transports, mails, or ships;
- Causes to be physically transported, mailed, or shipped;
- Attempts to physically transport, mail or ship; or
- Attempts to cause to be physically transported, mailed or shipped

currency or other monetary instruments in an aggregate amount exceeding \$10,000 at one time from the United States to any place outside the United States, or into the United States from any place outside the United States. A person is deemed to have caused such transportation, mailing or shipping when he aids, abets, counsels, commands, procures, or requests it to be done by a financial institution or any other person.

While 31 C.F.R. §103.23(c) provides exceptions from filing, the exceptions generally do not apply to member transactions. In summary, the credit union is not required to file FinCEN Form 105, CMIR for transfers of funds, through normal credit union operations, which do not involve the physical transportation of currency or monetary instruments.

Enforcing the Bank Secrecy Act

Q17.) Who is responsible for BSA enforcement in both federal and state chartered credit unions?

A17.) Both FinCEN and NCUA have enforcement responsibility.

Under Section 206 of the Federal Credit Union Act, NCUA has authority to ensure compliance with all laws and regulations including the Bank Secrecy Act. FinCEN administers the Bank Secrecy Act, but Bank Secrecy Act examination authority is delegated to NCUA for insured credit unions. While examination authority is delegated, FinCEN retains independent authority to take enforcement actions against credit unions for violations of the Bank Secrecy Act.

In federally insured credit unions, NCUA enforces compliance with the Bank Secrecy Act. Through agreement with NCUA, state supervisory authorities may take BSA

enforcement action in federally insured state chartered credit unions. BSA compliance is a condition of federal insurance.

In non-federally insured credit unions, FinCEN is responsible for BSA enforcement; state supervisory authorities and the Internal Revenue Service examine and refer BSA matters to FinCEN for enforcement.

Q18.) How long does a credit union have to resolve BSA deficiencies once identified by the regulator?

A18.) When NCUA identifies BSA deficiencies at a credit union, the examiner-in-charge will work with credit union management to establish mutually agreeable time frames and expectations for resolution of the deficiencies. When possible, BSA deficiencies should be corrected immediately, before conclusion of an examination.

If immediate correction is not possible, credit union management should be prepared to take necessary action and resolve BSA deficiencies within less than 90 days. Credit unions that are unable to resolve BSA deficiencies within 90 days, or the timeframe established during the examination, will face administrative action. This action could include, but may not be limited to, cease and desist orders and civil money penalties.

NCUA recognizes that some situations, such as the audit of historical transactions and filing of delinquent currency transaction reports for an extended period, may require more than 90 days to correct. In these rare cases, NCUA will expect to see measurable and significant progress in the correction of deficiencies within each 90 day period, as documented in the written agreement established during the examination process.

Q19.) What are the possible penalties if my credit union does not comply with the Bank Secrecy Act or USA Patriot Act?

A19.) There are a wide range of possible penalties for non-compliance. The penalty for a violation will depend on the facts involved.

For example, incomplete or inaccurate CTRs can bring fines of \$500 each. Your credit union could face fines of \$10,000 if a required CTR is not filed within 15 days of the transaction, with further fines of \$10,000 for each day a required report is not filed. A pattern of negligent violations is subject to a fine of up to \$50,000, and your credit union may also face forfeiture of the funds involved.

In addition, intentional violation of the BSA or USA Patriot Act can mean suspension or permanent removal of institution affiliated individuals. Conviction of an intentional violation of the Bank Secrecy or USA Patriot Act can bring a civil fine of between \$25,000 and \$100,000, and criminal penalties of fines up to \$500,000 and up to 10 years imprisonment.

A detailed listing of possible civil and criminal penalties may be found at 31 C.F.R. §103.57 and 31 C.F.R. §103.59. In addition to these penalties, a credit union could face significant damage to its reputation if a violation of BSA or USA Patriot Act became public knowledge.