

Bank Secrecy Act and OFAC Training

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Bank Secrecy Act

The Bank Secrecy Act (BSA) requires all financial institutions, casinos, and certain other businesses to:

- Monitor customer behavior
- File reports on transactions that meet certain dollar amounts
 - Maintain records of certain transactions The Currency Transaction Report (CTR), which records cash transactions that exceed \$10,000.
 - The Suspicious Activity Report (SAR), which records any known or suspected federal violation of federal law.
- BSA aids law enforcement by uncovering criminal activities such as money laundering, drug trafficking, tax fraud, and possible terrorist financing.

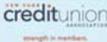
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BSA includes:

- Money Laundering Control Act
- Anti-Drug Abuse Act
- Currency and Foreign Transactions Reporting Act
- Title III of the USA PATRIOT Act

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Bank Secrecy Act Program

- Credit unions must have a written board approved BSA program that includes:
 - BSA compliance officer appointed by the board
 - System of internal controls to ensure compliance
 - Independent testing
 - On-going staff training
 - Annual Board of Director training

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Money Laundering

- Potentially Suspicious Activity that May Indicate Money Laundering:
 - Customers Who Provide Insufficient or Suspicious Information
 - Efforts to Avoid Reporting or Recordkeeping Requirement
 - Funds Transfers
 - Automated Clearing House Transactions

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Money Laundering

- Activity Inconsistent with the Customer's Business
- Other Suspicious Customer Activity
- Changes in Bank-to-Bank Transactions

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Examples

- A customer uses unusual or suspicious identification documents that cannot be readily verified
- A customer's home or business telephone is disconnected
- A customer makes frequent or large transactions and has no record of past or present employment experience
- A customer or group tries to persuade a bank employee not to file required reports or maintain required records
- A customer is reluctant to furnish identification when purchasing negotiable instruments in recordable amounts

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Examples

- A business or customer asks to be exempted from reporting or recordkeeping requirements
- Many funds transfers are sent in large, round dollar, hundred dollar, or thousand dollar amounts
- Funds transfer activity is unexplained, repetitive, or shows unusual patterns
- The currency transaction patterns of a business show a sudden change inconsistent with normal activities
- A customer frequently exchanges small-dollar denominations for large-dollar denominations

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Risk Assessment

- In writing
- Approved by the Board

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Risk Assessment

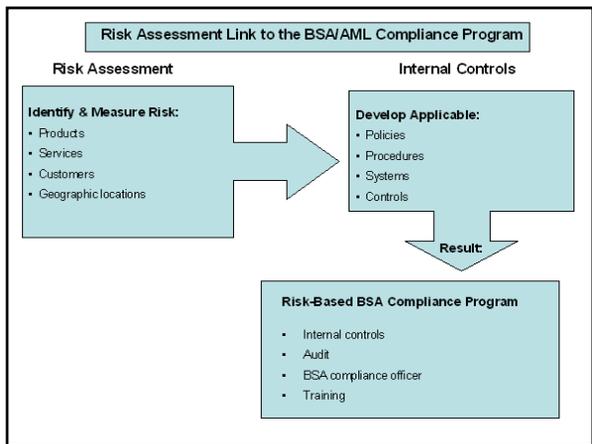
- High areas of risk
 - Electronic funds payment services (stored value cards, ACH, third party payment processors, ATM)
 - Electronic banking
 - Monetary instruments

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Risk Assessment

- Geographic Locations
 - High Intensity Drug Trafficking Areas (HIDTAs)
 - Albany, Bronx, Clinton, Erie, Franklin, Jefferson, Kings, Monroe, Nassau, New York, Onondaga, Orange, Queens, Richmond, St. Lawrence, Suffolk, and Westchester Counties
 - High Intensity Financial Crimes Areas (HIFCAs)
 - New York State - All Counties

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Forms

- CTR (Form 104)
 - Deposit, Withdrawal or Exchange of currency in excess of \$10,000 on a business day (aggregate weekends, ATM and night deposit transactions)
 - Must be filed 15 days from date of transaction
 - Must be filed electronically
 - Exempt designation
 - Some members may qualify for exemption
 - CTR not required in those instances

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Review of Exemptions

- The credit union must maintain appropriate documentation of all CTR exemptions that are granted and it must review the granted exemptions on an annual basis to make sure that they are still appropriate.
- Under the new CTR exemption rule, the biennial renewal requirement for Phase II exemptions (non-listed businesses and payroll customers) has been removed and credit unions are no longer required to record and report a change of control over a Phase II exempt person. A copy of this form is available at your local IRS forms office or via BSA Direct E-filing at <http://bsaeifiling.fincen.treas.gov/index.jsp>

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Forms

- SAR (Form TD F 90-22.47)
 - Transactions of \$5,000 or greater involving money laundering or violations of the BSA
 - Known or suspected criminal violations aggregating \$5,000 or more where a suspect can be identified
 - Known or suspected criminal violations aggregating \$25,000 or more whether or not a potential suspect can be identified

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Filing the SAR

- Must be completed and sent to the IRS Detroit Computing Center within 30 calendar days after discovery
- Additional 30 days are given to identify a suspect, if necessary
- No attachments should be sent with the SAR
- Must be filed electronically

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SAR

- Document everything!
 - Document your decision-making process, whether you file an SAR or not
 - Maintain a copy of the SAR and supporting documentation for 5 years
 - Be ready to respond to law enforcement requests should they occur

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Reasons to File a SAR

- BSA structuring
- Check fraud
- Computer intrusion
- Credit/debit card fraud
- Embezzlement
- Identity theft
- Mortgage loan fraud
- Terrorist financing
- Wire transfer fraud

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SAR Filing Notification to the Board

- Amendment to Part 748 of NCUA's Rules and Regulations
- Requires that the board be notified promptly of SAR filings
- If a board member is a suspect then that individual must not be notified but the remaining board members must be notified
- No particular format is required

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SAR Confidentiality

- Credit unions are not to disclose the SAR or any information revealing the existence of a SAR to parties other than those authorized to receive this information such as appropriate law enforcement, regulators, etc. FinCEN notes that it was important to clarify the scope of the confidentiality provision due to the potentially serious consequences of an unauthorized disclosure.
- Civil penalties up to \$1,000 per day for each day of non-compliance
- Criminal penalties \$250,000 and/or imprisonment not to exceed 5 years

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Wire Transfers

- For wire transfers in amounts of \$3,000 or more, credit unions are required to obtain and retain the following information relating to the payment order at the time the credit union accepts the payment order:
 - The name and address of the originator
 - The amount of the payment order
 - The execution date of the payment order
 - Any payment instructions received from the originator

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Wire Transfers

- The identity of the beneficiary's financial institution
- As many of the following items, with regard to the beneficiary, as are received with the payment order:
 - The name and address of the beneficiary
 - The account number of the beneficiary
 - Any other specific identifier of the beneficiary

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Monetary Instruments Filing Requirements

- When a member purchases a monetary instrument, with cash in amounts between \$3,000 and \$10,000, the credit union needs to record certain information
- Previously required a "chronological log." The "log" is no longer required, as long as the credit union obtains and retains the required information

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Monetary Instruments Filing Requirements

- Examples of monetary instruments include:
 - Teller's check
 - Cashier's check
 - Traveler's check
 - Money orders

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Monetary Instruments

- The information required to be recorded includes:
 - Name
 - Date of purchase
 - Type of instrument
 - Serial number of instrument
 - The dollar amount
 - Verify Identity

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Monetary Instruments

- **Cash** purchases of monetary instruments that exceed \$10,000 require a CTR
- **Non-cash** purchases, such as a withdrawal from shares, are not included

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Monetary Instruments

- Credit unions may have a policy requiring members to deposit the cash prior to purchasing the monetary instruments, however the credit union is still required to obtain and retain the required information.

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The USA PATRIOT Act

- Customer/Member Identification Program (MIP)
- Sections 314(a) and (b): Information Sharing

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Basic Requirements of MIP

- Verify the identity of any person seeking to open a new account
- All information used to verify the person's identity must be recorded and maintained

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Who is a "customer" for MIP purposes?

- Each person that opens a new account
 - Each person named on a joint account is considered a "customer" and must be verified
- Entities that are not legal persons (club, business, or estate)
 - Verify the identity of the personal representative
- Corporations
- For individuals who lack legal capacity (such as minors)
 - Verify the identity of the legal guardian
 - Verify the identity of the next of kin

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Who is not a “customer” for MIP purposes?

- Persons with an existing account, provided the credit union has a reasonable belief that it knows the member’s true identity
- Signatories on accounts (authorized signers)
- Financial institutions
- Government agencies

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Identification Verification

- At a minimum, the following information must be collected before a potential member opens an account:
 - Name
 - Address (No PO Box)
 - Date of Birth (for individuals)
 - Identification Number

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Address Requirements

- For Individuals
 - Must obtain a residential or business street address
- For Individuals Without a Residential or Business Street Address
 - May accept an Army Post Office (APO), Fleet Post Office (FPO) box number, and residential or business street address of the next of kin or of another contact individual
- For corporations, partnerships, or trusts
 - Must obtain the principal place of business, local office, or other physical location

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Identification Number Requirements

- U.S. persons must have a taxpayer identification number (such as a social security number)
- Non-U.S. persons must have one or more of the following:
 - a taxpayer identification number
 - passport number and country of issuance
 - alien identification card number
 - number and country of issuance of any other government issued document evidencing nationality or residence and bearing a photograph with a similar safeguard

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Documentary Verification

- The MIP must contain procedures describing when the credit union will verify identity through documents and setting forth the documents it will accept as identification
 - Individuals
 - Unexpired Gov't issued identification evidencing nationality or residence, should bear a photo (i.e., driver's license or passport)
 - Corporations, Partnerships, Trusts
 - Documents showing existence of entity, (i.e., certified articles of incorporation, gov't issued business license, partnership agreement or trust instrument)

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Non-Documentary Verification Methods

- Where the individual is unable to present unexpired government-issued ID
- Where the credit union is not familiar with documents presented
- Where the account is not opened in person
- Where the type of account being opened increases the risk that the credit union will not be able to identify through documents

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Documentary vs. Non-Documentary Methods

<ul style="list-style-type: none"> • Documentary <ul style="list-style-type: none"> – Driver's License – Passport – Matricula Consular – Certified Articles of Incorporation – Partnership Agreement – Trust Instrument – Business License 	<ul style="list-style-type: none"> • Non-documentary <ul style="list-style-type: none"> – Contact Member – Bank Statement – Consumer Report Chexsystems/Telecheck – Financial Statement
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Lack of Verification

- MIP should address the following:
 - When the credit union should not open an account
 - The terms under which the member may use an account while identity is still being verified
 - When the credit union should close the account after attempts to verify the member's identity have failed (the final rule does not have direct specifications for when to close an account; instead the discretion rests with the credit union)
 - When the information received rises to the level of filing a Suspicious Activity Report (SAR)

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Record Retention

- A description (copy not required) of any document relied upon to verify the member's identity must be maintained. The description should include the following:
 - Type of document
 - Identification number contained in the document
 - Place of issuance
 - Date of issuance
 - Expiration date
 - Description of any substantive discrepancy discovered

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Notes About Record Retention

- Credit unions can use electronic records to satisfy the retention requirements of MIP
- Records reproduced electronically must be:
 - Accessible within a “reasonable period of time”
 - Accurate

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Member Notice

- ✓ “**ADEQUATE NOTICE**” must be provided to a member before requesting any identification information
- ✓ The notice must be given in a manner “**reasonably designed**” to ensure that the member is able to view or receive the notice before opening an account
- ✓ The notice can be distributed as a lobby poster, electronically, or on account applications

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Member Due Diligence

- This is becoming a more and more important piece of MIP
- Effective due diligence requires a credit union to obtain additional information about certain types of members beyond the CIP requirements
- Credit union should obtain information (at account opening) that will enable the credit union to predict the normal and expected activity on a particular account

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Member Due Diligence

- Due diligence policies aid in the detection of unusual or suspicious activity
- The type and degree of information sought will vary based on risk presented by the particular member, products/services sought and the geographic location of the account

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Member Due Diligence

- For higher risk accounts, a credit union might consider collecting the following information:
 - Purpose of the account
 - Financial statements
 - Financial references
 - Occupation or type of business

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Independent Testing, BSA Officer Skills and Training

- Is the credit union's independent testing adequate for the size and complexity of the institution?
- Independent testing may be done internally or externally; if done internally, must ensure that person(s) performing testing are not involved with CU's BSA program
- Does the BSA officer have appropriate knowledge, resources and authority?
- Is training adequate for the size and complexity of the institution?

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**SECTION 314 –
Sharing Information**

314(a)

- Information Sharing Between Financial Institutions and the Federal Government

314(b)

- Information Sharing Between Financial Institutions

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314(a) Information Requests

- Credit union must have a contact person to receive requests from FinCEN
- Requests for information sent every 2 weeks
- Credit union has 2 weeks to search records
- Accounts maintained over last 12 months, transactions over the last 6 months
- Do not reply if there is no match
- Must maintain evidence of compliance
- Cannot disclose FinCEN request
- Report matches to FinCEN

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314(b) Information Sharing

- Credit union can apply to share information with other financial institution for the sole purpose of detecting and reporting terrorist activity or money laundering
- Annual notice filed with FinCEN
- Verify that the other institution is also on list prior to sharing

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May 2018

Elements of Customer Due Diligence:

- Identifying & verifying the identity of your customers.
- Identifying & verifying the identity of beneficial owners with 25% or more equity interest of the legal entity customers.
- Understanding nature & purpose of customer relationships.*
- Conducting ongoing monitoring to maintain and update customer information & to identify & report suspicious transactions.*

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BSA Beneficial Ownership Rule -

- At the time a new account is opened for a legal entity, financial institutions are required to obtain a certification from the individual opening the account on behalf of the legal entity, identifying the beneficial owner(s) of the entity.
- FinCEN has provided a sample certification form in Appendix A of the new rule that may be used for this purpose. Alternatively, a different form or format (paper or electronic) to obtain the same information required in sample certification, as long as the individual still certifies the accuracy of the information to the best of their knowledge.
- Can rely on the information supplied by the individual certifying the identity of the beneficial owners provided there is no knowledge of facts that would cause it to be questioned.

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OFAC

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OFAC

- Division of the US Treasury
- The Office of Foreign Assets Control imposes economic sanctions against hostile targets
- Administers and enforces economic and trade sanctions against targeted countries and their agents, terrorism sponsoring agencies and organizations, and international narcotics traffickers

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OFAC Compliance Program

- Credit unions must have an effective, written OFAC compliance program.
- Program must reflect the credit union's OFAC risk profile.

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Risk Assessment

- When to run members
- Which parties should be run
 - Beneficiaries
 - Guarantors
 - Signatories
 - Power of Attorney

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Risk Assessment

- What types of transactions may require an OFAC comparison each time
 - International funds transfers
 - Nonresident alien accounts
 - Foreign member accounts
 - Cross-border ACH transactions
 - Transactional electronic banking
 - Payable through accounts

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Risk Assessment

- Which parties to the transaction should be run?
 - Issuing financial institution
 - Payee
 - Endorser
 - Maker

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Internal Controls

- Address false hits
- How **close name** findings are handled in high risk transactions
- Ensure new members are checked at opening
- Ensure existing members are checked based on risk profile

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Internal Controls

- Credit union should maintain records verifying checks
- Ensure adequate controls over third-parties

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OFAC Reporting

- If a match is detected, the CU must call the OFAC Compliance Hotline at: 800-540-6322
- There is a resource center at the US Dept of Treasury <https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/directions.aspx>
- The CU will be instructed to either:
 - Process the transaction
 - Block the transaction
 - Provide additional information
- CU must report blocked accounts within 10 business days. In addition, the CU is required to submit an annual report of any blocked property it is holding as of June 30 by September 30th

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OFAC Reporting

- Matching names against the OFAC list is separate and apart from matching gov't list(s) under the Member Identification Program or any other Bank Secrecy Act requirement
- CUs must retain all OFAC related records for 5 years

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Miscellaneous

- Credit union should have a designated individual responsible for OFAC compliance
- Credit union should have adequate training for employees. Training should be appropriate for employee responsibilities.

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Thank you!!

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