







What does the Bank Secrecy Act Include?

- 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 of BSA compliance
 - On-going staff training
 - Member Identification Program

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Bank Secrecy Act Compliance Officer

- Board-designated BSA compliance officer must be fully knowledgeable about the BSA and all related regulations as well as understand the credit union's products, services, members and geographic location(s).
- Responsible for coordinating and monitoring day-to-day compliance
- Manages all aspects of the program
- Must have sufficient authority and resources to perform duties
- Must regularly apprise the senior management and Board on BSA compliance issues

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What is Money Laundering?

- Money Laundering is the concealment of the origins of illegally obtained money, typically by means of legitimate businesses (i.e. making "dirty" money appear "clean").
- Generally, it involves three steps:
 - Placement;
 - Layering; **and**
 - Integration

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Money Laundering Red Flags

- Avoiding Recordkeeping and Reporting Requirements
 - Member asks about record-keeping or reporting requirements
 - Member discourages employee from filing required reports or complying with recordkeeping requirements
 - Member reluctant to proceed with cash transaction after being told it must be reported
- Suspicious Customer Identification Behavior
 - Member uses unusual or suspicious identification documents, or refuses to produce originals for verification
 - A business member is reluctant to provide information about the nature and purpose of its business, expected account activity, or the names of its officers and directors

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Money Laundering Red Flags: Continued

- Suspicious Cash Transactions
 - Member regularly uses ATMs to make several deposits below the reporting threshold
 - Member comes in with another member and they go to different tellers to conduct currency transactions under the reporting threshold
 - Member opens different accounts under different names, and then makes several cash deposits under the reporting threshold
 - Member deposits cash into several accounts in amounts below the reporting threshold and subsequently transfers the funds into one account and wire transfers them
 - Member attempts to take back a portion of a cash deposit that exceeds the reporting threshold after being told a CTR must be filed

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Currency Transaction Report (CTR)

- A Currency Transaction Report (CTR) must be filed with the Financial Crimes Enforcement Network (FinCEN) for deposits, withdrawals or exchanges of currency in excess of \$10,000 during a business day
- Do not aggregate credits and debits together
- Must be filed 15 days from date of transaction
- Must be filed electronically with FinCEN

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CTR Exemptions

- The Money Laundering Suppression Act of 1994 (MLSA) established a two-phase exemption process.
- Under **Phase I** exemptions, transactions in currency by banks, governmental departments or agencies, and listed public companies and their subsidiaries may be exempt from reporting.
- Under **Phase II** exemptions, transactions in currency by smaller businesses that meet specific criteria laid out in FinCEN's regulations may be exempted from reporting.

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CTR Exemptions

Type of Customer	Transaction Frequency	Waiting Period	Intelligence Activity	File SOEP Report	Annual Review
Phase I					
Banks operating in the U.S.	N/A	None	N/A	No	No
Federal, state, local, or inter-state governmental departments, agencies, or authorities	N/A	None	N/A	No	No
Entities listed on the major national stock exchanges	N/A	None	N/A	Yes	Yes
Subsidiaries of bank listed on the major national stock exchanges	N/A	None	N/A	Yes	Yes
Phase II					
New listed businesses	Five or more transactions per year	Two months, or less after state-based analysis	No more than 50% of gross revenues derived from intelligence activity	Yes	Yes
Repeat Customers	Five or more transactions per year	Two months, or less after state-based analysis	N/A	Yes	Yes

Source: FinCEN Guidance on Determining Eligibility for Exemption from Currency Transaction Reporting Requirements

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Suspicious Activity Report (SAR)

- A Suspicious Activity Report (SAR) is a document that financial institutions must file with the Financial Crimes Enforcement Network (FinCEN) whenever there is a suspected case of money laundering or fraud.
- Must be completed and filed within 30 calendar days after discovery
- Must be filed electronically with FinCEN
- Part 748 of NCUA's Rules and Regulations require that the board be notified promptly of SAR filings.

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SAR Confidentiality

- Credit unions are **not** to disclose the SAR filing 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 \$100,000 per violation
 - Criminal penalties \$250,000 and/or imprisonment not to exceed 5 years

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When is a SAR Required ?

- Financial institutions are **required** to file a Suspicious Activity Report (SAR) with respect to:
 - Criminal violations involving insider abuse in any amount.
 - Criminal violations aggregating \$5,000 or more when a suspect can be identified.
 - Criminal violations aggregating \$25,000 or more regardless of a potential suspect.
 - Transactions conducted or attempted by, at, or through the bank (or an affiliate) and aggregating \$5,000 or more, if the bank or affiliate knows, suspects, or has reason to suspect that the transaction:
 - May involve potential money laundering or other illegal activity (e.g., terrorism financing).
 - Has no business or apparent lawful purpose or is not the type of transaction that the particular customer would normally be expected to engage in, and the bank knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

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Monetary Instrument

- When monetary instrument is purchased with cash in amounts between \$3,000 and \$10,000 the credit union needs to record certain information.

Member	Non-Member
<ul style="list-style-type: none"> The name of the purchaser; The date of purchase; The type(s) of instrument(s) purchased; The serial number(s) of each of the instrument(s) purchased; and The amount in dollars of each of the instrument(s) purchased. 	<ul style="list-style-type: none"> The name and address of the purchaser; The social security number of the purchaser, or if the purchaser is an alien and does not have a social security number, the alien identification number; The date of birth of the purchaser; The date of purchase; The type(s) of instrument(s) purchased; The serial number(s) of the instrument(s) purchased; and The amount in dollars of each of the instrument(s) purchased

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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 including:
 - The beneficiary bank identification
 - The beneficiary's name and address or the beneficiary's account number if received with the payment order.

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The USA Patriot Act

- The purpose of the USA PATRIOT Act is to deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and other purposes.
- The USA Patriot Act implements the following:
 - Member Identification Program (MIP)
 - 314(a) Information Requests
 - 314(b) Information Sharing
 - OFAC

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Member Identification Program (MIP)

- The purpose of your credit union's MIP is to:
 - Verify the identity of any potential member seeking to open a new account
 - Verify the identity of the beneficial owners of a legal entity (e.g. corporation, LLC, partnership)
- All information used to verify the member's identity must be recorded and maintained.

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MIP: 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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MIP: Data Collection

- At a minimum, your credit union is required to collect the following information before a potential member opens an account:
 - Name;
 - Address (No PO Box);
 - Date of Birth (for individuals); **and**
 - Identification Number
 - An identification number for a U.S. person is a taxpayer identification number (TIN) (or evidence of an application for one)
 - An identification number for a non-U.S. person is one or more of the following: a TIN; a passport number and country of issuance; an alien identification card number; or a number and country of issuance of any other unexpired government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

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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
- 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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MIP : Beneficial Ownership

- The Customer Due Diligence (CDD) rule requires your credit union to:
 - Establish and maintain procedures to reasonably identify and verify beneficial owners of legal entity members.
 - Legal Entity members must provide certification which consists of:
 - **Ownership criteria:** Each individual, if any, who directly or indirectly, through any contract arrangement, understanding, or otherwise, owns 25% or more equity interest in the legal entity (this is a baseline threshold – credit unions are permitted to have a lower threshold); and
 - **Control criteria:** A single individual with significant responsibility to control, manage, or direct the legal entity, such as CEO, CFO, VP or other member of the senior management team or a person that regularly performs similar functions.

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314 (a) Information Requests

- The 314(a) process allows law enforcement to periodically seek information from the nation's financial institutions. Financial institutions are then **required** to query their records for data matches, which if found, are to be reported back to the Financial Crimes Enforcement Network (FinCEN).
- What is involved with 314(a) information requests :
 - Occur every 2 weeks
 - Credit union has 2 weeks to search records for accounts maintained over last 12 months and transactions over the last 6 months
 - Report matches to FinCEN **not** the Federal Law Enforcement Agency

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314 (a) Information Requests : Participation

- Each credit union is **required** to sign up in order to receive the FinCEN information requests.
- Signing up for a FinCEN request is done with the NCUA as part of the Form 5300 call report. Section 314(a) contact information was added to the call report ,March 31, 2003 so every credit union will have registered a contact person.

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314(b) Information Sharing

- Under section 314(b) of the Patriot Act, credit unions, and other financial institutions, are **permitted** to share information with one another regarding individuals they suspect may be involved in terrorist or money laundering activities..
- For 314(b) **safe harbor** confirm the following elements are present before sharing information:
 - Whether the credit union suspects a specified unlawful activity has occurred;
 - Whether a transaction involving the proceeds from that activity has taken place; and
 - Whether that transaction is part of a terrorist or money laundering scheme.

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314(b) Information Sharing: Participation

- Participation in 314(b) information sharing is **voluntary**.
- Credit unions will only benefit from the **safe harbor** protection by following the conditions for participation in the program:
 - Submit a registration to FinCEN
 - Sharing information with other 314(b) participants
 - Safeguard Shared Information and use only for AML/CFT Purposes

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OFAC: Program

- The Office of Foreign Assets Control (OFAC) is a division of the US Treasury that imposes economic sanctions against hostile targets.
- Credit unions must have an effective written OFAC compliance program. The program should be based on and incorporate at least five essential components of compliance:
 - Management commitment;
 - Risk assessment;
 - Internal controls;
 - Testing and auditing; and
 - Training

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OFAC: Impact

- OFAC compliance impacts **all** types of transactions and account services.
- **All** parties involved with a transaction should be checked against OFAC's sanctions/SDN list.

Transaction/Service Examples	Parties Involved Examples
<ul style="list-style-type: none"> • Opening new accounts or Safety Deposit Boxes • Wire transfers • Automated Clearinghouse (ACH) transactions • Electronic Fund Transfers (EFTs) • Cashing or depositing share drafts/checks • Purchase of monetary instrument • Dispensing loan proceeds and accepting loan payments 	<ul style="list-style-type: none"> • Primary members • Joint account holders • Co-signers • Guarantors • Collateral owners • Beneficiaries • Makers and payees of checks and share drafts • Parties on the other end of a wire transfer

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Common BSA Findings

- Missing OFAC checks for new accounts
- Incomplete account cards per MIP requirements
- Improper address verification
- Late filing of CTRs
- Failure to aggregate CTR transaction amounts
- Unfiled/incomplete SARs
- Failure to comply with 314(a) requests
- Failure to name a BSA Compliance Officer
- Insufficient monitoring of high-risk accounts
- Missing disclosures and documentation for new business accounts
- Proper training for all staff, volunteers and new hires

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Additional Resources

- FFIEC's BSA/AML InfoBase Manual
 - <https://bsaaml.ffiec.gov/>
- NCUA's Bank Secrecy Act Resources Page
 - <https://www.ncua.gov/regulation-supervision/regulatory-compliance-resources/bank-secrecy-act-resources>
- Appendix F, FFIEC BSA/AML Manual: Money Laundering and Terrorist Financing Red Flags
 - <https://bsaaml.ffiec.gov/manual/Appendices/06>
- FinCEN Guidance on Determining Eligibility for Exemption from Currency Transaction Reporting Requirements
 - <https://www.fincen.gov/resources/statutes-regulations/guidance/guidance-determining-eligibility-exemption-currency>

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Additional Resources

- FinCEN's Beneficial Ownership Form (Appendix A)
 - https://www.fincen.gov/sites/default/files/shared/CDD_Rev6.7_Sept_2017_Certificate.pdf

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Questions

Thank you for attending today's session! Please do not hesitate to contact us with additional questions.

- Email: compliance@nycua.org
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