



# Department of the Treasury Financial Crimes Enforcement Network

## Guidance

### **FIN-2007-G005**

**Issued: November 14, 2007**

**Subject: Frequently Asked Questions**

**Casino Recordkeeping, Reporting, and Compliance Program  
Requirements**

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#### *Purpose*

This document provides guidance interpreting the requirements of the Bank Secrecy Act (“BSA”) regulations<sup>1</sup> as they apply to the casino and card club industries in the United States.

#### **Section A: 31 C.F.R. § 103.11 Casino and Card Club Definitions<sup>2</sup>**

##### **Question 1: What gaming institutions are subject to the BSA casino regulatory requirements?**

**Answer 1:** A casino or a card club that is duly licensed or authorized to do business as such, and has gross annual gaming revenue in excess of \$1 million, is a “financial institution” under the BSA. The definition applies to both land-based and riverboat operations licensed or authorized under the laws of a state, territory,<sup>3</sup> or tribal jurisdiction, or under the Indian Gaming Regulatory Act.<sup>4</sup> Tribal gaming establishments that offer slot machines, video lottery terminals, or table games,<sup>5</sup> and that have gross annual gaming revenue in excess of \$1 million are covered by the definitions. Card clubs generally are subject to the same rules as casinos, unless a different treatment for card clubs is explicitly stated in 31 C.F.R. Part 103.

##### **Question 2: Is a tribal gaming establishment that offers only bingo and related games considered a casino for purposes of the BSA?**

**Answer 2:** No. FinCEN has the authority under the BSA to define as “casinos” tribal gaming establishments that offer only bingo and related games. Nevertheless, in addressing the

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<sup>1</sup> See 31 C.F.R. Part 103.

<sup>2</sup> See 31 U.S.C. § 5312(a)(2)(X) and 31 C.F.R. § 103.11(n)(5)(i) and (n)(6)(i).

<sup>3</sup> This includes casinos located in Commonwealth of Puerto Rico, St. Croix (U.S. Virgin Islands), and Tinian (Northern Mariana Islands). See 31 C.F.R. § 103.11(tt).

<sup>4</sup> The Indian Gaming Regulatory Act is codified at 25 U.S.C. § 2701 *et seq.*

<sup>5</sup> Slot machines, video lottery terminals, and house-banked table games would qualify as Class III gaming under the Indian Gaming Regulatory Act. Bingo and related games, including pull tabs, lotto, punch boards, tip jars, instant bingo and some card games, would qualify as Class II gaming under the Indian Gaming Regulatory Act.

treatment of tribal gaming under the BSA, we have indicated that “activities such as bingo . . . are not generally offered in casino-like settings and may create different problems for law enforcement, tax compliance, and anti-money laundering programs than do full-scale casino operations.”<sup>6</sup> FinCEN does not view tribal gaming establishments that offer only traditional bingo (*i.e.*, not contained in electronic gaming devices) and related games in non-casino settings as satisfying the definition of “casino” for purposes of the BSA.

However, a tribal gaming establishment that offers both bingo and slot machines or table games, for example, would satisfy the definition of “casino,” if gross annual gaming revenue exceeds \$1 million. All gaming activity must go into the calculation of gross annual gaming revenue, including activity that standing alone would not transform an establishment into a casino. This is the same treatment that FinCEN applies to a state-licensed casino that offers poker (which is a non-house banked game) since poker and a poker room are an integral part of a casino operation.<sup>7</sup>

**Question 3: Is a “racino” considered a gaming institution subject to the BSA?**

**Answer 3:** The term “racino” has not been separately defined nor included specifically in the definition of casino for purposes of the BSA. In general, the term refers to horse racetracks that may be authorized under state law to engage in or offer a variety of collateral gaming operations, including slot machines, video lottery terminals, video poker or card clubs. FinCEN relies on the state, territory or tribal characterization of “racino” gaming in determining whether an entity or operation should be treated as a casino for purposes of the BSA. If state law defines or characterizes slot machine or video lottery operation at a racetrack as a “casino, gambling casino, or gaming establishment,” and the gross annual gaming revenues of that operation exceed the \$1 million threshold, then the operation would be deemed to be a “casino” for purposes of the BSA and subject to all applicable requirements.<sup>8</sup>

**Question 4: Would a race book or sports pool operator that has a “nonrestricted” Nevada gaming license be considered a casino for purposes of the BSA?**

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<sup>6</sup> See 61 F.R. 7054 – 7056 (February 23, 1996).

<sup>7</sup> *Id.*

<sup>8</sup> A similar conclusion would apply to “racinos” operating in tribal jurisdictions. Slot machines, table games, and similar forms of gaming would qualify as either Class II or Class III gaming under the Indian Gaming Regulatory Act.

**Answer 4:** Yes. Operators or owners of a Nevada race book or sports pool,<sup>9</sup> that are duly issued a “nonrestricted” Nevada gaming license,<sup>10</sup> and that have gross annual gaming revenues in excess of \$1 million are subject to the casino requirements under 31 C.F.R. Part 103, as well as all other applicable BSA requirements. This would include a Nevada race book or sports pool licensee that obtained a “nonrestricted” gaming license to operate a race book or sports pool on the property of another casino, or that operates a number of satellite race books and sports pools that are affiliated with a central site book.

**Question 5: Is an establishment that offers only off-track betting on horse races considered a casino for purposes of the BSA?**

**Answer 5:** In addressing the treatment of tribal gaming under the BSA, we have indicated that “pari-mutuel wagering” should receive the same treatment as bingo when determining whether an establishment satisfies the definition of “casino.”<sup>11</sup> Furthermore, Class III gaming under the Indian Gaming Regulatory Act includes off-track betting on horse races.<sup>12</sup> In addition, in Nevada, an establishment that offers only off-track betting on horse races would need to obtain a non-restricted gaming license. In many instances, off-track betting on horse races will involve pari-mutuel wagering. However, pari-mutuel wagering also applies to sporting events. For purposes of the BSA, FinCEN views casinos to include establishments in Nevada and in tribal jurisdictions that offer only off-track betting, provided the establishments permit account wagering and provided gross annual gaming revenue exceeds \$1 million.<sup>13</sup> In many instances, off-track betting will involve accounts through which customers may conduct a variety of transactions, including wagers, deposits, withdrawals, and transfers of funds. As we recognized when addressing the treatment of tribal gaming under our rules, FinCEN has sought to apply the

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<sup>9</sup> The Nevada Gaming Commission issues “nonrestricted” gaming licenses to operators or owners of Nevada race book or sports pools. *See* Nevada Gaming Commission Regulation 22.020. A Nevada race book “means the business of accepting wagers upon the outcome of any event held at a track which uses the pari-mutuel system of wagering.” *See* Nevada Revised Statute § 463.01855. A Nevada race book is a business that accepts wagers at fixed odds (or track odds) based on the outcome of the race that may be televised and displayed in Nevada casinos (*i.e.*, “simulcasting”). A Nevada sports pool “means the business of accepting wagers on sporting events by any system or method of wagering.” *See* Nevada Revised Statute § 463.0193. A Nevada sports pool is a business that accepts wagers at fixed odds based on the outcome of certain professional and amateur athletic sporting events that may be televised and displayed in Nevada casinos.

<sup>10</sup> A Nevada “nonrestricted license” includes, among other things, “. . . A license for, or operation of, any number of slot machines together with any other game, gaming device, race book or sports pool at one gaming establishment.” *See* Nevada Revised Statute § 463.0177(2). In addition, Nevada Revised Statute § 463.245(3) provides an exception to the prohibition against having more than one licensee issued to each casino. Also, *see* Nevada Gaming Commission Regulation 22.010(4).

<sup>11</sup> *See* 61 F.R. 7054 – 7056 (February 23, 1996).

<sup>12</sup> We have already addressed a situation in which an establishment operating in a tribal jurisdiction offers off-track betting on horse races and other Class III gaming. *See* In the Matter of the Tonkawa Tribe of Oklahoma and Edward E. Street - FinCEN No. 2006-1 (March 24, 2006).

<sup>13</sup> This discussion addresses off-track betting in Nevada and tribal jurisdictions only. Off-track betting may not require a gaming license in other jurisdictions. The definition of “casino” includes only those establishments licensed or authorized to conduct business as casinos.

BSA to “gaming establishments that provide both gaming and an array of financial services for their patrons.”<sup>14</sup>

**Question 6: Are “greyhound racing clubs” that offer table games considered gaming institutions for purposes of the BSA?**

**Answer 6:** If a “greyhound racing club”<sup>15</sup> generates gross annual gaming revenue in excess of \$1 million from poker tables (which would be akin to offering card games in a card club or card room type operation), and if the gaming facility is duly licensed or authorized by a state or local government to do business as a card club, gaming club, card room, gaming room, or similar gaming establishment, it would be subject to the BSA.<sup>16</sup> Therefore, once the \$1 million in revenue threshold is exceeded for such poker tables, all gaming activity must go into the calculation of gross annual gaming revenue, including activity that standing alone would not deem an establishment a casino, such as greyhound racing at the track, simulcast for other greyhound racing tracks, simulcast for horse racing tracks, or simulcast for jai alai.

**Question 7: Are horse racetracks that offer pari-mutuel or other forms of wagering only on races held at the track considered casinos for purposes of the BSA?**

**Answer 7:** FinCEN does not view a horse racetrack that offers pari-mutuel or other forms of wagering only on races held at the track as a casino for purposes of the BSA. We believe that, under these circumstances, wagering is integral to hosting the race itself. Horse racing as an industry poses “different problems for law enforcement, tax compliance, and anti-money laundering programs than do full-scale casino operations.”<sup>17</sup>

**Section B: 31 C.F.R. § 103.22 Currency Transaction Reporting Requirements<sup>18</sup>**

**Question 8: Is a casino required to provide identification information on customers who have conducted reportable multiple currency transactions that were summarized through "after the fact aggregation?"**

**Answer 8:** The process of checking internal casino computer information, rating cards, general ledgers, and other books and records after the end of the gaming day to find reportable currency transactions is sometimes referred to as "after the fact aggregation." After the fact aggregation of currency transactions does not relieve a casino of the requirement to file a FinCEN Form 103

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<sup>14</sup> See 61 F.R. 7054 – 7056 (February 23, 1996).

<sup>15</sup> A greyhound racing club is a gaming establishment that offers the sport of racing greyhounds. Specially trained dogs chase a lure (which is an artificial hare or rabbit) around an oval track until they arrive at the finish line. The dog that arrives first in each event is the winner of the bet.

<sup>16</sup> See 31 U.S.C. § 5312(a)(2)(X) and 31 C.F.R. § 103.11(n)(6)(i). The class of gaming establishments known as “card clubs” became subject to the BSA as of August 1, 1998. See 63 F.R. 1919 - 1924 (Jan. 13, 1998).

<sup>17</sup> See 61 F.R. 7054 –7056 (February 23, 1996).

<sup>18</sup> See 31 C.F.R. § 103.22(b)(2) and (c)(3).

Currency Transaction Report by Casinos (“CTRC”) on reportable multiple transactions containing all information required when it has the ability to obtain customer identification information through reviewing internal records in paper or electronic form or through automated data processing systems. The anti-money laundering compliance program requirement obligates a casino or card club to use all available information to determine a customer’s name, address, and Social Security number<sup>19</sup> from any existing information system or other system of records for a reportable multiple transaction summarized through "after the fact aggregation" when a customer is no longer available.<sup>20</sup> Also, for casinos or card clubs with automated data processing systems, programs for compliance with the BSA must provide for the use of these systems to aid in assuring compliance.<sup>21</sup>

Therefore, when a casino or card club cannot obtain identification information on reportable multiple transactions because a customer is no longer available, it must check its internal records or systems, including federal forms and records, which contain *verified* customer information. These records may include credit, deposit, or check cashing account records, or a previously filed CTRC form, IRS Form W-2G (Certain Gambling Winnings), or any other tax or other form containing such customer information. If a casino files a CTRC form lacking some customer identification information in situations described above, it would be required to file an amended CTRC with new identification information on the initial transaction if the customer returns and conducts new transactions of which a casino obtains knowledge.<sup>22</sup>

**Question 9: Is a casino required to use customer currency transaction information contained in the casino's slot monitoring system for purposes of BSA currency transaction reporting?**

**Answer 9:** For purpose of the BSA, FinCEN does not view customer “coin-in” and “coin-out”<sup>23</sup> transactions at a slot machine or video lottery terminal to be reportable as currency transactions because they can represent so-called "recycled" coin transactions (*i.e.*, casino customers typically engaging in transactions deriving from the same coins just won at electronic gaming devices). If a casino were to use “coin-in” and “coin-out” information in its slot monitoring system, it would distort and result in incorrect reporting of currency transactions. However, when a casino has knowledge of customer “paper money” transactions for slot club accountholders identified through its slot monitoring system, it must aggregate these with other types of “cash in”

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<sup>19</sup> See 31 C.F.R. § 103.64(a)(2)(v)(A).

<sup>20</sup> However, FinCEN does recognize that for certain aggregate currency transactions, a casino may not be able to obtain the required customer identification information because either the customer has left the casino and is no longer available or a casino does not have internal records which provide all of the required customer identification information.

<sup>21</sup> See 31 C.F.R. § 103.64(a)(2)(vi).

<sup>22</sup> See 31 C.F.R. §§ 103.22(b)(2) and (c)(3), 103.27(a) and (d), and 103.28. Also, see FinCEN Form 103, Specific Instructions, Item 1, for filing an amended report.

<sup>23</sup> Coin-in is a metered count of coins, credits and other amounts bet by customers at an electronic gaming device. Coin-out is a metered count of coins, credits and other amounts paid out to customers on winnings at an electronic gaming device. Therefore, coin-in does not include paper currency inserted into a bill acceptor (on slot machine or video lottery terminal) to accumulate credits.

transactions of which the casino has knowledge and which are recorded on a casino's books and records to determine whether the currency transactions exceed \$10,000 for a customer in a gaming day.<sup>24</sup> When a casino has knowledge of multiple currency transactions conducted by or on behalf of the same customer on the same day, it is required to treat those multiple transactions as a single reportable transaction for purposes of determining whether currency transaction reporting requirements have been met. Therefore, the conclusions that apply to the aggregation of two or more transactions involving the insertion of bills into slot machines also would apply to the aggregation of such transactions with other categories of "cash in" transactions.

It is not necessary to have personally observed the transactions; knowledge can also be acquired from a casino examining the books, records, logs, computer files, etc., that contain information that the currency transactions have occurred after the gaming day is over. Although FinCEN regulations impose no requirement to examine books or records merely for purposes of aggregating transactions in currency and determining whether to file a report on FinCEN Form 103, BSA requirements other than the requirement to report transactions in currency may obligate a casino to examine computerized records. A casino must report transactions that the casino "knows, suspects, or has reason to suspect" are suspicious and implement procedures reasonably designed to assure the detection and proper reporting of suspicious transactions.<sup>25</sup> For casinos with automated data processing systems, automated programs for compliance with the BSA must provide for the use of these systems to aid in assuring compliance,<sup>26</sup> including identifying transactions that appear to be suspicious conducted by customers using their magnetic club account cards at slot machines or video lottery terminals.<sup>27</sup>

Also, casinos should note that activities such as: (i) "turning off the dollar counter" to prevent obtaining knowledge of reportable transactions (*i.e.*, not using the feature that is readily available in its software program that accumulates U.S. dollars that a customer inserts into a slot machine bill acceptor while using a magnetic slot club account card), or (ii) requesting that a vendor remove a software tool or interface capability from its next software upgrade could result in enforcement action under the BSA.<sup>28</sup>

**Question 10: Is a cash wager/bet that is ultimately lost at a table game considered a transaction in currency for purposes of BSA currency transaction reporting?**

**Answer 10:** Casinos are required under BSA regulations to file currency transaction reports for "cash in" transactions, which include "bets of currency." For purposes of the currency transaction reporting requirements, a cash bet (referred to as a "money play")<sup>29</sup> at a table game

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<sup>24</sup> See 31 C.F.R. §§ 103.22(b)(2)(i)(I), (b)(2)(iii)(C), and (c)(3), and 103.64(b)(3) and (4).

<sup>25</sup> See 31 C.F.R. §§ 103.21 and 103.64(a)(2)(v)(B).

<sup>26</sup> See 31 C.F.R. § 103.64(a)(2)(vi).

<sup>27</sup> Furthermore, as discussed in FinCEN Ruling 2005-1, measures that a casino could implement in response to a risk-based suspicious activity analysis could include enhancements to the operating system for slot machines. The enhancements could consist of new software tools/interfaces and reprogramming. A casino could develop the enhancements or have a vendor develop the enhancements.

<sup>28</sup> See 31 U.S.C. § 5321(a)(1) and 31 C.F.R. § 103.57(f).

<sup>29</sup> See 31 C.F.R. § 103.22(b)(2)(i)(E).

would become a “bet of currency” once the customer can no longer retrieve the bet (*e.g.*, once the dealer has dealt the cards). The cash wager would be a “cash in” transaction for purposes of currency transaction reporting regardless of whether the customer subsequently wins or loses the wager.<sup>30</sup>

However, money plays are exempted as reportable cash in transactions to the extent the customer wagers the same physical currency that the customer wagered on a prior money play on the same table game, and the customer has not departed from the table.<sup>31</sup> Also, money plays are exempted as reportable cash out transactions when the currency used to place the wager is the same physical currency received when the customer wins the bet.<sup>32</sup>

**Question 11: Is a card club required to maintain and retain records of all currency transactions by customers pertaining to backline betting for purposes of currency transaction reporting?**

**Answer 11:** Yes. The BSA requires card clubs to maintain and to retain the original or a microfilm copy of records of all currency transactions by customers, including without limitation, records in the form of currency transaction logs and multiple currency transaction logs.<sup>33</sup> This requirement applies to card clubs<sup>34</sup> that offer the practice of backline betting. Backline betting occurs when a customer, who is standing behind a seated player, places a bet or wager on the betting circle for a specific hand on which a seated player also is wagering. The extra players that stand behind each seat position are known as “backline betters.” Although backline betting makes it difficult to track customer wagers at the gaming table, a card club must have a procedure in place to identify such transactions for purposes of filing a FinCEN Form 103 (CTRC).<sup>35</sup>

A card club must have procedures for using all available information to determine and verify, when required, the name, address, social security or taxpayer identification number, and other identifying information for a person.<sup>36</sup> In addition, a card club employee or propositional player<sup>37</sup> who obtains actual knowledge (*i.e.*, direct and clear awareness of a fact or condition) of

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<sup>30</sup> See FinCEN Administrative Ruling FIN-2006-R002, A Cash Wager on Table Game Play Represents a “Bet of Currency” (March 24, 2006).

<sup>31</sup> Nonetheless, when a customer increases a subsequent cash bet (*i.e.*, money play) at the same table without departing, the increase in the amount of the currency bet would represent a new bet of currency and a transaction in currency being monitored by a casino.

<sup>32</sup> See 31 C.F.R. § 103.22(b)(2)(iii)(B) and 72 F.R. 35008 (June 26, 2007).

<sup>33</sup> See 31 C.F.R. § 103.36(b)(11).

<sup>34</sup> The card clubs operate or run the games and earn their revenue by receiving a fee from, rather than “banking,” the games as casinos do. See 63 F.R. 1919 – 1924 (January 13, 1998). 31 C.F.R. § 103.116(n)(6)(i) defines a card club as a card club, gaming club, card room, gaming room, or similar gaming establishment.

<sup>35</sup> See 31 C.F.R. §§ 103.22(b)(2) and (c)(3), 103.28, and 103.64(a)(2)(i) and (b)(3) – (4).

<sup>36</sup> See 31 C.F.R. § 103.64(a)(2)(v)(A).

<sup>37</sup> A propositional player is a natural person employed by a casino or card club to play a permissible game with his or her personal funds. A propositional player is paid a fixed sum by a casino or card club for playing in a poker/card game and retains any winnings and absorbs any losses. Also, a propositional player's function is to start and gamble at a poker/card game, to keep a sufficient number of players in a game, or to keep the action going in a game. Some

unknown customers exchanging currency and chips with each other during poker/card game play in excess of \$10,000 in currency, through a single transaction or through a series of transactions in a gaming day, would be required to comply with suspicious activity reporting.

In addition, the BSA requires card clubs to prepare a record of any transaction required to be retained, if the record is not otherwise produced in the ordinary course of business.<sup>38</sup> Therefore, when a card club employee or propositional player monitoring a non-house banked card game has obtained actual knowledge of a reportable currency transaction, he/she is required to produce a record of the transaction for purposes of currency transaction reporting and a card club must retain such record for a period of five years.

**Question 12: Is a casino required to file FinCEN Form 103 (CTRC) on slot jackpot wins in excess of \$10,000 in currency?**

**Answer 12:** FinCEN no longer requires a casino to file a FinCEN Form 103 (CTRC), when it has knowledge of customer slot jackpot wins involving payment in currency in excess of \$10,000 (*e.g.*, through a single transaction or through aggregating transactions on multiple transaction logs, W-2G issued log). This BSA currency reporting requirement was amended by 31 C.F.R. § 103.22(b)(2)(iii)(D), which removed jackpots from slot machines or video lottery terminals from the definition of "cash out" transactions.<sup>39</sup>

**Question 13: In the instructions to FinCEN Form 103, what does the word “periodically” mean when updating customer identification information for casino customers granted accounts for credit, deposit, or check cashing, or for whom a CTRC containing verified identity has been filed?**

**Answer 13:** The General Instructions to FinCEN Form 103 (CTRC), under “Identification requirements” state:

For casino customers granted accounts for credit, deposit, or check cashing, or on whom a CTRC containing verified identity has been filed, acceptable identification information obtained previously and maintained in the casino's internal records may be used as long as the following conditions are met. The customer's identity is reverified periodically, any out-of-date identifying information is updated in the internal records, and the date of each reverification is noted on the internal record. For example, if documents verifying an individual's identity were examined and recorded on a signature card when a deposit or credit account was opened, the casino may rely on that information as long as it is reverified periodically.

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card rooms have entered into contractual agreements with so-called "third party provider[s] of propositional player services" to exclusively bank poker/card games as independent contractors, which introduces issues with assuring day-to-day BSA compliance with maintaining currency and cash equivalent records. An individual employed by such a service is called a "third party propositional player" who gambles with funds provided by such a service.

<sup>38</sup> See 31 C.F.R. § 103.38(b).

<sup>39</sup> See 72 F.R. 35008 (June 26, 2007).



As part of the requirement to establish an effective system of internal controls,<sup>40</sup> a casino or card club must determine how often it will reverify a customer's identity to update the identifying information in the internal record for purposes of currency transaction reporting. Given this requirement, it is a common business practice for casinos to maintain a "known customer" file containing a customer's name, address and identification credential that it has previously verified.<sup>41</sup> Accordingly, a casino or card club checks Item 27b on FinCEN Form 103 to indicate that it has examined an acceptable internal casino record (*i.e.*, credit, deposit, or check cashing account record, or a CTRC worksheet) containing previously verified identification information on a "known customer." There is no fixed period that will apply to all casinos for all types of customers. The purpose of this requirement is to keep customer identification information reasonably current. Hence, a casino should develop its own policies based on its own experiences with how often relevant customer information, such as permanent address or last name, might change.

### **Section C: 31 C.F.R. § 103.21 Suspicious Transaction Reporting Requirements**

#### **Question 14: How comprehensive must a casino's procedures be for detecting suspicious activity?**

**Answer 14:** A casino or card club is responsible for establishing and implementing risk-based internal controls (*i.e.*, policies, procedures and processes) to comply with the BSA<sup>42</sup> and to safeguard its operations from money laundering and terrorist financing, including for detecting, analyzing and reporting potentially suspicious activity. A casino or card club is required to file a suspicious activity report for a transaction when it knows, suspects or has reason to suspect that the transaction or pattern of transactions (conducted or attempted) is both suspicious, and involves \$5,000 or more (in the single event or when aggregated) in funds or other assets. The extent and specific parameters under which a casino or card club must monitor customer accounts<sup>43</sup> and transactions for suspicious activity must factor in the type of products and services it offers, the locations it serves, and the nature of its customers. In other words, suspicious activity monitoring and reporting systems cannot be "one size fits all."

As part of its internal controls, a casino or card club must establish procedures for using all available information, including its automated systems<sup>44</sup> and its surveillance system and

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<sup>40</sup> See 31 C.F.R. § 103.64(a)(2)(i).

<sup>41</sup> Typically, these records contain the original method of identification (including type, number and expiration date, of the customer's identification credential originally examined) and the date of such examination as well as a photocopy or other reproduction (*e.g.*, a computerized representation) of the identification credential. Some casinos maintain hard copy internal records and others digitized records containing identification information on a known customer.

<sup>42</sup> See 31 C.F.R. §§ 103.64(a) and 103.120(d).

<sup>43</sup> Types of casino accounts that would be subject to suspicious activity reporting include deposit (*i.e.*, safekeeping, front money or wagering), credit, check cashing, player rating or tracking, and slot club accounts.

<sup>44</sup> See 31 C.F.R. § 103.64(a)(2)(vi).

surveillance logs, to determine the occurrence of any transactions or patterns of transactions required to be reported as suspicious.<sup>45</sup> Also, a casino or card club must perform appropriate due diligence in response to indicia of suspicious transactions, using all available information. Please note that a casino or card club must train personnel in the identification of unusual or suspicious transactions.<sup>46</sup>

**Question 15: How can a casino complete suspicious activity reporting (“SAR”) for “unknown” subjects?**

**Answer 15:** Since a casino or a card club is prohibited from disclosing to a customer involved in a suspicious activity that it filed a FinCEN Form 102, Suspicious Activity Report by Casinos and Card Clubs (“SARC”), FinCEN advises using internal records that contain verified customer identification information when filing this form. Such records may include credit, deposit, or check cashing account records or any filed FinCEN Form 103 (CTRC), FinCEN Form 103-N, Currency Transaction Report by Casinos – Nevada, IRS Form W-2G, Certain Gambling Winnings, or IRS Form W-9, Request for Taxpayer Identification Number and Certification.

If the above records or reports do not exist or if additional customer identification information is needed to complete the form, FinCEN advises casinos and card clubs to use any other records that may be on file which contain verified identification such as a driver's license, military or military dependent identification cards, passport, non-resident alien registration card, state issued identification card, foreign national identity card (*e.g.*, cedular card), other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard, or a combination of other unexpired documents, which contain an individual's name and address and preferably a photograph. If casinos or card clubs do not have verified identification information on the customer, they should use whatever other sources of customer information are available within internal records, such as player rating records, slot club membership records, a filed IRS Form 1099-Misc, Miscellaneous Income (*e.g.*, pertaining to prizes or awards), or a filed IRS Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, etc.

If no suspect is identified on the date of detection, a casino or card club may delay filing a SARC form for an additional 30 calendar days to identify a suspect. However, a casino or card club must in all events report a suspicious transaction within 60 calendar days after the date of initial detection (regardless of whether a casino or card club is able to identify a suspect).

**Question 16: Must a casino identify suspicious customer chip redemptions at a cage for reporting on FinCEN Form 102 (SARC)?**

**Answer 16:** A casino must implement procedures reasonably designed to assure the detection and proper reporting of suspicious transactions.<sup>47</sup> Also, a casino shall file a report of each transaction in currency involving cash out of more than \$10,000 in a gaming day in which it has obtained

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<sup>45</sup> See 31 C.F.R. § 103.64(a)(2)(v)(B).

<sup>46</sup> See 31 C.F.R. § 103.64(a)(2)(iii).

<sup>47</sup> See 31 C.F.R. § 103.64(a)(2)(v)(B).

knowledge including the redemption of chips.<sup>48</sup> A casino, which is not required by state or tribal regulations to maintain multiple currency transaction logs or currency transaction logs at the casino cage,<sup>49</sup> nonetheless should develop an internal control<sup>50</sup> based on a risk analysis to be able to identify chip redemptions that were paid with currency from the imprest drawer<sup>51</sup> to a customer<sup>52</sup> that involve potential suspicious transactions to assure ongoing BSA compliance. Such an internal control would aid such casinos in monitoring chip redemptions for “unknown” customers who previously purchased chips and then engaged in minimal or no gaming activity for purposes of suspicious activity reporting.<sup>53</sup> As a corollary, a casino should develop an internal control, based on a risk analysis, to be able to identify betting ticket,<sup>54</sup> token,<sup>55</sup> and TITO ticket<sup>56</sup> redemptions that were paid with currency from an imprest drawer to a customer that involve potential suspicious transactions to assure ongoing BSA compliance.

Moreover, the BSA requires casinos to prepare and retain a record of any transaction that is not otherwise produced in the ordinary course of business to comply with these regulations.<sup>57</sup> Also,

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<sup>48</sup> See 31 C.F.R. §§ 103.22(b)(2)(ii)(A) and (c)(3), and 103.64(b)(4).

<sup>49</sup> Almost all casinos maintain multiple transaction logs (“MTLs”) pursuant to state, tribal or local laws, or as unique business records. Casinos or card clubs record on these logs only currency transactions above a given threshold, usually \$2,500 - \$3,000. Also, some casinos have enhanced the existing MTL compliance procedure to require a surveillance photograph of each “unknown” customer to assist in identifying customers for purposes of aggregating transactions for currency transaction reporting as well as potential suspicious transaction reporting.

<sup>50</sup> See 31 C.F.R. § 103.64(a)(2)(i).

<sup>51</sup> Casinos and card clubs maintain cages where cashiers conduct financial transactions using a drawer that operates on an imprest basis or inventory. An imprest basis is a method of accounting for funds inventories whereby any replenishment or removal of funds is accounted for by an exchange of an exact amount of other funds in the inventory. The imprest drawer opens with a stated amount of currency and/or chips. Any subsequent additions or removal of funds in the drawer are accounted for by either a document or an exchange of an equal amount of funds of another form. Since chips and currency are fungible items no imprest records of these transactions are prepared or maintained.

<sup>52</sup> For example, a known customer with a casino deposit (*i.e.*, safekeeping, front money or wagering), credit, check cashing, player rating/player tracking, or slot club account.

<sup>53</sup> See 31 C.F.R. §§ 103.21 and 103.64(a)(2)(v)(B).

<sup>54</sup> A betting ticket is a written record of a wager for a race or sporting event. It is printed with a unique ticket number and is used to record the event for which the wager was placed. It includes the name of the gambling establishment, race or sport event (*e.g.*, race track, race number, horse identification), the amount of the wager, line or spread, and date and time. The gambling establishment provides a copy of the betting ticket to a customer and maintains a record of it.

<sup>55</sup> A token is a gaming instrument or coin issued by a casino at certain stated denominations as a substitute for currency and used to play certain slot machines or video lottery terminals. Tokens are most often used for denominations of \$1.00 or greater. Tokens represent a monetary value only within the casino and are intended for the purposes of gambling.

<sup>56</sup> Slot machines or video lottery terminals that print tickets are commonly known as “ticket in/ticket out” or “TITO” machines. A TITO ticket is a gaming instrument issued by a slot machine or video lottery terminal to a customer as a record of the wagering transaction and/or substitute for currency. Tickets are voucher slips printed with the name and the address of the gaming establishment, the stated monetary value of the ticket, date and time, machine number (*i.e.*, asset or location), an 18-digit validation number, and a unique bar code. Tickets are a casino bearer “IOU” instrument. A customer can use a ticket at a machine or terminal that accepts tickets, or cash a ticket at a cage, slot booth, a redemption kiosk, or a pari-mutuel window at the gaming establishment.

<sup>57</sup> 31 C.F.R. § 103.38(b) states that “records required by this subpart to be retained by financial institutions may be those made in the ordinary course of business by a financial institution. If no record is made in the ordinary course

records must in all events be filed or stored in such a way as to be accessible within a reasonable period of time.<sup>58</sup> A casino must retain such record of the transaction for a period of five years.

**Question 17: What type of information has law enforcement found to have particular value on FinCEN Form 102 (SARC)?**

**Answer 17:** Casinos and card clubs should note the type of information contained on a FinCEN Form 102 (SARC) that law enforcement has advised is the most valuable to them, and which, if missing, limits the effectiveness for law enforcement use.

- Provide complete subject identifying information, such as name, permanent address, government-issued identification number, date of birth, and casino account number.
- Identify the characterization of suspicious activity by checking Item 26 on the form and refrain from checking the “other” box unless the activity is not covered by the existing list of suspicious activities.
- Prepare a concise and clear narrative that provides a complete description of the suspicious activity. The following are several things to consider when a casino or card club reviews a SARC’s narrative (*i.e.*, Part VI) to ensure it is concise and clear:
  - Provides a detailed description of the suspicious activity.
  - Narrative should not state, “see attached.”
  - Identifies “who,” “what,” “when,” “why,” “where,” and “how.”
  - Identifies whether the transaction was attempted or completed.
  - Is chronological and complete.
  - Identifies the dates of any previously filed Form 102 on the same subject.
  - Notes any actions (taken or planned) by the casino, including any internal investigative numbers used by the casino to maintain records of the suspicious activity.
- Include contact information for persons at the casino with additional information about the suspicious activity.

For additional guidance on providing a clear and complete description of the suspicious activity, see FinCEN’s *Suspicious Activity Reporting Guidance for Casinos*.

**Question 18: Should a casino or card club document the basis for its determination that a transaction is not suspicious?**

**Answer 18:** If a casino determines that an activity is suspicious, it must file FinCEN Form 102 (SARC). However, based on the available facts and after an initial investigation, a casino may determine that certain unusual activity is not suspicious. Although 31 C.F.R. § 103.21 does not specifically state that a casino or a card club must document the reasons why it has not filed FinCEN Form 102 for a particular activity that was reviewed as potentially suspicious, it is an

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of business of any transaction with respect to which records are required to be retained by this subpart, then such a record shall be prepared in writing by the financial institution.”

<sup>58</sup> See 31 C.F.R. § 103.38(d).

effective practice for a casino or card club to document the basis for its determination that the transaction is not, after all, suspicious.<sup>59</sup>

Thorough documentation provides a record of the decision-making process (including the final decisions not to file a SARC) which a casino or card club would find helpful to: (i) assist internal or external auditors and examiners in their assessment of the effectiveness of its suspicious activity reporting and monitoring and reporting system, (ii) assist its internal review committee<sup>60</sup> in making future decisions on what should be reported as suspicious, (iii) train employees about what transactions are suspicious and which are not suspicious based on all the relevant facts and circumstances, (iv) respond to a potential law enforcement subpoena pertaining to a particular customer whose activity was reviewed by the committee, but considered not to be suspicious, and (v) if it has multiple casino properties in the same jurisdiction, ensure that reasonably consistent suspicious activity reporting risk-based analysis procedures are being followed.

#### **Section D: 31 C.F.R. § 103.36 Casino Recordkeeping Requirements**

##### **Question 19: What specific recordkeeping requirements apply to a casino?**

**Answer 19:** 31 C.F.R. § 103.36 requires a casino or card club to maintain and to retain the following source records (either the originals or microfilm version, or other copies or reproductions of the documents) that relate to its operation:

- Records of each deposit of funds, account opened or line of credit extended, including a customer's identification and the verification of that identification as well as similar information for other persons having a financial interest in the account, regardless of residency;
- Records of each receipt showing transactions for or through each customer's deposit or credit account, including a customer's identification and the verification of that identification, regardless of residency;
- Records of each bookkeeping entry comprising a debit or credit to a deposit account or credit account;
- Statements, ledger cards or other records of each deposit or credit account, showing each transaction in or with respect to the deposit or credit account;
- Records of each extension of credit in excess of \$2,500, including a customer's identification and the verification of that identification, regardless of residency;
- Records of each advice, request or instruction with respect to a transaction of any monetary value involving persons, accounts or places outside the United States, including customer identification, regardless of residency;
- Records prepared or received in the ordinary course of business that would be needed to reconstruct a customer's deposit or credit account;
- Records required by other governmental agencies, *e.g.*, federal, state, local or tribal;

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<sup>59</sup> See FinCEN's *Suspicious Activity Reporting Guidance for Casinos*, December 2003, page 4.

<sup>60</sup> Many casinos have an internal SARC review committee.

- A list of transactions involving various types of instruments, cashed or disbursed, in face amounts of \$3,000 or more, regardless of whether currency is involved, including customer's name and address; and
- A copy of the compliance program required by 31 C.F.R. § 103.64.

Also, card clubs are required to maintain and to retain records of all currency transactions by customers, including, without limitation, records in the form of currency transaction logs and multiple currency transaction logs.

Besides the above casino-specific requirements, there are other BSA recordkeeping requirements that apply to all financial institutions, including casinos and card clubs, such as:

- Records by persons having financial interests in foreign financial accounts;<sup>61</sup>
- Records of transmittals of funds in excess of \$3,000 requiring the verification of identity, and the recording, retrievability and reporting of information to other financial institutions in the payment chain, regardless of the method of payment;<sup>62</sup> and
- Nature of records, record access, and five-year retention period for records.<sup>63</sup>

#### **Question 20: What computer records must a casino retain?**

**Answer 20:** A casino or card club that inputs, stores, or retains, in whole or in part, for any period of time, any record required to be maintained by 31 C.F.R. §§ 103.33 or 103.36(a) and (b) on computer disk, tape, or other machine-readable media shall retain the records in such media. Also, a casino or card club is required to maintain the indexes, books, file descriptions and programs that would enable a person readily to access and review these computer records. These computerized records, source documentation and related programs must be retained for a period of five years. However, the BSA does not require that computerized records be stored in on-line memory in a computer past their normal business use.<sup>64</sup> Nonetheless, records must in all events be filed or stored in such a way as to be accessible within a reasonable period of time,<sup>65</sup> taking into consideration the nature of the records and the length of time since the record was made.

A casino may not delete or destroy specific computerized customer gaming activity information (prior to the end of the five-year retention period), such as player rating records,<sup>66</sup> and instead only retain the more limited trip history records (which only summarize the total funds from a customer's multi-day trip and the most recent trips, usually between three and nine trips). Because a trip includes any number of continuous days of gaming activity in which there is not a

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<sup>61</sup> See 31 C.F.R. § 103.32.

<sup>62</sup> See 31 C.F.R. § 103.33(f) and (g).

<sup>63</sup> See 31 C.F.R. § 103.38.

<sup>64</sup> For example, for casinos that maintain computerized records, such as daily player rating records, markers issued records, and cage voucher records for each customer deposit, deposit withdrawal and marker redemption, they may store such information on-line in computer memory or in off-line storage media, such as magnetic tape, magnetic disk, magnetic diskette, CD-ROM disk, etc.

<sup>65</sup> See 31 C.F.R. § 103.38(d).

<sup>66</sup> See 31 C.F.R. §§ 103.36(b)(8) and 103.36(c), and F.R. 1165 – 1167 (January 12, 1989).

break in play, the player trip history is only a limited summarized record that typically does not provide all of the information contained on the original rating card, such as the specific amounts of the customer's currency transactions conducted for *each* gaming day.

Further, the retention of computerized records does not relieve a casino from the obligation to retain any record required to be maintained by 31 C.F.R. §§ 103.33 or 103.36(a) and (b), which typically are the source documents (either the originals or microfilm version, or other copies or reproductions of the documents) of customers' transactions.

### **Section E: 31 C.F.R. § 103.64(a) Compliance Program Requirements<sup>67</sup>**

#### **Question 21: How comprehensive must an internal and/or external testing program be to assure and monitor compliance with the BSA?**

**Answer 21:** A casino or card club must conduct internal and/or external testing for compliance with a scope and frequency commensurate with the risks of money laundering and terrorist financing it faces, as well as the products and services it provides, to determine if a casino's procedures are comprehensive enough to detect suspicious activity.<sup>68</sup>

The primary objectives of the independent testing of the BSA compliance program are to determine whether: (i) the program is properly designed and operating effectively to comply with suspicious and currency transaction reporting, identification, recordkeeping, and record retention requirements; (ii) there are material weaknesses (*e.g.*, inadequate training) and internal control deficiencies; (iii) testing of the program is based on risk assessment criteria designed to focus on money laundering and terrorist financing as well as the products and services provided; and (iv) there is adherence to BSA policy, procedures, and systems.

FinCEN is aware that some casinos conduct internal testing for BSA compliance on a regular basis as part of their annual internal audit plan. The testing provides an assessment of the level of BSA compliance. The internal audit report typically includes the scope, objectives, and findings of the audit as well as a response to any audit finding indicating the corrective action to be taken, the target date for completion, and the department head responsible for the corrective action. Other casinos and card clubs may hire independent certified public accountants for similar purposes.

A casino or card club needs to take corrective actions once becoming aware of weakness and deficiencies in its anti-money laundering compliance program, or any element thereof, that could or did result in failures to comply with BSA identification, reporting, recordkeeping, record retention as well as compliance program requirements. Violations of these regulatory requirements may result in both criminal and civil penalties.

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<sup>67</sup> See 31 C.F.R. §§ 103.64 and 103.120(d).

<sup>68</sup> See 31 C.F.R. § 103.21.

**Question 22: What type of compliance training program should be developed and what types of documentation should be maintained by a casino or card club to ensure that it has an adequate, accurate, and complete program?**

**Answer 22:** One of the more important elements of the anti-money laundering compliance program is the obligation to institute an effective and ongoing training program for all appropriate casino or card club personnel. Such a compliance training program should be commensurate with the risks posed by the products and financial services provided. Training should be provided to all personnel before conducting financial transactions on behalf of a casino at the cage (including casino credit and slot booth), on the floor (including table games, keno, poker, other floor games, and slot machines/video lottery terminals), as well as those responsible for complying with BSA currency transaction and suspicious transaction reporting, identification, recordkeeping, and other compliance program requirements. Also, a casino or card club is required to maintain, and to retain, a copy of the compliance program documentation. This documentation should include all casino records, documents, and manuals substantiating the training program as well as the training of appropriate personnel.<sup>69</sup> The requirement is flexible and allows each compliance training program to depend on the characteristics of an individual casino. For example, a large casino having many table games, slot machines/video lottery terminals, and cage windows might need a more comprehensive training program than a small casino with no table games. A compliance procedures manual for employees should cover all applicable divisions or departments (*e.g.*, table games, slot operations, keno, poker), other operational departments (*e.g.*, cage operations, casino credit, slot booth), as well as other departmental functions (*e.g.*, accounting, finance, information technology, marketing, surveillance).

Also, recordkeeping procedures should reflect the types of financial services provided. In addition, the training program should ensure that casino front-line employees, such as cage personnel (*e.g.*, shift managers), cage cashiers, front window cashiers (*i.e.*, general cashiers), pit personnel (*e.g.*, pit bosses), floor persons (*i.e.*, raters), dealers, and slot personnel (*e.g.*, slot supervisors, slot attendants, slot cashiers, change persons) have appropriate training to detect the occurrence of unusual or suspicious casino transactions.

**Question 23: What does the requirement mean that casinos that have automated data processing systems must use their automated programs to aid in assuring compliance?**

**Answer 23:** Casinos are required to “develop and implement” written programs that are reasonably designed to assure BSA compliance with all applicable requirements.<sup>70</sup> Effective casino anti-money laundering compliance procedures should include identifying and using

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<sup>69</sup> Such training program documentation would include any course outlines, the dates that training was provided, names of personnel who received training, any test that was administered, and the test results to allow internal and/or external examiners to evaluate the effectiveness of each training session.

<sup>70</sup> See 31 C.F.R. § 103.64(a)(1).



appropriate automated systems and programs<sup>71</sup> for all applicable gambling operating divisions or departments (*e.g.*, table games, slots, keno, poker), other operational departments (*e.g.*, cage, slot booth), as well as other departmental functions (*e.g.*, accounting, surveillance) to comply with suspicious activity and currency transaction reporting, as well as to maintain relevant records<sup>72</sup> for casino accountholders.<sup>73</sup>

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Questions or comments regarding the contents of this Guidance should be addressed to the FinCEN Regulatory Helpline at 800-949-2732.

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<sup>71</sup> This would include gaming computer systems or other computer systems that interface with systems that track, control, or monitor customer gaming activity (*e.g.*, a casino management system, a casino marketing system, a customer master file system, a credit management system).

<sup>72</sup> *See e.g.*, 31 C.F.R. §§ 103.21, 103.22(b)(2) and (c)(3), 103.33(f) and (g), and 103.36.

<sup>73</sup> Many companies have developed casino management system software capable of identifying and aggregating customer transactions that are associated with casino accounts such as deposit (*i.e.*, safekeeping, front money, or wagering), credit, check cashing, player rating or tracking, or slot club.