BANK SECRECY ACT

OVERVIEW

Overview

Congress enacted the Bank Secrecy Act (BSA) to prevent credit unions from being used as intermediaries for the transfer or deposit of money derived from criminal activity. NCUA monitors credit unions for compliance with the BSA and its implementing regulation (31 CFR 103).

Since its passage, Congress has amended the BSA a number of times to enhance law enforcement effectiveness. The Anti-Drug Abuse Act of 1986, which included the Money Laundering Control Act of 1986 (MLCA), strengthened the government's ability to fight money laundering by making it a criminal activity. The Money Laundering Suppression Act of 1994 (Title IV of the Riegle-Neal Community Development and Regulatory Improvement Act of 1994) required regulators to develop enhanced examination procedures and increase examiner training to improve the identification of money laundering schemes in financial institutions. Title III of the USA Patriot Act of 2001 made a number of amendments to the anti-money laundering provisions of the BSA. The amendments were intended to make it easier to prevent, detect, and prosecute international money laundering and the financing of terrorism by imposing additional due diligence and record keeping practices.

The primary objective of the BSA is to provide a paper trail of financial transactions to help detect and prevent money laundering activities connected with drug traffickers, terrorists, and other elements of white collar and organized crime. Congress delegated authority for issuing regulations to the Secretary of the Treasury. The financial regulatory agencies, in turn, were given responsibility for determining compliance with the Act and applicable regulations by institutions under their jurisdiction.

Compliance Program

Credit unions must establish and maintain a written compliance program for fulfilling the requirements of the BSA that includes at least: (1) a system of internal controls; (2) designation of an individual to coordinate/monitor BSA compliance; (3) independent testing; and (4) training of appropriate personnel. In addition, an effective BSA compliance program should include written policies and procedures designed to detect and prevent money laundering activities. Failure to comply with the requirements of BSA and its implementing regulations can result in both civil and criminal penalties.

Customer Identification Program[1]

Section 326 of the USA Patriot Act sets forth minimum standards for financial institutions, including credit unions, for the identification and verification of the identity of any customer who opens an account (12 CFR §103.121). The written customer identification program (CIP) must be a part of the credit union's anti-money laundering program, approved by the board and should be tailored to the credit union's size, location, and type of business. Customers must be provided notice that the credit union is verifying their identity and why. The CIP must, at a minimum, provide for:

- Obtainment of certain basic identifying data;
- Verification of the identity of each customer to the extent reasonable and practicable;
- Maintenance of records of the information used to verify the identity; and
- Determination of whether the customer appears on any lists of suspected terrorists provided by the Federal government.

The CIP must also address:

- How to handle discrepancies in identifying information received;
- Terms under which a customer can conduct transactions while the identity is being verified; and
- What to do if the credit union cannot form a reasonable belief that the true identity of the customer is known.

At a minimum the credit union must obtain the following information prior to opening or adding a signatory to an account:

- Name;
- Date of birth (for individuals);
- Residential or business street address, APO or FPO or address of next of kin, (individual) or principal place of business, local office or other physical location (corporation, partnership, etc.); and
- Taxpayer identification number (U.S. person) or passport number and country of issuance, alien identification card number, or other government issued document bearing a photo or similar safeguard (non-U.S. person).

The credit union must retain records of the identifying information (name, date of birth, etc.) for five years after the account is closed. A description of the information used to verify the identity (driver's license number, passport number, etc.) must be maintained for five years after the record was made.

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[1] It is recognized that credit unions have "members" not customers; however the BSA regulations refer to this requirement as the customer identification program. So as not to cause confusion, the program will be referred to as the customer identification program or CIP.

Reports & Record Keeping

The BSA and its implementing regulations require that credit unions file certain currency and monetary instrument reports and maintain certain records for possible use in criminal, tax, and regulatory investigations or proceedings. Credit unions are required to submit reports and/or retain records of various types of transactions including, for example: (1) large currency transactions by its members; (2) certain cash purchases of monetary instruments by its members; (3) known or suspected crimes and suspicious activities; and (4) certain wire (funds) transfers.

Exemptions from CTR Filing Requirements

The BSA regulations permit certain types of transactions to be exempt from the Currency Transaction Report (CTR) filing requirements to reduce the large volume of CTRs filed. The exemption provisions were revised and issued in two parts commonly referred to as "Phase I" and "Phase II."

As of April 30, 1996, credit unions were not required to file CTRs on large currency transactions by certain classes of "Exempt Persons." Exempt Persons are defined in 31 C.F.R. 103.22(d)(2) as:

Phase I:

1. Domestic depository institutions.

2. Departments and agencies of the United States, the states, and their political subdivisions.

3. Any entity established under the laws of the United States, of any state, or of the political subdivision of any state, or under an interstate compact between two or more states, that exercises authority on behalf of the United States or any such state or political subdivision.

4. Any entity, other than a bank, whose common stock or analogous equity interests are listed on the New York Stock Exchange, the American Stock Exchange, or whose common stock, or analogous equity interests have been designated as a Nasdaq National Market Security listed on the Nasdaq Stock Market (except stock or interests listed under the separate "Nasdaq Small-Cap Issues" heading).

5. Any subsidiary, other than a bank, of any entity described in number four (a "listed entity") that is organized under the laws of the United States or of any state and at least 51 percent of whose common stock is owned by the listed entity. Franchises of listed entities may not be treated as exempt persons, unless they qualify as subsidiaries.

Phase II:

1. Any other commercial enterprise (also known under the new exemption procedures as a non-listed business), to the extent of its domestic operations, other than those ineligible businesses covered by 103.22(d)(6)(viii) (e.g., pawnbroker, gaming establishment, etc).

2. A customer who holds a payroll account and regularly withdraws more than $10,000 to pay its U.S. employees in currency solely for withdrawals for payroll purposes from existing transaction accounts.

Non-listed businesses and payroll customers must meet certain additional criteria to be eligible for exemption:

- The entity must have maintained a transaction account at the credit union for at least 12 months. The months do not have to be consecutive but should be recent.

- The entity must engage in frequent currency transactions with the credit union in excess of $10,000 (eight or more a year).

- The entity must be incorporated or organized under the laws of the United States or a state or registered as and eligible to do business in the United States.

Annually, credit unions must verify whether each exemption continues to meet the exemption eligibility requirements. Biennially, credit unions must file the "Designation of Exempt Person" form for each non-listed business and payroll customer. Biennial renewals must include a statement certifying the credit union's system of monitoring transactions in currency of an exempt person for suspicious activity has been applied.

Suspicious Activity Reporting Requirements

An effective BSA compliance program also recognizes that certain member transactions are suspicious in nature. A credit union must know its members to be able to make an informed decision as to the suspicious nature of a particular transaction and whether to file a Suspicious Activity Report (SAR). SARs can be filed on any transaction occurring in any department. SARs must be filed no later than 30 days after the date of initial detection of facts that may constitute a basis for filing a SAR. A copy of each filed SAR along with supporting documentation should be retained for a period of 5 years from the date filed.

Credit unions must file a SAR following the discovery of:

- Insider abuse involving any amount.

- Violations of federal law aggregating $5,000 or more when a suspect can be identified.

- Violations of federal law aggregating $25,000 or more regardless of a potential suspect.

- Transactions aggregating $5,000 or more that involve potential money laundering or violations of the BSA if the credit union knows, suspects, or has reason to suspect that the transaction:

    - Involves funds from illegal activities or is intended or conducted to hide or disguise illicit funds or assets as part of a plan to violate or evade any law or regulations or to avoid any transaction reporting requirement under federal law;
    - Is designed to evade any of the BSA regulations; or
    - Has no business or apparent lawful purpose or is not the sort in which the particular member would normally be expected to engage, and the credit union knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

Information Sharing Between Federal Law Enforcement Agencies and Financial Institutions

Section 314(a) of the USA Patriot Act authorized law enforcement authorities to communicate with financial institutions about suspected money launderers and terrorists (§103.100).

A request for information under section 314(a) (referred to as a "314(a) request") will be made by the Financial Crimes Enforcement Network (FinCEN). Generally, the requests will be batched and issued every two weeks and financial institutions, including credit unions, will have two weeks to respond to the request. Searches will be limited to specific records and, unless otherwise noted, will be a one-time search. If the credit union identifies a match for a named subject, it should stop its search of accounts for that suspect and respond to FinCEN that it has a match and provide point-of-contact information for the requesting law enforcement agency to follow-up directly with the credit union.

Searches need only encompass current accounts and accounts maintained by a named subject during the preceding twelve (12) months, and transactions not linked to an account conducted by a named subject during the preceding six (6) months. Any record that is not maintained in electronic form need only be searched if it is required to be kept under federal law or regulation.

Credit unions are not required by a 314(a) request to close any account or take any other action with respect to an account or a transaction by virtue of a match with any named subject. Credit unions do not need to maintain the list of named subjects for the purpose of evaluating whether to open an account or to conduct a transaction, unless specific instructions accompanying a 314(a) request state otherwise.

A credit union may not disclose to any other person the fact that FinCEN has requested or obtained information, except to the extent necessary to comply with FinCEN's request.

While there are no specific record keeping requirements concerning 314(a) requests, appropriate documentation of the request and record search should be maintained for a reasonable time period to provide for an effective examination trail. Credit unions may use third party vendors to conduct these searches provided the vendor agrees to maintain the confidentiality of the process.

Voluntary Information Sharing Among Financial Institutions

Section 314(b) of the USA Patriot Act authorized financial institutions to communicate amongst themselves about suspected money launderers and terrorists (§103.110). A credit union that intends to share information must submit a notice to FinCEN. The notice is effective for one year and a new notice must be submitted for each subsequent year. Completed notices can be submitted by accessing FinCEN's Web site at: http://www.treas.gov/fincen and entering the appropriate information. Notices may also be mailed to: FinCEN, P.O. Box 39, Mail Stop 100, Vienna, VA 22183.

If a credit union intends to share information with another institution, it must verify that the institution with which it intends to share has also filed a notice with FinCEN. Each credit union that shares information must maintain adequate security and confidentiality of the information.

Associated Risks

Compliance risk can occur when the credit union fails to implement an effective program implementing the requirements of the BSA.

Reputation risk can occur when the credit union incurs fines and penalties as a result of failure to comply with the BSA. Enforcement actions against institutions are public information, and negative publicity can result from such exposure.

Additional Information

FinCEN's Web site contains additional information including links to the regulation, BSA forms, and general compliance information. It can be located at: http://www.fincen.gov.

BANK SECRECY ACT

OPERATIONAL REQUIREMENTS

Written Programs / Documentation

Part 748 of the NCUA Rules and Regulations (§741.214 for state-chartered credit unions by reference) requires all credit unions to establish and maintain procedures reasonably designed to assure and monitor their compliance with the BSA and its implementing regulations. This includes establishing an effective Customer Identification Program (CIP) that is part of the overall BSA program. A credit union must develop and administer a program which assures and monitors compliance with BSA record keeping and reporting requirements. Such a program also can protect a credit union against possible criminal and civil penalties and asset forfeitures. Section 748.2 establishes four minimum requirements for a compliance program.

At a minimum, a credit union's internal compliance program must be written, approved by the board of directors, and noted in the board's meeting minutes. The program must include:

- A system of internal controls to ensure ongoing compliance;
- Independent testing of compliance;
- Daily coordination and monitoring of compliance by a designated person; and
- Training for appropriate personnel.

<u>Internal Controls</u>

Credit unions must have appropriate internal control procedures to allow them to detect money laundering. These procedures must provide, among other things, a credit union with the ability to identify and report: (1) currency transactions in excess of $10,000 on Internal Revenue Service (IRS) Form 4789; and (2) transactions suspicious in nature.

Senior management responsibilities for internal controls should demonstrate their commitment to compliance by:

- Establishing a comprehensive compliance plan that is approved by the board of directors and fully implemented by credit union staff.
- Instituting a requirement that senior management be kept informed of compliance efforts, audit reports, identified compliance deficiencies, and the corrective action taken.
- Making BSA compliance a condition for employment.
- Incorporating compliance with the BSA and its implementing regulation into job descriptions and performance evaluations of credit union personnel.

Independent Testing

Compliance with the BSA should be independently tested at least annually by the internal audit department, outside auditors, or consultants. The audit program should, at a minimum, be able to:

- Attest to the effectiveness of internal procedures for monitoring compliance with the BSA by, for example:
  - Sampling large currency transactions traced to CTR filings;
  - Testing the validity and reasonableness of exemptions granted; and
  - Reviewing a sample of SARs filed for completeness and accuracy.
- Assess employees' knowledge of regulations and procedures.
- Assess adequacy of training programs.

Audit findings should be incorporated into a report for senior management and board review. Appropriate follow-up should be ensured.

Compliance Officer

A credit union must designate a credit union employee as the BSA compliance officer. This officer should have day-to-day responsibility for the BSA compliance program.

Training

Senior management must ensure that appropriate credit union personnel are trained in all aspects of the regulatory requirements of the BSA and the credit union's internal policies and procedures to ensure compliance. An effective training program includes provisions to ensure that:

- All credit union personnel who have contact with members – tellers, member service representatives, lending officers, etc. – receive appropriate training.
- Such training is ongoing and incorporates current developments such as new and different money laundering schemes involving credit unions. It also can include examples of money laundering cases, tailored to the audience, and the ways in which such activities can be detected or resolved.

Record Keeping

The BSA regulations require credit unions to maintain numerous records so that, for example, transactions can be reconstructed. The general retention period under the BSA is five years. Specific record keeping requirements can be found in §103.33 of the BSA (31 CFR 103.33). Following is a list of some of the records which must be kept.

- Extensions of credit in excess of $10,000;
- Currency transaction in excess of $10,000 to or from any person, account, or place outside the United States;
- Cash sales of monetary instruments (e.g., money orders, traveler's checks, cashier's checks) between $3,000 and $10,000;
- Each certificate of deposit sold or redeemed;
- Each document granting signature authority;
- Each statement;
- Each share draft of more than $100;
- The name, address and taxpayer identification number of any person purchasing or redeeming a certificate of deposit; and
- Numerous, detailed records with respect to a funds transfer of $3,000 or more (§103.33(e)).

In addition, credit unions must keep copies of Suspicious Activity Reports, along with supporting documentation and Currency Transaction Reports.

Reports

The following list details reports that credit unions generally will file. (This is not an exhaustive list of all BSA reports.)

- Suspicious Activity Report (SAR), TD F 90-22.47
- Currency Transaction Report (CTR), Form 4789
- Designation of Exempt Person, TD F 90-22.53
- Report of International Transportation of Currency or Monetary Instruments (CMIR), Form 4790
- Report of Foreign Bank and Financial Accounts (FBAR), TD F 90-22.1

Enforcement / Liability

Enforcement and compliance lies with the Assistant Secretary of the Treasury (Enforcement). Authority to examine credit unions for compliance has been delegated to NCUA with respect to those credit unions NCUA examiners regularly examine for safety and soundness. The IRS has the authority to examine those credit unions not regularly examined by NCUA.

The BSA regulations provide for civil penalties not to exceed the greater of the amount (not to exceed $100,000) involved in the transaction or $25,000. Criminal penalties can be up to $500,000 and up to 10 years in prison.