

NATIONAL CREDIT UNION ADMINISTRATION
WASHINGTON, D.C. 20456
LETTER TO CREDIT UNIONS

NCUA LETTER NO. 90

DATE: MAY 19, 1987

TO THE BOARD OF DIRECTORS OF THE FEDERALLY-INSURED CREDIT UNION
ADDRESSED:

Congress has expressed a great deal of concern recently about the effect of drug trafficking on our society. As a result of that concern, Congress passed, and the President signed, the Anti-Drug Abuse Act of 1986. This law affects your recordkeeping and reporting obligations under the Bank Secrecy Act and the Department of Treasury's regulations.

As required by Congress, NCUA recently adopted a regulation requiring federally-insured credit unions to establish programs for compliance with the Bank Secrecy Act and Treasury's regulations. When I last wrote to you, I indicated NCUA would provide further guidance in this area. NCUA's guidelines are attached. The guidelines are in three parts. Part I is a checklist of the Treasury requirements and Part II is a more detailed explanation. Part III contains suggestions for establishing your compliance program.

While we have made every effort to keep the guidelines as concise as possible, the requirements of the law and Treasury's regulations are lengthy and complex. The guidelines do not impose new requirements, but rather are intended to help you comply with the law and regulations.

Sincerely,

FOR THE NCUA BOARD

ROGER W. JEPSSEN
Chairman

Guidelines Concerning Recordkeeping
and Reporting Under the Bank Secrecy Act

All financial institutions, including credit unions, are subject to recordkeeping and reporting requirements of the Bank Secrecy Act and the Treasury Department's regulations. Also, though outside the scope of these guidelines, some states have reporting requirements which may apply to your credit union. You should consult state regulators for information.

Two recent actions by Federal agencies are of importance to - federally-insured credit unions in meeting their responsibilities. First, Treasury has amended its regulations to make important changes in recordkeeping and reporting requirements. Second, as required by Congress, NCUA has issued a regulation requiring that federally-insured credit unions establish a program for compliance with the Act and Treasury regulations.

These guidelines are provided to assist you in complying with the requirements of the Treasury Department and NCUA regulations. NCUA's regulation (12 C.F.R. 5748.2) is found at page 748-1 of your Rules and Regulations booklet. For ease of reference, you may wish to keep a copy of these guidelines on file with the regulation.

This letter should be used only as a guide. Whenever any question exists with regard to the reportability of a transaction, reference should be made to the Treasury regulations and, if necessary, the matter should be discussed with the credit union's legal counsel. Also, please feel free to contact your NCUA Regional Office if you have questions or need other assistance.

PART I

**Checklist of Recordkeeping and Reporting
Requirements [References are to pages within
these guidelines which provide greater detail]**

Maintain the following records for 5 years.

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| I. | Extensions of credit greater than \$10,000. | p. 4 |
| II. | Attempts to transfer more than \$10,000 to or from any person, account or place outside the U.S. | p. 4 |

Report the following transactions immediately

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|----|---|-------|
| I. | Cash deposits or withdrawals over \$10,000. | p. 78 |
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- II. Mailing or shipping by the credit union itself or private messenger of over \$10,000 in cash or monetary instruments into or out of the U.S.

p. 10

PART II

Chapter citations are to Treasury regulations found at 31 C.F.R. Part 103. Part 31 of the Code of Federal Regulations is available at many libraries or through the U.S. Government Printing Office, Washington, D.C. 20402. In the event you have difficulty obtaining a copy, contact your NCUA Regional office.

I. Important Definitions:

(a) Currency - Coin and paper money of the U.S. or any other country. Currency includes U.S. silver certificates, U.S. notes, and Federal Reserve notes. 31 C.F.R. §103.11(d).

(b) Monetary instruments - Currency, of the U.S. or any other country, securities or stock in bearer form or in any form where title passes on delivery, investment securities and all negotiable instruments; e.g., share drafts, personal and business checks, official bank checks, cashier's checks certified checks, third-party checks, promissory notes, travelers' checks, money orders and other similar instruments that are either in bearer form, endorsed without restriction, signed but with the payee's name omitted, or in any form where title passes upon delivery. 31 C.F.R. §103.11(j)

(c) Transaction in currency - A transaction involving the physical transfer of currency, as defined in paragraph (a) above, from one person to another. A transaction which is a transfer of funds by means of bank check, bank draft, wire transfer, or other written order, and which does not include the physical transfer of currency is not a transaction in currency. 31 .F.R.§103.11(n).

(d) Transaction account. A share draft account or any other account which permits withdrawals by negotiable instruments or telephone transfers for the purpose of making payments or transfers to others.

RECORDKEEPING REQUIREMENTS

This section will summarize what records must be maintained under the Bank Secrecy rules. (Many of these records are maintained in the usual course of business.) These recordkeeping requirements are independent of and in addition to requirements to file reports for certain types of transactions, e.g., Form 4789- with Department of the Treasury for transactions in currency greater than \$10,000. Additional records must be kept in connection with those reporting requirements. They will be discussed in connection with the specific reporting requirement.

II. Records To Be Maintained By Credit Unions [original, microfilm or other copy is acceptable]

All records discussed below must be retained by the credit union for a period of five years. All such records shall be filed or stored in such a way as to be accessible within a reasonable period of time. 31 C.F.R. §103.38 (d). **It is not necessary to keep a separate system of records for each of these requirements so long as the information is accessible in the credit union's existing record system.**

(a) Extensions of credit. A record of any extension of credit in excess of \$10,000, except one secured by an interest in real property.

This record shall contain:

- (1) Name of borrower
- (2) Address of borrower
- (3) Amount of credit extended
- (4) Nature or purpose of loan
- (5) Date of loan

31 C.F.R. §103.33 (a)

(b) Requests to transfer funds outside the U.S. A record of any request made or instructions provide regarding a transfer of currency or other monetary instruments, checks, funds, investment securities, or credit greater than \$10,000 to or from any person, account or place outside the United States. This is required whether or not a transfer occurs. If a transfer does not occur, a record must be maintained made before the transaction was canceled.

(c) Members' taxpayer ID numbers. A record of the taxpayer identification number of any member opening a share or share draft account or purchasing or redeeming a share certificate. In cases of joint accounts, information on a person with a financial interest must be maintained. (If the person is a nonresident alien, record the passport number or a description of some other government document used to verify identity.) This information must be recorded within 30 days of the date the transaction occurs. 31 C.F.R., 103.34(a)(1)(2). In the event a credit union is unable to secure the information, it must maintain a list containing the names, addresses, and account numbers of those members for whom it has been unable to secure the information. 31 C. F. R. §103. 34 (a) (1) .

(d) Exceptions. Taxpayer identification numbers required in paragraph (c) above need not be secured for accounts or transactions with the following:

- (1) agencies and instrumentalities of Federal, state, local, or foreign governments;
- (2) judges, public officials, or clerks of courts of record as custodians of funds in controversy or under the control of the court;
- (3) certain aliens as specified in 31 C.F.R. §103.34 (a) (3) (iii-vi);

- (4) certain tax exempt organizations and units of tax-exempt organizations. See 31 C.F.R. §103.34(a)(3)(vii);
 - (5) a person under 18 years of age with respect to an account opened as a part of a school thrift savings program, provided the annual dividend is less than \$10; and,
 - (6) a person opening a Christmas club, vacation club, and similar installment savings programs, provided the annual dividend is less than \$10.
- (e) Signature authority. A record of each grant of signature authority over each share or share draft account. 31 C.F.R. §103.34 (b) (1).
- (f) Individual account ledgers. A record of each statement, ledger card or other entry on each share account, showing each transaction with respect to that account. 31 C.F.R. § 103.34 (b) (2).
- (g) Share drafts or money orders. A record of each share draft or money order drawn on the credit union or issued and payable by it, except those for \$100 or less. 31 C.F.R. §103.34 (b) (3).
- (h) Exceptions. A record need not be kept of those share drafts or money orders, regardless of amount, drawn on accounts which can be expected to have drawn on them an average of at least 100 share drafts per month over the calendar year or at least 100 share drafts each time such drafts, (ii) payroll share drafts, (iii) employee benefit share drafts, (iv) insurance claim share drafts, (v) medical benefit share drafts, (vi) share drafts drawn on government agency accounts, (vii) share drafts drawn by brokers or dealers in securities, (viii) share drafts drawn on fiduciary accounts, (ix) share drafts drawn on other financial institutions, or (x) pension or annuity share drafts. 31 C.F.R. §103.34 (b) (3).
- (i) Debits in excess of \$100. A record of each item in excess of \$100 (other than credit union charges or periodic charges made pursuant to agreement with the member), comprising a debit to a member's share or share draft account, and not specifically exempted, under subparagraph (h) above. 31 C.F.R. §103.34(b)(4).
- (j) Transfers outside the U.S. A record of each item or remittance, including share drafts, other drafts, transfers of credit, funds, currency, other monetary instruments or investment securities of more than \$10,000 remitted or transferred to a person, account, or place outside the United States. 31 C.F.R. §103.34 (b) (5), (6) .
- (k) Share drafts issued or payable by foreign banks. A record of each share draft or other draft in an amount in excess of \$10,000 drawn on or issued by a foreign bank which the credit union has paid or presented to a non-bank drawee for payment. 31 C.F.R. §103.34(b)(7).

(l) Receipts from outside the U.S. A record of each item, including checks, drafts or transfers of credit, of more than \$10,000 received directly, (not through a domestic financial institution) by letter, cable, or any other means, from a bank, broker or dealer in foreign exchange outside the United States. 31 C.F.R. 9103.34(b)(8).

(m) Receipts from outside the U.S. A record of each receipt of currency, other monetary instruments, investment securities or checks, and each transfer of funds or credit, of more than \$10,000 received on any one occasion directly (not through a domestic financial institution) from a bank, broker or dealer in foreign exchange outside the United States. 31 C.F.R. §103.34(b)(9).

(n) Share Draft Accounts. Maintain records prepared or received by a credit union in the ordinary course of business, which would be needed to reconstruct a share draft account and to trace a share draft in excess of \$100 deposited in such account through its domestic processing system or to supply a description of a deposited share draft in excess of \$100. This paragraph shall be applicable only with respect to share draft accounts.

(o) Share certificates. A record of the name, address, and taxpayer identification number of the purchaser of each share certificate as well as a description of the certificate, a notation of the method of payment, and the date of the transaction. 31 C.F.R. §5103.34(b)(11).

(p) Payment of share certificates. A record of the name, address and taxpayer identification number, if available, of any person presenting a share certificate for payment, as well as a description of the instrument and the date of the transaction. 31 C.F.R. §103.34(b)(12).

(q) Records of deposits. Each deposit slip or credit ticket reflecting a transaction in excess of \$100 or the equivalent record for direct deposit or other wire transfer deposit transactions. The slip or ticket shall record the amount of any currency involved. 31 C.F.R. §103.34(b)(13).

REPORTING REQUIREMENTS

ALL CREDIT UNIONS MUST:

III. Transactions in Currency over \$10,000. Report each deposit, withdrawal, or exchange of currency by or through their institution that involves a transaction in currency greater than \$10,000. 31 C.F.R. §103.22(a)(1)

(a) The Form to be used is IRS Form #4789, Currency Transaction Report. A copy is attached.

(b) The report must be filed by the credit union within 15 days following the day on which the transaction occurred. 31 C.F.R. §103.26(a)(1).

(c) It must be filed with the Commissioner of the IRS. 31 C.F.R. §103.26 (a) (4).

(d) A copy must be retained by the credit union for 5 years. 31 C.F.R. §103.26(a) (3).

(e) Multiple currency transactions must be treated as a single transaction if the credit union, through a director, official or employee, has knowledge that they are by or on behalf of any person and result in cash in or cash out totaling more than \$10,000 during any one business day. 31 C.F.R. §103.22(a)(1). Thus, multiple transactions will have to be reported if they exceed \$10,000 in one day and the credit union has knowledge that they are by or on behalf of one person.

(f) Reports of transactions in currency in excess of \$10,000 are not required if between the credit union, Federal Reserve Banks, or other domestic banks or credit unions. 31 C.F.R. § 103.22(b)(1).

IV. Exemptions from Reporting Requirements - 31 C.F.R. §103.22(b)

(a) A credit union may exempt from reporting requirements deposits/withdrawals of currency if from:

Existing accounts and by an established depositor who is a U.S. resident operating a retail business in the United States.

(1) Retail Business is one engaged primarily in providing goods to ultimate customers, (e.g., food store, gas station). Dealerships which buy or sell motor vehicles, vessels and aircraft are not included and may not be exempted. 31 C.F.R. §103.22(b)(2)(i).

(b) Other Exemptions. Deposits/withdrawals from existing account by an established depositor and U.S. resident. who is operating:

- (1) sports arena
- (2) race track
- (3) amusement park
- (4) bar
- (5) restaurant
- (6) hotel
- (7) check cashing service (licensed by State or local gov't.)
- (8) vending machine co.
- (9) theatre
- (10) regularly scheduled passenger carrier
- (11) public utility company

(c) Deposits/withdrawals or other payments or transfers by Governments or Government agencies.

(d) Withdrawals greater than \$10,000 for payroll purposes from an existing account by an established depositor who is a U.S. resident and operates a firm that regularly withdraws more than \$10,000 to pay workers in currency.

(e) A credit union shall only allow exemptions from reporting requirements for the above type persons and businesses if it reasonably concludes that the amounts withdrawn or deposited are normal and not excessive for customary conduct of the type of business involved. 31 C.F.R. §103.22(c).

(f) Additions to exempt list maintained by credit unions after October 27, 1986. 31 C.F.R. § 103.22(d).

(1) Any new exemption in the categories listed above granted after 10/27/86 must be recorded. The record must contain certain specific information as set forth on Form A, copy attached. Form A is provided for convenience however, any form may be used provided it contains the required information. (The Treasury Department is developing an exemption form which will be available for use in the near future.)

(2) The form must be retained by the credit union for as long as customer is on the exempt list and for 5 years thereafter.

(3) A credit union must independently verify activity on accounts exempted to assure dollar limits are not being exceeded. 31 C.F.R. §103.22 (d).

(4) A credit union must only allow exemptions if it reasonably concludes that the amounts withdrawn or deposited are normal and not excessive for the type of business involved. 31 C.F.R. §103.22(d).

(g) Exemptions in areas not specifically listed above may be obtained under special circumstances. The credit union should write to Chief, Currency and Banking Reports Branch, Exemption Review Staff, IRS Data Center, Post Office Box 32063, Detroit, Michigan, 48232. The credit union should include a copy of its exemption form for the particular business, as well as a statement of the circumstances that warrant special exemption treatment. 31 C.F.R. §103.22 (e).

(h) A credit union must maintain a centralized list of all exemptions from reporting requirements. In the case of individuals or businesses, this must include:

- (a) NAME
- (b) ADDRESS
- (c) Taxpayer Id #
- (d) Account Number

- (e) Specify whether exemption applies to deposits/withdrawals or both
- (f) Specify any dollar limits on exemptions
- (g) The name and address of the credit union.

31 C.F.R. §103.22(f).

This list, including exemption forms, must be produced within 15 days if requested by an Assistant Secretary for Enforcement or the Commissioner of the IRS.

V. Transfers Into or Out Of the U.S. In certain limited circumstances a credit union must report transactions where it is involved in the transportation, mailing or shipping of currency or monetary instruments, which in the aggregate exceed \$10,000, into or out of the United States. (Examples of such a transaction would include situations where the credit union itself physically transfers the currency or monetary instruments or where it does so by private messenger service.) 31 C.F.R. §103.23(a).

(a) The Form to be used is #4790 (U.S. Customs). A copy is attached.

(b) The report must be filed on or before the date of transportation, mailing, or shipping. Filing may be by mail addressed to Commissioner of Customs, Attn: Currency Transportation Reports, Washington, D.C. 20226. If the credit union itself physically transports the currency or monetary instruments, the report must be filed immediately with the customs service at the port of departure. 31 C.F.R. §103.26 (b).

(c) A copy must be retained by the credit union for 5 years.

(d) There are many exceptions to this reporting requirement. If the transaction in question fits within one of the exceptions below, the credit union need not file Form #4790.

(1) A report is not required if the shipment or mailing of currency or other monetary instruments is through the postal service or by common carrier. 31 C. F. R. §103. 23 (c) (2)

(2) A report is not required if the transfer of funds is through normal banking procedures which do not involve the physical transportation of the currency or monetary instruments (e.g., wire transfers). 31 C.F.R. §103.23(d).

(3) A report is not required if the credit union receives the currency or monetary instruments over the counter from a member who may have transported them into the U.S.; or if it provides the currency or monetary instruments over the counter to a member who may transport the funds out of the U.S. In such a situation, the responsibility to file the Customs Form #4790 is the member's. The credit union employee need not inquire of the member whether the funds have been brought into

or will be taken out of the country. The credit union employee has no duty to inform the member of his obligation to file Form 4790 or to ask whether the member has actually filed. If, however, the credit union employee knows that a complete and truthful report has not been filed by, member, the credit union-must file Form #4790.

(4) any transaction involving currency which requires filing Form 4790 will always require the simultaneous filing of Form 4789.

VI. Verification of Identity.

(a) A credit union must always verify and record the name and address of the individual presenting a reportable transaction, as well as record the identity, account number, and the social security taxpayer identification number, if any, of any member or entity for whose account the transaction is effected. Verification of identity shall be made by examination of a document, other than a credit union signature card, that is normally acceptable within the credit union community as a means of identification (e.g., a driver's license or credit card). A credit union signature card may be relied upon only if it was issued after documents establishing the identity of the member were examined and notation of the specific identifying information was made on the signature card. In each instance, the specific identifying information (i.e., the account number of the credit card, the driver's license number, etc.) used in verifying the identity of the member must be recorded on any report filed under Sections III or V above, and the mere notation of "known customer" or "credit union signature card on file" on the report is prohibited. 31 C.F.R. §103.27.

(b) A credit union must always make a reasonable effort to secure a member's taxpayer identification number when it is required to do so. In cases where it is unable to secure this information, it must maintain a list containing names, addresses, and account numbers, if applicable, of those persons for whom it does not have any taxpayer identification number. 31 C.F.R. §103.34 (a) (I).

VII. New Offense of Laundering Monetary Instruments

New Federal legislation makes it a crime to engage in a financial transaction if you have knowledge that the transaction is designed to conceal or disguise proceeds of unlawful activity or to avoid a transaction reporting requirement. Thus, if you are aware or have reason to believe a financial transaction is designed to accomplish such a purpose, you should promptly notify law enforcement officials. Financial Privacy laws have been amended to permit disclosure of a suspect's name and account information in such a situation.

PART III

I. Suggestions on Establishing a Program to Assure That Your Credit Union meets Reporting and Recordkeeping Requirements.

The effectiveness of any compliance program will be measured by the consistency with which it detects and reports appropriate transactions as well as the thoroughness of its record retention. The complexity of your program will depend upon the size of your credit union and the number of reportable transactions which occur at the institution. The following suggestions are intended to provide ideas on establishing your compliance program.

- (a) Select responsible, experienced persons to develop and administer a program. Once developed, the program must be reduced to writing and approved by the board of directors.
- (b) Designated personnel should review recordkeeping and reporting requirements to determine which apply to your credit union.
- (c) Examine the credit union's current compliance program (if any) to determine if it is effective in detecting and reporting appropriate transactions.
- (d) Examine the credit union's recordkeeping and records storage procedures.
- (e) Remember that many records must be maintained for a minimum of 5 years. Examples of the more common records subject to this requirement are: (1) any document granting signature authority over a deposit or share draft account; (2) deposit slips or credit tickets reflecting a transaction in excess of \$100. See Part 1 and the Treasury regulation for a complete listing. These documents should already be retained for some period so the credit union may need only to extend the period and expand the space available for this purpose. In the event records which are required to be retained are not being kept, procedures must be established to assure that they are. Personnel who are involved in preparing or receiving a particular document from a member will have to be trained regarding what procedures to follow to assure an appropriate record is maintained.
- (f) Remember the purpose of extending the retention period is to allow records to be reconstructed and transactions to be traced when necessary. For this aspect of your program to be acceptable, it must enable the credit union, if requested, to provide records on a particular account going back five years. You must be able to provide these documents within a reasonable time after the request. Therefore, in selecting procedures for your credit union, keep these goals in mind.
- (g) Assure that affected personnel are aware of reporting requirements and have appropriate forms. See Part I and Treasury Regulation for a complete listing.
- (h) If feasible (depending on the number of transactions), have all transactions which require reporting routed through or approved by designated personnel.
- (i) If feasible, provide for a limited number of specified personnel to be responsible for recordkeeping and storage.

(j) Assure that personnel responsible for overall compliance are at all times aware of current Treasury and NCUA regulations pertaining to currency recordkeeping and reporting requirements.

(k) Provide training for involved personnel to assure that they are familiar with their responsibilities in administering the credit union's program. It is essential that tellers and others likely to be involved initially with a member are able to identify transactions which require recordkeeping or reporting.

(l) Provide for periodic random checking, by personnel administering the program, of tellers' records to assure that they are reporting appropriate transactions and that documents are being forwarded to Treasury or Customs if required. Periodic checks should also be made to assure records are being properly maintained and are retrievable. Problems found should be noted and corrected. A written summary of any periodic checking should be maintained. It should be dated, signed and list any problems noted and corrections made.

(m) At least annually, personnel other than those designated to administer the program should test the system established: (1) to assure that it is adequate to meet the needs of the credit union in having transactions properly reported; and (2) to assure that it adequately provides for record maintenance and retrieval. The personnel involved in this testing may be credit union personnel, provided they are not involved in administering the program, or outside parties.

(n) This independent testing may be performed as part of a credit union's annual supervisory committee audit.

(o) The results of the independent testing should be reduced to writing and made available for review by NCUA examiners.

II. **Scope of NCUA's Review**

NCUA, as part of its examination of Federal credit unions, will be monitoring compliance in this area. Specifically, the examiner will be interested in determining whether a program exists which meets the criteria set forth in §748.2 of NCUA's Rules and Regulations. He will also discuss the program with the personnel involved in administering it, review the comments they have made as a result of periodic testing, and examine the results of the annual independent test performed by the supervisory committee or outside auditors. Each examination will include comments regarding whether the credit union's program is successful in assuring that currency recordkeeping and reporting requirements are being met.