
BANK SECRECY ACT (BSA) – APPENDIX 18A

Examination Objectives

- Determine the credit union's level of compliance with the Bank Secrecy Act (BSA)
- Ensure the credit union has adequate BSA policies, procedures, and controls for each of the following:
 - Verifying member identity
 - Identifying reportable transactions
 - Filing required reports
 - Maintaining proper documentation
 - Blocking and reporting transactions required by the Office of Foreign Asset Control (OFAC)
 - Complying with the U.S.A. Patriot Act (Patriot Act)

Risk Categories

- Compliance – the current and prospective risk to earnings or capital arising from failure to comply with the BSA and the resulting civil and criminal penalties;
- Strategic – the current and prospective risk to earnings or capital arising from inadequate policies, procedures and controls for BSA; and
- Reputation – the risk that negative publicity will adversely impact earnings and capital.

Overview

Failure to maintain strict compliance with the BSA can subject the credit union to high levels of compliance (regulatory) risk, reputation risk, financial losses, and other risks such as civil and criminal penalties. At its worst, this deficiency can jeopardize national security. Negative publicity may result in operational losses, a decline in net worth, or the inability to attract members and competent staff.

Risk indicators include the following:

- Inadequate due diligence by management when initiating new programs or products;
- Failure to appoint and train a compliance officer;
- Inadequate policies or procedures;

- Inadequate audit;
- Inability of data processing system to generate BSA reports;
- Inadequate review by management of BSA reports from data processing system;
- Lack of adequate management oversight;
- Inadequate training; and
- High staff turnover.

While a credit union may not knowingly risk its reputation for a member engaged in criminal activity, it must take steps to guard against the possibility of permitting or facilitating criminal activity.

Bank Secrecy Act

The BSA includes several related acts such as the Anti-Drug Abuse Act, the Money Laundering and Control Act, the Currency and Foreign Transactions Act and the USA Patriot Act, all of which were enacted by Congress. The BSA requires maintenance of certain types of records and reports useful to criminal, tax, or regulatory investigations. The Department of Treasury issued the implementing regulations in 31 CFR 103. §748.2 of the *NCUA Rules and Regulations* requires that credit unions establish and maintain procedures to assure and monitor compliance with the BSA and the implementing regulations.

Specific provisions of the BSA were designed to:

- Prevent members from using financial service providers as intermediaries to accomplish or hide the transfer or deposit of monies derived from criminal activity;
- Prevent, detect, and prosecute terrorism and international money laundering; and
- Provide a paper trail of activities.

Therefore, credit unions must file certain currency and monetary instrument reports and maintain certain records, including identifying and recording cash purchases of certain monetary instruments. Credit unions must also understand the following constitutes criminal offenses:

- Knowingly helping to launder money from criminal activity;

- Knowingly engaging in (including being “willfully blind”) a transaction of more than \$10,000 that involves property from criminal activity; and
- Structuring transactions to avoid BSA reporting.

The Department of Treasury may assess civil and criminal penalties on any domestic credit union and upon any director, officer, or employee for willful violation of the BSA. Penalties can include both fines and prison terms. Therefore, due diligence regarding BSA requires credit union officials to train their employees, identify members using appropriate documentation, understand members and members’ businesses, and institute systems and procedures to distinguish between routine transactions and those that may indicate suspicious activity. The Treasury may also assess fines for negligence.

Enforcement

NCUA must, by law, determine during each examination whether the credit union:

- Conducts money-laundering schemes;
- Complies with technical reporting and record keeping requirements of the BSA; and
- Adopted policies and implemented procedures to detect, deter, and report unusual or suspicious activities related to money laundering (31 CFR 103.46 (b)(5)).

Therefore, violations of the BSA necessitate immediate corrective action. Failure of a credit union to take immediate and effective corrective action may warrant administrative action. Examiners must document BSA violations and compliance deficiencies on the Consumer Compliance Violations Form.

Member Due Diligence

The objectives of a member due diligence program include:

- Protecting the reputation of the credit union;
- Facilitating the credit union’s compliance with BSA requirements;
- Enforcing OFAC and Patriot Act regulations and enhancing national security; and

- Protecting the credit union from becoming a vehicle for, or victim of, illegal activities by the member.

Credit Union's Responsibility

A credit union's responsibility includes knowing the identity of each member and assuring the member's account is not used for illegal purposes. The credit union should have policies and procedures for verifying the identity of its members and determining consistency of account activity.

The credit union's due diligence policy should reflect the following:

- Size and complexity of the credit union;
- Nature and extent of the services offered;
- Level of risk; and
- Documentation requirements.

The credit union's documentation requirements and due diligence procedures should include, at a minimum:

- Documentation requirements for verifying the identity of the member;
- Documenting the source of the member's funds, if deposits exist that include other than normal routine transactions;
- Determining the member's normal and expected transactions;
- Identifying unusual transactions, or activities disproportionate to the member's known business; and
- Determining criteria for when the credit union should report a transaction as a suspicious activity on a Suspicious Activity Report (SAR.)

Identifying a Member

Member identification procedures should include:

- Obtaining, examining, verifying, and recording primary identification, such as the following:

- Drivers License;
 - Passport;
 - Government ID; or
 - Alien Registration Card.
- Obtaining and recording primary information such as:
 - Full name with street or postal address;
 - Social Security number, taxpayer ID number;
 - Date of birth;
 - Home and work phone numbers; and
 - Bank or other credit union references.
 - Obtaining, examining, verifying, and recording secondary identification, for example:
 - Credit card;
 - Employer card;
 - Union card;
 - Voter registration card; or
 - School ID.
 - Verifying as much of the information as possible, including:
 - Physical observation of the address (drive by to see if the address is legitimate);
 - Call backs (validate the phone number by calling it);
 - Check with a third party (call references given);
 - Use of a verification service;
 - Use of a reverse directory to verify the phone number and address match;
 - Check the telephone book;
 - Contact previous employer; and
 - Obtain a credit report.
 - Determining whether the member is on any list of known or suspected terrorists provided by any federal government agency, including:

- OFAC; and
- the Control List (FBI-maintained).

**Identification
Procedures for a
Business
Account**

When a member opens a business account at a credit union (after staff has determined membership eligibility), the credit union must ascertain the person's authorization to open the account by establishing the true identity of the person and the principals of the business using the following procedures:

- Obtaining, examining, verifying, and recording evidence of the legal status, for example:
 - Incorporation documents;
 - Partnership agreements;
 - Association documents;
 - Business licenses; and
 - Corporate resolutions.
- Obtaining and verifying information about the business, for example:
 - Financial statements of the business;
 - A description of the business; and
 - A description of the trade area.
- Obtaining, verifying and recording identification of principals the same as for natural person members.
- Verifying as much of the information as possible. Some ways include:
 - Physical observation of the address;
 - Callbacks;
 - Check with a third party;
 - Verification service;
 - Reverse directories;
 - Telephone book;
 - Contact previous financial institution;
 - Credit reports;

- Dun and Bradstreet reports; and
- Lexis/Nexis searches.

The credit union should remain alert to inconsistencies between the account activity and the member's business.

Reporting Requirements

Credit unions must file the following as required by provisions of the BSA reporting requirements:

- Currency and Transaction Report (CTR); and
- Suspicious Activity Report (SAR.)

Currency and Transaction Report (CTR)

Credit unions must file a CTR (Form 4789) with the IRS Detroit Computing Center (1) each time a member makes a deposit, withdrawal, exchange, or other transfer of more than \$10,000 in currency, or currency instruments such as bank checks or drafts, money orders, or travelers checks; or (2) when a member exceeds \$10,000 in one cash transaction or \$10,000 in multiple cash transactions in one business day. (Currency is defined as U.S. or foreign coin or currency, but does not include bank checks or other negotiable instruments.) Transactions spread over a number of days may constitute a reportable transaction if the member structured the deposit to evade reporting requirements. (Exemptions exist for transactions between financial institutions and with legitimate retail businesses.)

Structuring

Transaction structuring attempts to circumvent the reporting requirements of BSA. Structuring exists when a person, whether acting alone or with somebody, conducts, or attempts to conduct, a transaction for the purpose of evading the BSA reporting requirements. Notice that the individual does not have to succeed in conducting a transaction for a violation to have occurred, nor do they escape criminal liability by merely assisting someone attempting to structure a transaction.

Due to the possibility of structuring, a credit union must treat multiple currency transactions as a single transaction if it has knowledge that the transactions were made by, or on behalf of, any person and resulted

in either cash in or cash out totaling more than \$10,000 during any one business day. Credit unions should file a CTR with the IRS Data Center in Detroit, Michigan, within 15 days after the transaction and must retain copies of the form for five years.

Credit unions may obtain Form 4789 by calling the IRS Forms Distribution Center at 1-800-829-3676, accessing the IRS web site at http://www.irs.treas.gov/forms_pubs/forms.html, or the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) web site at <http://www.treas.gov/fincen/forms.html>.

**Exemptions
from CTR
Reporting**

Certain account holders receive an exemption from the requirement to file a CTR. The five mandatory exemptions include:

- Banks or other financial institution, to the extent of their domestic operations;
- A government department or agency, including federal, state and local governments;
- Any entity established under federal, state, or local government that exercises governmental authority (i.e., has the power of taxation, eminent domain, or police authority);
- Any entity listed on the New York Stock Exchange, the American Stock Exchange, or whose common stock has been designated as a NASDAQ National Market Security listed on the NASDAQ Stock Market (except those listed under the "NASDAQ Small-Cap issue); and
- Any subsidiary of a listed entity organized under federal or state law where the listed entity owns at least 51 percent of its stock or equity interest.

Following are characteristics of a "non-listed business" that may also receive an exemption:

- Incorporated or organized under the laws of the United States or a state, or is registered and eligible to do business within the United States;
- Maintained a transaction account at the credit union for at least 12 months; and

- Frequently engages in transactions in currency with the credit union in excess of \$10,000, or only withdraws more than \$10,000 in cash to pay its United States employees in currency.

The credit union must designate each exempt person or entity by filing a Designation of Exempt Person Treasury Form (TD F 90-22.53) with the Department of Treasury within 30 days of the date of the first reportable transaction. (The credit union need not file an exemption for transactions with any of the twelve Federal Reserve Banks.)

At least once each year, the credit union must review, verify, and document the information supporting each designation of a “non-listed” or “payroll customer” exempt person or entity and the application of each account of an exempt person or entity. Further, the credit union must renew the exempt status of the “non-listed” or “payroll customer” exempt members by filing a Designation of Exempt Person Treasury Form” (TD F 90-22.53) with FinCEN by March 15 of the second calendar year following the original exemption and biennially thereafter. The renewal must include:

- A statement that the credit union has applied its system of monitoring transactions for suspicious activity to the exempt persons accounts at least annually; and
- Any information about a change in control of the exempt person or entity.

The credit union may not treat any of the following businesses as a non-listed business and may not exempt those with the following characteristics:

- Serve as a financial institution or agent of financial institutions of any type, such as check cashing or currency changers;
- Purchase or sell motor vehicles of any kind, vessels, aircraft, farm equipment, or mobile homes;
- Practice of law, accountancy, or medicine;
- Auction goods;
- Charter or operate ships, buses, or aircraft;
- Gaming of any kind (other than licensed pari-mutuel betting at race tracks);
- Investment advisory or investment banking services;

- Real estate brokerage;
- Pawn brokerage;
- Title insurance and real estate closing;
- Trade union activities; and
- Any other activity that may be specified by FinCEN.

Credit unions may treat a business that engages in multiple business activities as a “non-listed business” as long as it receives no more than 50 percent of its gross income from one or more of the ineligible business activities listed above.

**Exemptible
Accounts**

The credit union may grant exemptions to a member for all share and money market accounts held by the member for the commercial enterprise as long as the enterprise qualifies for the exemption.

If the credit union determines that a member qualifies for a CTR exemption, the exemption includes all large currency transactions as long as they are normal for the type of business conducted by the exempt person or entity. The credit union may not exempt a transaction carried out by an exempt person acting as an agent for another person who owns the funds, but who does not have an exemption.

Liability Limits

Failure to file a CTR with respect to transactions in currency by an exempt person or entity will not subject the credit union to penalty unless the credit union does the following:

- Knowingly files false or incomplete information with respect to the transaction or the member engaging in the transaction; or
- Has reason to believe (1) the member does not meet the criteria for the exemption or (2) the person performing the transaction was not an exempt person.

**Suspicious
Activity
Report (SAR)**

The credit union must use the SAR to report all known or suspected criminal offenses, including transactions involving possible money laundering or violations of the BSA. Generally, a credit union should file a SAR within 30 days from the initial detection of the suspicious

activity. If it cannot identify a suspect, the time period for filing a SAR extends to 60 days. In situations involving violations of law requiring immediate attention, the credit union should immediately notify, by telephone, appropriate law enforcement and supervisory authorities, in addition to filing a SAR.

A credit union must file a SAR with the IRS Detroit Computing Center (Financial Crimes Enforcement Network) following the discovery of known or suspected federal criminal violations, or pattern of criminal violations conducted by, at, or through the credit union with the following characteristics:

- Insider abuse involving any amount. The credit union must have a substantial basis for identifying one of its directors, officers, employees or agents as having committed or aided in the commission of a criminal act regardless of the amount involved;
- Violations aggregating \$5,000 or more where a suspect can be identified. The credit union must have a substantial basis for identifying a possible suspect or group of suspects; and
- Violations aggregating \$25,000 or more regardless of a potential suspect. The credit union has no basis for identifying a possible suspect or group of suspects.

In addition, a credit union must file a SAR for any transaction conducted or attempted by, at, or through the credit union and aggregating \$5,000 or more, if the credit union knows, suspects, or has reason to suspect that the transaction:

- May involve potential money laundering;
- Involves funds derived from illegal activities or is intended or conducted to hide or disguise funds or assets derived from illegal activities;
- Is designed to evade the BSA or its implementing regulations;
- Has no business or apparent lawful purpose, or is not the sort in which the member would normally be expected to engage, and the credit union has no reasonable explanation for the transaction.

The credit union must file a SAR for the above activities at the stated thresholds, but may voluntarily file for transactions below these thresholds. It must not notify any person involved in the transaction that the transaction has been reported and must not make such disclosure even under subpoena.

Credit unions must also file a SAR on suspicious activity even when a portion of the activity occurs outside of the United States or the funds involved in the activity originated from outside the United States. Although federal law does not require foreign-located operations of U.S. credit unions to file a SAR, a foreign branch may wish to file a SAR with regard to suspicious activity that occurs outside the United States if that activity is so egregious that it has the potential to cause harm to the entire organization. (Foreign-located operations of U.S. credit unions that identify suspicious activity should report such activity consistent with local reporting requirements in the foreign jurisdiction where the operation is located.)

**Credit Unions
Completing
SARs**

Credit unions should ensure the accuracy and completeness of any SAR it decides to file. The SAR should describe the following:

- The suspect, including the individual's occupation or nature of the suspect's business and known relationships;
- The instruments or mechanisms used;
- All the accounts involved in the suspicious activity, including account activity in multiple branches;
- The dates the suspicious activity occurred, and was noticed, and the duration of the activity;
- Dollar amount involved; and
- The reasons the credit union suspects the activity. Describe the transaction or activity, why the activity or transaction is unusual for the member, whether a pattern of ongoing activity exists, and the person to contact for more information.

The credit union should provide requested information for each section of the form. It should not use terms such as “same as above” or “not applicable.” If the credit union needs to repeat pertinent information, it should enter the information again. If it does not know certain information, it should leave the section blank.

The credit union should not send supporting documentation with the SAR; however, under the SAR regulations, financial institutions filing a SAR must retain all "supporting documentation" related to the reported activity for five years, and disclose supporting documentation to appropriate law enforcement agencies or FinCEN upon request.

FinCEN’s website has SAR forms, guidance, and software available at <http://www.treas.gov/fincen/forms.html>, or by hyperlink from NCUA's web site www.ncua.gov.

**Money
Laundering**

Objectives of the BSA include detecting and deterring money laundering, providing a paper trail of suspicious transactions, and reducing the profit of the perpetrators. Money laundering constitutes a federal crime designed to conceal the proceeds of another criminal activity, such as drug dealing, arms trafficking, credit card swindles, or terrorist activities.

Money laundering has the following stages:

- Getting illicit funds (cash or cash equivalent) into or out of a U.S. financial institution (placement);
- Commingling the illicit funds with other funds to confuse their origins (layering); and
- Reintroducing the funds into the economy (integration).

**Follow Up on
Suspicious
Activity**

If conduct continues for which a credit union has filed a SAR, the credit union should report continuing suspicious activity with a SAR at least every 90 days even if a law enforcement agency has declined to investigate or the credit union has knowledge that an investigation has begun.

The filing of SARs on continuing suspicious activity provides useful information to law enforcement and supervisory authorities. Moreover, the information contained in a SAR that one law enforcement agency has declined to investigate may interest other law enforcement agencies, as well as supervisory agencies. Should activity of concern continue over a period of time, the credit union should share such information with law enforcement and financial regulators.

By filing a report on continuing suspicious activity at least every 90 days, the credit union will notify law enforcement of the continuing nature of the activity, as well as provide a reminder that it must continue to review the suspicious activity to determine other appropriate actions.

**Dealing With
Persons
Reported on
SAR**

Since a credit union member has a fundamental right to maintain a share account and participate in elections, the credit union cannot deny someone credit union membership because it has identified suspicious activity. However, the credit union may wish to consider limiting access to certain services. To do so, the credit union must have established written policies and have notified its members of the policies in advance. The credit union should not consider the mere filing of a SAR as the basis for limiting services.

Similarly, the credit union may find it necessary to consider reassigning or terminating the services of an employee who is the subject of a SAR. The credit union should seek advice from counsel in these situations.

The credit union may not, by law, notify any person involved in an activity being reported on a SAR that the credit union has reported the activity, or that it has filed a SAR (31 U.S.C. 5318(g)(2)). However, this prohibition does not preclude a disclosure in an appropriate manner of the facts that serve as the basis of the SAR, so long as the disclosure is not made in a way that indicates or implies that the credit union has filed a SAR, or that the SAR includes that information.

Summary of CTR and SAR Reporting

The implementing regulations of the BSA require a credit union to file a CTR whenever a currency transaction exceeds \$10,000. If the currency transaction exceeds \$10,000 and is suspicious, the credit union must file both a CTR and SAR. If a currency transaction equals or is below \$10,000 and is suspicious, the credit union should only file a SAR.

Other Reporting Requirements

Credit unions must also adhere to the following other reporting requirements if applicable:

- Foreign Bank and Financial Accounts Report (FBAR), IRS Form TD F 90-22.1. A credit union must file a FBAR if it has a financial interest in, or signature authority over one or more financial accounts in foreign countries and the aggregate value exceeds \$10,000;
- Reports of certain transactions with designated foreign financial agencies upon specific notice required by the Secretary of Treasury; and
- Special requirements imposed by the Secretary of Treasury for a limited period of time whereby credit unions in a certain geographic area must report currency transactions in amounts below \$10,000.

In addition, an individual must file Form 4790, Report of International Transportation of Currency or Monetary Instrument (CMIR), each time a person sends or receives more than \$10,000 in currency or monetary instruments into or out of the United States. The person (not the credit union) who physically transports, mails, or ships, or causes the shipment, transportation, or mailing of currency and/or monetary instruments into or out of the U.S must file the report within 30 days of the transaction.

BSA Record-keeping Requirements

Credit unions must retain all records required by the BSA for five years, and must provide access to the records upon request within a reasonable period of time. At a minimum, credit unions must retain the records as original, microfilm, or other copy or reproduction, both front and back.

A credit union must verify and record information relating to the identity of the purchaser of monetary instruments, such as bank checks or drafts, money orders, or travelers checks, in exchange for currency in amounts between \$3,000 and \$10,000. (Credit unions must report amounts over \$10,000 on a CTR.) The credit union must maintain the data in monthly chronological logs, which it must retain for five years. The information must include:

- The purchaser's name;
- The purchaser's account number;
- Date of purchase;
- Branch location of purchase;
- Types of instruments purchased;
- Serial number of instrument purchased;
- Dollar amount of each instrument purchased; and
- Verification of purchaser's identity, including the type of verifying information used.

A credit union must also maintain the following:

- A record of each loan that exceeds \$10,000 (except those secured by real estate), which must contain the borrower's name and address, the amount, purpose or nature, and date of the loan;
- A record of each advice, request, or instruction received or given regarding any transaction resulting in or intending to result in the transfer of currency and other monetary instruments, funds, checks, investment securities, or credit, of more than \$10,000 to or from any person, account or place outside the United States;
- A record of any report required by the Department of Treasury's special order concerning the transfer of United States coins or currency in a geographic area;
- Member identification information and payment data related to the sender and the recipient of each incoming or outgoing wire transfer of \$3,000 or more. (31 CFR 103.33 (e));
- Member identification information obtained to comply with the Patriot Act for five (5) years after the account has been closed;
- Social security number or taxpayer identification number (TIN) for each share account and share certificate account;
- Either the original or a copy of each of the following:

- The signature card granting signature authority over each share account, including the information used in verifying the signer's identify, such as a driver's license number;
- Each statement, ledger card or other record for each share account, showing each transaction for that account;
- Each check, clean draft, or money order drawn on the credit union, or issued and payable by the credit union unless the amount is less than \$100, drawn on an account that averages at least 100 checks a month, and written for employee benefits or dividends. (31 CFR 103.34 (b)(3));
- Each item in excess of \$100 comprising a debit to a member's deposit account not otherwise exempted;
- Each item, including checks, drafts, or transfers of credit, of more than \$10,000 remitted or transferred to a person, account, or place outside the United States;
- Each record of remittance or transfer of funds, currency, other monetary instruments, checks, investment securities, or credit, of more than \$10,000 to a person, place, or account outside the United States;
- Each check or 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 nonbank drawee for payment;
- Each item, including checks, drafts or transfers of credit, of more than \$10,000 received directly and not through a domestic financial institution, by letter, wire, or any other means from a bank, broker, or dealer in foreign exchange outside the United States;
- A record of each receipt of currency, other monetary instruments, investment securities or checks, and of each transfer of funds or credit, of more than \$10,000 received on any one occasion directly from a bank, broker, or dealer in foreign exchange outside the United States;
- Records prepared or received by the credit union in the ordinary course of business and needed to reconstruct a share draft account and to trace a check or share draft in excess of \$100 deposited in such account through its processing system or to supply a description of a deposited check or share draft in excess of \$100 (this applies to demand deposits only);
- A record containing the name, address, and taxpayer identification number, if available, of any person presenting a

certificate of deposit for payment, as well as a description of the instrument, and the date of the transaction; and

- 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.

Wire Transfers

Credit unions must obtain and retain complete information about the parties to a funds transfer of \$3,000 or more. The text of every payment order must include the following:

- Name and address of the originator;
- Amount of the payment order;
- Execution date of the payment order;
- Payment instructions received from the originator with the payment order;
- Identity of the beneficiary's bank; and
- As many of the following items as the credit union receives with the payment order:
 - Name and address of the beneficiary;
 - Account number of the beneficiary; and
 - Any other specific identifier of the beneficiary.

Office of Foreign Assets Control (OFAC)

The Office of Foreign Asset Control, within the Department of Treasury administers a series of laws that impose economic sanctions against hostile targeted foreign countries and their agents, terrorism sponsoring organizations, international narcotics traffickers and specially designated nationals. The economic sanctions further U.S. foreign policy and national security. The OFAC website, www.treas.gov/ofac, contains specific OFAC laws and provisions. NCUA is responsible for determining that credit unions comply with the OFAC regulations.

Part 748 of NCUA's Rules and Regulations requires a credit union to have a Bank Secrecy Act compliance program and procedures. Although no specific requirement exists for a policy on compliance with OFAC regulations, the credit union must comply with the

regulations. Credit unions may include these requirements within the Bank Secrecy Act compliance policy.

Definitions

Blocking, or freezing: a form of controlling assets under U.S. jurisdiction. While title to blocked property remains with the designated country or national, OFAC may prohibit the exercise of the powers and privileges normally associated with ownership without its authorization. Blocking immediately imposes an across-the-board prohibition against transfers or transactions of any kind without regard to the property.

Property: anything of value. Practically everything that banks do every day involves property within the meaning of the regulation. Examples include: money, checks, drafts, evidences of title, obligations, debts and anything else real, personal, tangible or intangible. Property also covers direct, indirect, present, future and contingent interests.

Credit Union Requirements

Credit unions must block or "freeze" the assets, funds transfers, and all transactions of all designated countries and their agents, specially designated terrorists, foreign terrorist organizations, specially designated narcotics traffickers and blocked persons. In addition, OFAC may require the credit union to reject or return incoming transfers from prohibited sources.

Credit unions can obtain a listing of prohibited sources by checking the OFAC website. The credit union should frequently update the list of prohibited sources by checking the OFAC website and documenting their check. If a credit union does not have website access, the credit union's may call OFAC at 1-800-540-6322.

The credit union should compare new accounts with the prohibited listing. The credit union may open the account, but should immediately block the funds so that account owners can make no withdrawals. In some cases, it is appropriate to reject the funds, i.e., the OFAC website contains the proper course of action for each law.

Credit unions must check the names of all parties to a transaction, including:

- Beneficiaries;
- Collateral Owners;
- Guarantors/Cosigners;

- Receiving Parties; and
- Sending Parties.

The credit union must review every type of transaction for compliance without limitation, including the following:

- Share accounts of all types;
- Loans, credit cards and lines of credit;
- Letters of credit;
- Safety deposit boxes;
- Wire and ACH transfers;
- Currency exchanges;
- Depositing and cashing checks;
- Purchase of money orders or traveler's checks;
- Loan payments;
- Guarantors and collateral owners; and
- Trust accounts.

Large and sophisticated credit unions may have special software which can interdict prohibited transactions. If the credit union identified any accounts, transactions or property, which match the prohibited listing, the credit union must immediately block or reject the assets as required.

OFAC Reporting Requirements

The credit union must report all blockings and or rejections to the Office of Foreign Asset Control within 10 days of the occurrence. For blocked property, the credit union must report the following information:

- Owner or account party;
- The property or amount of funds;
- The property location;
- Any existing or new account number or similar reference necessary to identify the property;
- Actual or estimated value of the property;
- The date it was blocked;
- A photocopy of the payment or transfer instructions;
- The individual or entity subject to blocking;
- The name and address of the holder; and

- The name and phone number of the contact person at the credit union who can provide compliance information.

Reports on rejected items must include:

- The name and address of the transferee credit union;
- The date and amount of the transfer;
- A photocopy of the payment or transfer instructions received;
- The basis for the rejection; and
- The name and telephone number of a contact person at the transferee credit union who can provide compliance information.

There is no designated form for filing reports of blocked or rejected items. Credit unions should fax reports on blockings or rejected items with the above information to the OFAC Compliance Division at (202) 622-2426.

The credit union must also file a comprehensive report on blocked property held as of June 30, by September 30, each year. Credit union must use Form TDF 90-22.50, which is available on the OFAC home page.

Record Retention and Penalties

OFAC requires the credit union retain all reports of blockings or rejected items and the related records for five years.

Penalties vary depending on the specific law, which is violated. However, OFAC has the authority to impose corporate or personal penalties up to \$1 million and 12 years in jail, civil penalties up to \$250,000 per incident, and forfeiture of funds involved in the violation. Criminal penalties may also apply.

U.S.A. Patriot Act

The U.S.A. Patriot Act contains strong measures to prevent, detect, and prosecute terrorism and international money laundering. The U.S. Department of the Treasury issued rules setting forth minimum standards for member identification upon account opening. The rules are part of BSA. Among other items, the rules require credit unions to:

- Verify members' identity;

- Maintain identity documentation records;
- Compare member names with lists of known or suspected terrorists; and
- Provide adequate notice to members.

**Identity
Verification
Procedures**

Credit unions must develop procedures based on the assessment of the risks presented by the various types of accounts (regular shares, share drafts, business, etc) and the methods used to open an account (in person, by mail, etc). The credit union must reasonably believe they know the true identity of the member.

For non-U.S. citizens identity verification becomes more difficult. The credit union may use various methods to verify identity. The credit union may accept any government-issued document evidencing nationality or residence and bearing a photo or similar safeguard. Businesses may provide registered articles of incorporation, government-issued business licenses, partnership agreements, etc. to verify identity. If credit unions use other methods to verify identity, their procedures must require they perform the verification within a reasonable period after the account is opened.

If, according to the credit union's assessment risk is limited, actual documents need not always be obtained when verifying identity. The credit union may choose to monitor the specific account if the member does not provide physical documentation or is in the process of obtaining verification documentation.

**Maintenance of
Verification
Information**

The credit union must maintain all information obtained to document the member's identity for five (5) years after the account has been closed.

**Comparison with
Government
Lists**

The credit union's procedures must specify that it will determine whether the member is on any list of known or suspected terrorists provided by any federal government agency. This would include OFAC and the Control List (maintained by the FBI).

Notification to Members

The credit union must notify members that steps will be taken to verify the identity of all members. This requires the credit union to post a general notice in the lobby, on their website, or by some other general method. It does not require the credit union to send individual paper notices to every member.

Part 748 of the *NCUA Rules and Regulations* covers the Anti-Money Laundering Program provisions of the Patriot Act.

FinCEN issued rules implementing the cooperative efforts to deter money-laundering provisions of the Patriot Act. These rules:

- Encourage information sharing among financial institutions and federal government law enforcement agencies to identify, prevent, and deter the financing of terrorist activity;
- Require credit unions search their records to determine if they have accounts for, or have engaged in transactions with, specific individuals, entities or organizations named by FinCEN in a request;
- Require the designation of a person to receive such requests from FinCEN; and
- Permit information sharing between financial institutions upon prior notification of FinCEN of its intent to share information.

FinCEN

FinCEN collects data on potential violations of federal criminal law as well as suspicious transactions related to money laundering offenses and violations of the BSA. Its primary tool in administering the BSA is a uniform interagency SAR used by all financial institutions.

Referrals to FinCEN

In some instances, examiner should recommend referral of BSA violations for further action. Examiners should forward BSA referrals with appropriate comments through the supervisory examiner to their regional director. In cases involving suspected ongoing criminal activity, the examiner should immediately contact the supervisory examiner, who will give the examiner further instructions after consulting with regional management. The Office of Examination and Insurance consults with the Office of General Counsel before making

final decisions on referrals to FinCEN. Examiners should consider the following in determining whether to recommend referral:

- Suspected instances of money laundering or structuring of transactions to avoid reporting;
- Evidence the credit union or an official committed a flagrant violation, demonstrated bad faith, attempted to conceal the violation, or committed the violation with disregard for the law or the consequences to the institution;
- Failure of the board or an individual to cooperate with NCUA to affect an early resolution and correction of a violation;
- Continuation, frequency, or recurrence of a violation, especially instances where NCUA, Treasury, FinCEN, IRS, Securities and Exchange Commission (SEC), Customs Service, or the credit union's independent reviewer advised the credit union of the violation;
- Evidence that insiders, participants in the currency transaction, or their associates benefited directly or indirectly as a result of a violation;
- Evidence that a violation may have facilitated or concealed illegal activity by the credit union, its employees, its members, or others;
- Absence of a compliance program or severe inadequacies in the compliance program;
- Failure by the credit union or individuals to adhere to the requirements of a compliance program; and
- Indication of false record keeping entries.

The following examples include situations that warrant referral:

- Intentional or unintentional failure to file a CTR or CMIR as a pattern or practice at a certain location or for one or more specific members or accounts. This includes failure to report aggregated transactions when the credit union has a system that identifies multiple related transactions occurring on the same day;
- Failure to maintain a centralized list of members or accounts exempted from the reporting requirements;
- Failure to obtain and maintain the exemption certification statement for exemptions granted after October 27, 1986;

- Inclusion of ineligible members or accounts on the exemption list, especially if the credit union did not file CTRs because of the inclusion; and
- Lack of adequate internal controls, audit coverage, or inaccuracies in the credit union's training materials regarding BSA compliance.

Documenting Violations

FinCEN requires sufficient information to enable it to determine the severity of the problem and to decide whether to pursue a civil or criminal action. NCUA refers significant violations of the BSA to FinCEN for review for possible civil or criminal penalties. FinCEN may assess civil and criminal penalties for willful violations upon any domestic financial institution, and upon any partner, director, officer, or employee. Penalties can include both fines and prison terms. FinCEN forwards potential criminal referrals to the Internal Revenue Service - Criminal Investigation Division (IRS-CID) for investigation.

Examples of documentation necessary to support the referral of violations of BSA include the following:

- A description of the examination procedures used. The description should note the "as of" date of the information reviewed, whether the examiner conducted a review of currency transactions and, if so, the testing dates of the transactions;
- A history of the credit union's compliance with BSA;
- A description of the violations. The description should contain adequate detail to allow FinCEN to determine whether to pursue enforcement action (e.g., name of the member or account, nature of the member's business, the member's tax identification number, and the purpose or type of transaction). The information regarding the violation should identify the area or branch of the credit union in which the violations occurred. If the violation involves ineligible members or accounts on the exemption list, it should indicate whether the credit union has on file exemption certificates for additions to the list after October 27, 1986;
- The credit union's employer identification number (EIN) and the Magnetic Ink Character Recognition (MICR) number;
- Identification of the individuals responsible for the violations or having knowledge of the violation;
- Credit union management's response to the violations; and

- For exemption list problems, the examiner may photocopy and submit the exemption list. Examiners can note the absence of the required exemption certification statement on the photocopy or other problems with the list.

NCUA will submit copies of selected examination workpapers summarizing the violations and other supporting documents with a referral. Examiners may wish to obtain copies of source documents (e.g., teller tapes or microfilm) to substantiate violations, but need not submit all of the source documentation with the referral.

Examiners should maintain the following documentation for referred cases:

- For exemption violations:
 - If the examiner questions the reasonableness of an exemption or the business of an exempt member, the credit union should provide documentation to support its position. Documentation regarding exemptions may also include copies of credit union statements, copies of letters to and from FinCEN or IRS, internal credit union memoranda, and other items evidencing cash flows and descriptions of the business;
 - If an ineligible member has received an exemption, examiners should retain copies of the Designation of Exempt Person Treasury Form and documents stating the reasons why the credit union believed that the member should receive the exemption. In this case, examiners should direct the credit union to contact the IRS Detroit Computing Center, Compliance Review Group, Box 32063, Detroit, MI 48232 to determine if the credit union must backfile CTRs;
- For unreported transactions, examiners should retain in the workpapers a copy of the source document identifying the transaction. The document may be a teller machine tape, microfilm, cash in/out ticket, selected portions of a computer report, a debit/credit ticket, official application/request, wire transfer department documents, memoranda, or any other documents which indicate that a reportable transaction occurred; and

- For incomplete record keeping, documents may include copies of signature cards, record retention schedules, or account documents for which the credit union has failed to obtain a member's taxpayer identification number. If the credit union's BSA Manual or internal memoranda contains incorrect information regarding BSA, examiners should retain copies of such documents noting the credit union personnel responsible for approving, developing, or issuing the document.

IRS Forms

Credit unions may obtain IRS forms by calling the IRS Forms Distribution Center at 1-800-829-3676, or by accessing the IRS web site at www.irs.treas.gov/forms_pubs/forms.html. Some forms are also available from FinCEN's web site at www/treas.gov/fincen/forms.html.

Credit unions should file hardcopy forms with the U.S. Department of the Treasury, P.O. Box 33112, Detroit, Michigan 48232-0112. Magnetic media filers of these forms should mail magnetic media/diskettes to the IRS Detroit Computing Center, FinCEN, 985 Michigan Avenue, Detroit, Michigan 48226.

Credit unions may contact the IRS Detroit Computing Center at 1-800-800-2877 for assistance with questions regarding CTR exemption regulations (31 CFR Section 103.22(d)(2)), completion of the Designation of Exempt Person Treasury Form (TD F 90-22.53), completion of the CTR form (Form 4789), and CTR paper or magnetic filing issues.

For other BSA related questions, credit unions and individuals may call FinCEN's Regulatory Help line at 1-800-949-2732.