

REGULATORY ALERT

**NATIONAL CREDIT UNION ADMINISTRATION
1775 DUKE STREET, ALEXANDRIA, VA 22314**

DATE: December 2008 NO: 08-RA-11

TO: All Federally-Insured Credit Unions

**SUBJ: Bank Secrecy Act Amendments – Exemptions from
The Requirement to Report Transactions in Currency**

Dear Board of Directors,

The Financial Crimes Enforcement Network (FinCEN) recently issued a final rule amending the Bank Secrecy Act (BSA). The final rule simplifies the regulation allowing credit unions to exempt transactions of certain persons from the requirement to report currency transactions in excess of \$10,000. The final rule is effective January 5, 2009.

Credit unions are required to file Currency Transaction Reports (CTRs) on currency transactions in excess of \$10,000 (reportable transaction). A system for exempting transactions by certain members from CTR reporting was established in 1994.

The amendments to the CTR exemption requirements are briefly discussed below.

- Credit unions will no longer be required to file an initial Designation of Exemption Person form (DOEP) to exempt reportable currency transactions, or to perform an annual review for the following:
 - Depository institutions (banks, thrifts, credit unions, corporate credit unions, etc.);
 - Federal, state, or local governments; and
 - Entities exercising governmental authority.¹

¹An entity generally exercises governmental authority on behalf of the United States, a State, or a political subdivision only if its authorities include one or more of the powers to tax, to exercise the authority of eminent domain, or to exercise police powers with respect to matters within its jurisdiction. Examples include, but are not limited to, the New Jersey Turnpike Authority and the Port Authority of New York and New Jersey.

- Credit unions may designate an eligible Phase II member² for CTR exemption after the member has conducted five or more reportable cash transactions within a year, and either:
 - a. The member has maintained a transaction account for two months;
- OR**
- b. The credit union has conducted a risk-based analysis of the member's eligibility for Phase II exemption to form a reasonable belief that the member has a legitimate business purpose for conducting frequent large currency transactions. Factors the credit union may consider in order to form a reasonable belief include, but are not limited to:
 - Whether the credit union had a past relationship with the member;
 - Certain specific characteristics of the member's business model that may be pertinent;
 - The types of business in which the customer engages; and
 - Where the business is operating.
- Credit unions must still file an initial DOEP for Phase II exempt members, but will no longer be required to file a DOEP biennially (every two years) after the initial DOEP for Phase II Exempt members has been filed. Credit unions are still required to perform an annual review to determine whether the member meets the requirements for continued eligibility for Phase II exemption.
 - Credit unions will no longer be required to record and report a change of control in a designated non-listed or payroll customer.

Credit unions should continue to use the current DOEP form (FinCEN Form 110) until further notice. However, any references to biennial renewals on the form or the instructions should be disregarded.

²A Phase II exemption is defined as either a "non-listed business" or a "payroll member". A "non-listed business" is a business whose stock is not listed on a public stock exchange and is not engaged in the specified ineligible activities listed in 31 CFR 103.22(d)(6)(viii). A "payroll member" is defined solely with respect to cash withdrawals for payroll purposes from existing exemptible accounts.

FinCEN's press release and the final rule may be accessed at http://www.fincen.gov/news_room/nr/html/20081204.html.

If you have any questions, please contact your regional director or state supervisory authority.

Sincerely,

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Michael E. Fryzel
Chairman