

Bank Secrecy Act & OFAC Training Presentation

Presented by Financial Standards Group, Inc.





Role of the Board

- Approve the BSA compliance program
 - Establish a compliance culture
 - Exercise management oversight
 - Establish management accountability
 - The Board is ultimately responsible for the Credit Union's BSA compliance program!
- 



Risk Assessment

Purpose

- Comprehensive analysis
- Risk management
- Develop internal control framework



Risk Assessment Cont.

Specific Risk Categories

- Products and services
- Customers and entities
- Geographical locations



Risk Assessment

Geographical Locations

- Countries subject to OFAC sanctions
- Countries identified as supporting international terrorism
- Jurisdictions determined to be “of primary money laundering concern” by the Secretary of the Treasury
- Jurisdictions or countries monitored for deficiencies in their regimes to combat money laundering terrorist financing
- Offshore Financial Centers (OFCs)
- High Intensity Drug Trafficking Areas (HIDTAs)
- High Intensity Financial Crime Areas (HIDFCAs)



Question for Understanding # 1

Which of the following is NOT considered to be a primary risk category to be addressed in the BSA risk assessment?

1. Products and Services
2. Loan and Share Accounts
3. Customers and Entities
4. Geographical Locations
5. All the above are considered primary risk categories



Question for Understanding # 1

Which of the following is NOT considered to be a primary risk category to be addressed in the BSA risk assessment?

1. Products and Services
2. **Loan and Share Accounts**
3. Customers and Entities
4. Geographical Locations
5. All the above are considered primary risk categories



Reporting

- Currency Transaction Reports (CTRs)
- Suspicious Activity Reports (SARs)



Reporting CTRs

Currency Transaction Reports (CTRs)

- ▶ Must be filed electronically for each transaction in currency of \$10,000 or more within 15 Calendar Days of transaction
- ▶ Multiple currency transactions totaling more than \$10,000 during any one business day are treated as a single transaction if the Credit Union has knowledge that they are by or on behalf of the same person
 - ▶ Deposits are always assumed to be on the behalf of all account holders



Reporting CTRs Cont.

Currency Transaction Reports (CTRs)

- Must be retained for five years either electronically or in hard copy
- It is not necessary to file a CTR for transactions involving “Exempt Persons”



Reporting CTR Exemptions – Phase I

- The Money Laundering Suppression Act of 1994 (MSLA) established a two-phase exemption process
- Five categories of Phase I exemptions
 - Banks
 - Governmental agencies or departments
 - Entities exercising governmental authority within the United States
 - Publicly listed companies, with some exceptions
 - Subsidiaries of publicly listed entities



Reporting CTR Exemptions – Phase II

- The Money Laundering Suppression Act of 1994 (MLSA) established a two-phase exemption process
- Two categories of Phase II exemptions:
 - Non-listed business
 - Payroll customer



Reporting

CTR Exemptions – Phase II Cont.

Non-listed businesses

- Commercial enterprise to the extent of its domestic operations and only with respect to transactions conducted through its exemptible accounts and
 - Maintained a transaction account for two months
 - Exemption may be allowed prior to two months if the Credit Union undertakes a risk-based analysis that allows it to form and document a reasonable belief that large currency transactions are for legitimate business purposes
 - Frequently engages in currency transactions in excess of \$10,000
 - Is incorporated or organized under the laws of the United States or a State, or is registered as and eligible to do business within the United States or a state



Reporting

CTR Exemptions – Phase II Cont.

- Certain businesses are ineligible for treatment as an exempt Phase II business
- Ineligible businesses engage in primarily one or more of the following specified activities:
 - Serving as a financial institution or as agents for a financial institution of any type
 - Purchasing or selling motor vehicles of any kind, vessels, aircraft, farm equipment or mobile homes
 - Practicing law, accounting or medicine
 - Auctioning of goods



Reporting CTR Exemptions – Phase II Cont.

Ineligible business activities cont.

- Chartering or operation of ships, buses or aircraft
- Operating a pawn brokerage
- Engaging in gaming of any kind (other than licensed pari-mutuel betting at race tracks)
- Engaging in investment advisory or investment banking services
- Operating a real estate brokerage



Reporting CTR Exemptions – Phase II Cont.

Ineligible business activities cont.

- ▶ Operating in title insurance activities and real estate Closings
- ▶ Engaging in trade union activities
- ▶ Engaging in any other activity that may, from time to time, be specified by FinCEN, such as *Marijuana Related Businesses*



Reporting

CTR Exemptions – Phase II Cont.

A “Payroll Customer” is defined solely with respect to withdrawals for payroll purposes from existing exemptible accounts and as a person who:

- Maintained a transaction account for two months
 - Exemption may be allowed prior to two months if the Credit Union undertakes a risk-based analysis that allows it to form and document a reasonable belief that large currency transactions are for legitimate business purposes
- Frequently engages in currency transactions in excess of \$10,000
- Is incorporated or organized under the laws of the United States or a state, or is registered as and eligible to do business within the United States or a state



Reporting CTR Exemptions – Phase II Cont.

- A Designation of Exempt Persons (DOEP) Form must be filed electronically within 30 days after the first transaction that the Credit Union wishes to exempt
- Information supporting Phase II exemption must be reviewed and verified annually
- Phase II accounts must be monitored for suspicious activity



Reporting CTR Exemptions – Phase II Cont.

Safe Harbor

- The Credit Union is not liable for failing to file a CTR for a transaction in currency by an exempt person, unless it knowingly provides false or incomplete information or has reason to believe that the customer does not qualify as exempt
- The Credit Union is entitled to Safe Harbor from civil penalties to the extent that it treats the customer as exempt until the date of annual review
- When in doubt, it is recommended that a CTR be filed



Question for Understanding #5

Which is the minimum dollar amount required to file a CTR?

1. \$5,000.00
2. \$5,000.01
3. \$10,000.00
4. \$10,000.01
5. There is no minimum limit if the Credit Union believes that the transaction is suspicious



Question for Understanding #5

Which is the minimum dollar amount required to file a CTR?

1. \$5,000.00
2. \$5,000.01
3. \$10,000.00
4. \$10,000.01
5. There is no minimum limit if the Credit Union believes that the transaction is suspicious



Reporting SARs

1. Suspicious activity reporting forms the cornerstone of the BSA reporting system
2. Suspicious Activity Reports (SARs)
 - Identify activities of concern that may be in violations or potential violations of the law
 - Must be filed electronically within 30 calendar days from initial detection
 - Timeline is extended to 60 days if no suspect can be identified
 - The Credit Union may conduct an investigation prior to initiating the 30 or 60-day countdown
 - Must be retained for five years from the date of filing



Reporting SARs Cont.

SARs are required by federal regulation to be filed with respect to:

- Criminal violations involving insider abuse in any Amount
- Criminal violations aggregating \$5,000 or more when a suspect can be identified
- Criminal violations aggregating \$25,000 or more regardless of a potential suspect



Reporting SARs Cont.

SARs are required by federal regulation to be filed with respect to:

- ▶ Transactions conducted or attempted by, at or through the Credit Union aggregating \$5,000 or more, if the Credit Union knows, suspects or has reason to suspect that the transaction:
 - ▶ May involve potential money laundering or other illegal activity
 - ▶ Is designed to evade the BSA or its implementing regulations
 - ▶ Has no business or apparent lawful purpose
 - ▶ Is not the type of transaction that the particular customer would normally engage in, and the Credit Union knows of no reasonable explanation for the transaction



Reporting SARs Cont.

- The person involved in the suspicious transaction may not be notified that a SAR has been filed
- SAR must be filed even if the suspicious activity occurs outside of the United States



Reporting SARs Continuous Activity

- If suspicious activity continues over a period of time, the information should be made known to law enforcement and federal banking agencies
- Continuing activity should be reported at least every 90 calendar days
- Continuing activity should be reported after a 90 day review with a filing deadline of 120 calendar days after the previous SAR was filed
- Continuing activity may be reported earlier than 120 days if the Credit Union believes that the activity warrants investigation by law enforcement



Reporting SARs Cont.

1. Number of SARs should be reported in the board minutes.
2. Summaries or tables of SARs filed for specific violation types may also be included
3. Sufficient information should be provided to allow The Board of Directors to fulfill fiduciary responsibilities while remaining mindful of the confidential nature of the SARs



Question for Understanding #7

How long must SARs and CTRs be retained for?

1. Two years
2. Three ears
3. Five years
4. Ten years
5. Permanently



Question for Understanding #7

How long must SARs and CTRs be retained for?

1. Two years
2. Three ears
3. **Five years**
4. Ten years
5. Permanently



SARS

Marijuana-Related Transactions

- The Controlled Substances Act (CSA), effective May 1, 1971, made it illegal under federal law to manufacture, distribute, or dispense marijuana
- Despite this federal ban, 44 States – including Michigan – and the District of Columbia have legalized certain marijuana-related activity
- Because of the federal illegality of marijuana, Credit Unions are required to file SARs on marijuana-related businesses.



SARS

Marijuana-Related Transactions Cont. The Cole Memo

- Rescinded January 4, 2018 by Attorney General Jeff Sessions
- Memorandum issued by Attorney James Cole in 2013, in response to state legalization of federally banned substances
- The Cole Memo provides guidance to legal authorities to focus resources on persons or organizations whose conduct interferes with any one or more established priorities, termed “The Cole Memo Priorities”
- The Cole Memo did NOT provide a “safe harbor” or legal defense to Credit Unions servicing marijuana businesses
- While the Memo has been rescinded, the guidance is still largely deferred to with regard to marijuana-related businesses



Recordkeeping and Due Diligence

- ▶ The Credit Union's BSA policy must address recordkeeping requirements for:
 - ▶ Customer/member identification when opening new accounts
 - ▶ Sales of large monetary instruments
 - ▶ Wire transfers



Recordkeeping and Due Diligence Customer Identification

- Credit Unions are required to have a written Customer Identification Program (CIP), also known as a Member Identification Program (MIP)
- Procedures should be appropriate for the size of the Credit Union and the type of business in which it operates
- The following information must be verified at account opening for the perspective member:
 - Name
 - Date of birth
 - Address
 - Identification, generally social security or employment identification number



Recordkeeping and Due Diligence Customer Identification Cont.

- Identifying information must be retained for five years from the closing of an account
- Documentation and description of documentation used to verify the identity of the member for a period of five years from the closing of an account



Recordkeeping and Due Diligence Beneficial Ownership

- Credit Unions must establish and maintain written procedures that are reasonably designed to identify and verify beneficial owner(s) of legal entity members
- Legal entities, whether domestic or foreign, can be used to facilitate money laundering and other crimes because their true ownership can be concealed
- Legal entity members include:
 - Corporations
 - Limited Liability Corporations
 - Entity created by filing a public document
 - General partnerships
 - Similar entities formed under the laws of a foreign jurisdiction



Recordkeeping and Due Diligence Beneficial Ownership Cont.

- Beneficial ownership is determined under both a control prong and an ownership prong.
 - Under the control prong, the beneficial owner is a single individual with significant responsibility to control, manage or direct a legal entity member
 - Under the ownership prong, a beneficial owner is each individual, *if any*, who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25 percent or more of the equity interests of a legal entity member



Question for Understanding #9

The following information is NOT required to be obtained at account opening?

1. Name
2. Date of birth
3. Address
4. Occupation
5. Identification



Question for Understanding #9

The following information is **NOT** required to be obtained at account opening?

1. Name
2. Date of birth
3. Address
4. **Occupation**
5. Identification



Recordkeeping Wire Transfers

- ▶ When originating wire transfers of \$3,000 or more, the Credit Union must obtain the following:
 - ▶ Name and address of originator
 - ▶ Identification of the originator
 - ▶ Amount of the wire
 - ▶ Date of the wire request
 - ▶ Payment instructions regarding the purpose of the wire



Recordkeeping Wire Transfers

- When originating wire transfers of \$3,000 or more, the Credit Union must obtain the following:
 - Date of the wire request
 - Payment instructions regarding the purpose of the wire
 - Name and address of the beneficiary
 - Name of the beneficiary's financial institution
 - Any other specific identifying information for the beneficiary



Recordkeeping Wire Transfers

- ▶ When receiving wire transfers of \$3,000 or more, the Credit Union must perform the following:
 - ▶ Retain a record of the payment order for each wire transfer accepted as an intermediary financial institution
 - ▶ Retain a record of the payment order for each wire transfer accepted as a beneficiary's financial institution



Question for Understanding #10

The following information is NOT required to be recorded when originating a wire transfer?

1. Name
2. Date of birth
3. Address
4. Social Security number
5. Both 2 and 4 are not required



Question for Understanding #10

The following information is NOT required to be recorded when originating a wire transfer?

1. Name
2. Date of birth
3. Address
4. Social Security number
5. Both 2 and 4 are not required



Recordkeeping

Sale of Monetary Instruments

- Credit Unions are required to verify the identity of persons purchasing monetary instruments in currency in the amounts between \$3,000 and \$10,000
- Records must be retained for five years
- Monetary instruments include:
 - Cashier's checks
 - Official Credit Union checks
 - Money orders
 - Traveler's checks



Recordkeeping

Sale of Monetary Instruments

- If the purchaser is a member of the Credit Union, the following information must be obtained:
 - Name
 - Date of purchase
 - Type(s) of instrument(s) purchased
 - Serial numbers of each instrument purchased
 - Dollar amount of each instrument purchased



Recordkeeping

Sale of Monetary Instruments

- If the purchaser is NOT a member of the Credit Union, the following information must be obtained:
 - Address of purchaser
 - Social Security or alien identification of the purchaser
 - Date of birth of the purchaser
 - If the purchaser is NOT a member of the Credit Union, the
- The Credit Union should refuse to perform the transaction if the information is not provided



OFAC

- The Office of Foreign Assets Control (OFAC) is an office of the U.S. Treasury that administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted individuals and entities such as foreign countries, regimes, terrorists, international narcotics traffickers, and those engaged in certain activities such as the proliferation of weapons of mass destruction or transnational organized crime
- Regulations require that Credit Unions block accounts and other property of specified countries, entities and individuals
- The Credit Union must prohibit or reject unlicensed trade and financial transactions with specified countries, entities and individuals



OFAC Cont.

- The Credit Union is required to block transactions that:
 - Are by or on behalf of a blocked individual or entity
 - Are to or go through a blocked entity
 - Are in connection with a transaction in which a blocked individual or entity has an interest



OFAC Cont.

- Credit Unions must report all blocking to OFAC within 10 business days of the occurrence; and annually by September 30, all those assets blocked as of June 30.
- Prohibited transactions that are rejected must also be reported to OFAC within 10 business days of the occurrence.
- A full and accurate record of all rejected transactions must be retained for at least five years after the date of the transaction.
- For blocked property, (including blocked transactions), records must be maintained for the period the property is blocked, and for five years after the property is unblocked.



OFAC Cont.

- ▶ While not required by a specific regulation, it is a sound industry practice to establish and maintain an effective, written compliance program commensurate with the Credit Union's OFAC risk profile



OFAC Cont.

- An effective OFAC compliance program should:
 - Identify high-risk areas
 - Provide for appropriate internal controls for screening and reporting
 - Establish independent testing for OFAC compliance
 - Designate a Credit Union employee or employees responsible for OFAC compliance
 - Create training programs for appropriate personnel in all relevant areas of the Credit Union



Question for Understanding #13

Under OFAC, Credit Unions must block transactions that:

1. Are by or on behalf of a blocked individual or entity
2. Are to or go through a blocked entity
3. Are in connection with a transaction in which a blocked individual or entity has an interest
4. All of the above
5. Both 1 and 2



Question for Understanding #13

Under OFAC, Credit Unions must block transactions that:

1. Are by or on behalf of a blocked individual or entity
2. Are to or go through a blocked entity
3. Are in connection with a transaction in which a blocked individual or entity has an interest
4. **All of the above**
5. Both 1 and 2



Question for Understanding #14

Under OFAC, Credit Unions must report blocked assets and rejected transactions within 10 days of:

1. The occurrence
2. June 30
3. September 30
4. December 31
5. It is not necessary to report blocked assets and rejected transactions



Question for Understanding #14

Under OFAC, Credit Unions must report blocked assets and rejected transactions within 10 days of:

1. The occurrence
2. June 30
3. September 30
4. December 31
5. It is not necessary to report blocked assets and rejected transactions

A decorative graphic on the left side of the slide. It features a solid dark green arrow pointing to the right, positioned in the lower half. Several thin, dark green lines of varying lengths and curves extend upwards and to the right from the top of the arrow, creating a sense of movement or growth. The background is a light, neutral color.

Questions?



Thank you
for
Attending!