



OVERVIEW OF LAWS AND REGULATIONS

Bank Secrecy Act

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Executive Summary:

Congress enacted the Bank Secrecy Act (BSA) to prevent financial institutions from being used as intermediaries for the transfer or deposit of money derived from criminal activity. The primary objective of the BSA is to provide a paper trail of money laundering activities connected with drug traffickers and other elements of white collar and organized crime. Congress delegated authority for issuing regulations to the Secretary of the Treasury. The financial regulatory agencies, in turn, were given responsibility for determining compliance with the Act and applicable regulations by institutions under their jurisdiction.

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

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

Business Areas Impacted:

- New Accounts
- Teller Operations
- Deposit Operations
- Credit Operations
- Treasury Operations
- Data Processing
- Safe Deposit Box Area
- Trust Department
- Private Banking
- International Department
- Correspondent Banking Department
- Discount Brokerage Department



Highlights:

REQUIREMENTS/RECOMMENDATIONS	TIME FRAME	DOCUMENT, RECORD OR REPORT
<p>Written Compliance Program</p> <p>Establish and maintain a written program designed to assure and monitor compliance with the BSA and its implementing regulations, that must include at a minimum:</p> <ol style="list-style-type: none"> 1. A system of internal controls; 2. Daily coordination and monitoring of compliance by a designated person; 3. Independent testing of compliance; and 4. Training for appropriate personnel. <p>The program should also include procedural guidelines to ensure that the institution will:</p> <ol style="list-style-type: none"> 1. Meet the reporting and recordkeeping requirements of the BSA regulations. 2. Detect, prevent, and report suspicious transactions related to money laundering. <p>Ensure that the institution's compliance program as well as all applicable policies, procedures, and practices reflect the current reporting and recordkeeping requirements of the Act and its implementing regulations.</p>	<p>Continuing</p>	<p>Compliance Program (approved by the board of directors and noted in the minutes)</p>



Bank Secrecy Act

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<p>Currency Transaction Report (CTR)</p> <p>File, with the IRS, a completed CTR (Form 4789) involving any transaction in currency over \$10,000, including each deposit, withdrawal, currency exchange, or other payment or transfer.</p> <p>Multiple transactions totaling more than \$10,000 during any one business day are treated as a single transaction if the institution has knowledge that they are by or on behalf of any person. Beware of persons attempting to structure currency transactions in such a manner to evade CTR filing requirements.</p> <p><i>Note:</i> Before concluding any transaction requiring a CTR, the institution must verify and record the name/address of the individual presenting the transaction, and record the identity, account number, and social security number (if any) of any person or entity on whose behalf the transaction is undertaken.</p>	<p>CTR must be filed with the Internal Revenue Service (IRS) within 15 days after the date of the transaction.</p> <p>Retain records for at least 5 years</p>	<p>Currency Transaction Report (IRS Form 4789)</p>
<p>Exempt Transactions</p> <p>Currency transactions involving transactions with exempt persons need not be reported. Exempt persons include:</p> <ol style="list-style-type: none"> 1. Banks in the United States; 2. Federal, state, or local governments; or 3. Corporations whose common stock is traded on the New York Stock Exchange, most corporations whose common stock is traded on the American Stock Exchange and the NASDAQ Stock Market, and certain subsidiaries of those corporations (listed businesses) (See Section 103.22(d)(2)) 4. Other commercial entities that have had an account at the institution for at least 12 months, are organized under U.S. or state law or are registered and eligible to do business in the U.S., and either: (1) frequently engage in 	<p>Continuing</p> <p>Note that:</p> <p>Exemption forms must be filed within 30 days after the first reportable transaction.</p> <p>Persons exempt before 10/21/98 remain exempt if the prior exemption is applied consistently according to the prior applicable rules, until the earlier of a proper exemption under Section 103.22(d) as revised 9/21/98 or 6/30/00.</p>	<p>Customer Exemptions (Currently noted on IRS Form 4789)</p> <p>Biennial Renewal Forms</p>



Bank Secrecy Act

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<p>transactions at the institution exceeding \$10,000 (non-listed businesses) or (2) operate a payroll business that regularly withdraws more than \$10,000 to pay employees in the U.S. in currency (payroll customers).</p> <p>Non-listed businesses exclude:</p> <ol style="list-style-type: none"> 1. Financial institutions and their agents. 2. Dealers in automobiles, boats, vessels, aircraft, farm equipments, or mobile homes, and those who charter or operate ships, buses, or aircraft. 3. Lawyers, accountants, doctors, investment advisers, investment bankers, real estate or pawn brokers, title insurers, real estate closing businesses, auction businesses, and trade union businesses. 4. Gaming of any type except licensed parimutuel betting at race tracks. 	<p>The institution must review and verify each exemption at least annually.</p> <p>Biennial filings are required to continue exemptions for non-listed businesses and payroll customers.</p> <p>Exemption forms must be retained for 5 years.</p>	
<p>Currency and Monetary Instrument Report (CMIR)</p> <p>File, with the appropriate U.S. Customs officer or the Commissioner of Customs, a completed CMIR for each shipment of currency or other monetary instrument(s) in excess of \$10,000 out of or into the U.S., except via the postal service or common carrier.</p>	<p>For transport into or out of the U.S.- file CMIR at time of entry into or departure from U.S.</p> <p>For receipt from outside the U.S.-file CMIR within 15 days of receipt of instruments (unless a report has already been filed).</p>	<p>Currency and Monetary Instrument Report (U.S. Customs Form 4790)</p>



Bank Secrecy Act

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<p>Monetary Instruments Recordkeeping Involving \$3,000 to \$10,000 in Currency</p> <p>Maintain records of monetary instrument issuance or sale for currency in amounts between \$3,000 and \$10,000, with supporting information prescribed by Section 103.29(a).</p> <p>Contemporaneous purchases of the same or different types of instruments totaling \$3,000 or more must be treated as one purchase. Also multiple purchases totaling \$3,000 or more must be treated as a single purchase where the officer or employee has knowledge that these multiple purchases occurred.</p> <p>Verify that purchaser is a deposit account holder or verify purchaser's identity in the manner described at Sections 103.29(a)(1) and 103.29(a)(2).</p>	<p>Records should be updated as monetary instruments are issued or sold.</p> <p>Maintain records for five years</p>	<p>Record of Monetary Instruments</p>
<p>Reports of Foreign Financial Accounts</p> <p>Each person subject to U.S. jurisdiction with a financial interest in, or signature authority over, a bank, securities, or other financial account in a foreign country must annually file a Report of Foreign Bank Financial Accounts with the IRS, as prescribed by Section 103.24.</p> <p>Note: See also recordkeeping requirements of Section 103.32</p>	<p>Annual filing</p>	<p>Report of Foreign Bank Financial Accounts (Treasury Form 90-22)</p>



Bank Secrecy Act

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<p>General Record Retention Requirements</p> <p>Ensure that the extensive record retention requirements (particularly Sections 103.33 and 34 pertaining to financial institutions) are understood and observed by appropriate personnel. An institution is required to retain either the original, microfilm, copy or other reproduction of the relevant documents.</p>	<p>Records required to be retained at least 5 years in most cases.</p>	<p>Compliance Program</p> <p>All affected documentation</p> <p>Record Retention Guidelines</p>
<p>Internal Controls</p> <p>Institute internal audit procedures or a management review process designed to:</p> <ol style="list-style-type: none"> 1. Confirm the integrity and accuracy of report of large currency transactions. 2. Include a review of tellers activities that relate to BSA and Forms 4789 and 4790. 3. Confirm the integrity and accuracy of recordkeeping activities and adherence to the in-house record retention schedule. 4. Ascertain whether a list of exempt customers is being properly maintained. 5. Test the reasonableness of the exemptions granted. 6. Confirm that records of cash purchases of monetary instruments (in amounts from \$3,000 to \$10,000) are maintained and that appropriate identification measures are in place. 7. Review effectiveness of training program. 	<p>Conduct audits as frequently as is appropriate given volume/complexity of transactions, but at least annually.</p>	<p>Compliance Program</p> <p>Audit Procedures/Reports</p>



Bank Secrecy Act

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<p>Anti-Money Laundering Program</p> <p>Develop procedures designed to detect and/or prevent money laundering activities that will:</p> <ol style="list-style-type: none"> 1. Define money laundering in its different forms (placement, layering, integration). 2. Address compliance with applicable anti-money laundering laws and regulations. 3. Identify high risk business activities, businesses, and foreign countries associated with money laundering. <p>Ensure that the anti-money laundering procedures are extended to the following:</p> <ul style="list-style-type: none"> • retail operations • trust department • loan departments • private banking operations • sale of monetary instruments • wire transfer room • safe deposit box activity • international department • correspondent banking area • discount brokerage department <p>Establish internal controls to minimize the risk of money laundering, that include:</p> <ol style="list-style-type: none"> 1. Money laundering detection procedures. 2. Monitoring non-bank financial institution depositors with high volume cash activity. 3. Periodic account activity monitoring. 4. Internal investigations, monitoring, and reporting of suspicious transactions. 	<p>Continuing</p>	<p>Compliance Program</p> <p>Monitoring/Audit Procedures</p>



Bank Secrecy Act

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<p>Records of Wire (Funds) Transfer</p> <p>Collect and retain the information specified in Section 103.33(e) and (g) for all wire (funds) transfers in the amount of \$3,000 or more. The information to be collected and retained depends upon: (1) the type of financial institution, (2) its role in the wire transfer (originator, intermediary, or beneficiary), (3) the amount of the wire transfer, and (4) the relationship of the parties to the transaction with the financial institution.</p> <p>Exceptions to recordkeeping requirements:</p> <ol style="list-style-type: none"> 1. A domestic bank; 2. A wholly-owned domestic subsidiary of a domestic bank; 3. A broker or dealer in securities; 4. The U.S. government; 5. A state or local government; and 6. A federal, state or local government agency or instrumentality. <p>If the originator and beneficiary are the same and the institutions involved in the funds transfer are the same, the transfer is exempt.</p> <p>Audit procedures should verify that:</p> <ol style="list-style-type: none"> 1. A separation of duties ensures proper authorization for sending and receiving transfers and for correct account posting. 2. CTRs are properly filed for noncustomers submitting cash for funds transfers. 3. Fund transfers to/from foreign institutions involve amounts, frequency and countries consistent with the customer's business. 4. Accounts with frequent cash deposits and subsequent wire transfers of funds to larger institutions are closely monitored. 	<p>Continuing</p>	<p>An original or a microfilm, other copy, or electronic record of required information must be retained and must be retrievable in the manner set forth in Section 103.33(e)(4)</p> <p>Compliance Program</p> <p>Monitoring/Audit Procedures</p>



Bank Secrecy Act

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<p>Payable Through Accounts (PTA)</p> <p>Develop and maintain procedures to prevent the improper or illegal use of payable through accounts by foreign banks. These procedures should include the following:</p> <ol style="list-style-type: none"> 1. Identification of the ultimate users of the foreign bank customers PTAs; 2. Review of the foreign bank s procedures for identifying and monitoring all of the sub-account holders; and 3. Monitoring of account activities occurring in PTAs with foreign banks, reporting any suspicious or unusual activity. 	<p>Continuing</p>	<p>Compliance Program</p> <p>Records of PTAs</p> <p>Monitoring/Audit Procedures</p>
<p>Suspicious Activity Report (SAR)</p> <p>File a completed SAR for any transaction involving \$5,000 or more when the institution knows, suspects, or has reason to suspect that a transaction:</p> <ol style="list-style-type: none"> 1. Involves money laundering; 2. Is designed to evade regulations promulgated under the BSA; or 3. Has no business or apparent lawful purpose or is not of the type that the particular customer would normally be expected to undertake. <p>Note: If the suspicious transaction involves currency of more than \$10,000, both a SAR and a CTR must be filed. For suspicious transactions involving currency under \$10,000, only a SAR need be filed.</p> <p>SAR must be sent to the Financial Crimes Enforcement Network (FinCEN) at the Treasury Department.</p>	<p>File no later than 30 days after the date of initial detection of facts constituting a basis the SAR filing.</p> <p>If no suspect was initially identified on the date of detection, filing may be delayed for an additional 30 calendar days to identify a suspect.</p> <p>Maintain copy of SAR filed along with supporting documentation for a period of 5 years</p>	<p>Suspicious Activity Report (OTS SAR Form 1601)</p>



Bank Secrecy Act

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<p>Training and Education</p> <p>Establish a program for training appropriate employees regarding BSA and money laundering that includes the following:</p> <ol style="list-style-type: none">1. Reporting of large currency transactions.2. Exemptions from reporting.3. Sale of monetary instruments.4. Reporting suspicious activity or alleged criminal conduct.5. Examples of money laundering and how to detect, resolve and report such activity.6. Overview of various forms that money laundering can take.7. Wire (fund) transfer activity.8. Payable through accounts.9. Filing of SARs.	Continuing	Compliance Program Training Manuals



Major BSA Components for OTS Regulated Institutions

I. WRITTEN BSA COMPLIANCE PROGRAM

Establish and maintain a written program (approved by the board of directors) containing the following:

1. System of internal controls
2. Designation of BSA Officer to coordinate and monitor program
3. Independent testing of compliance
4. Training of appropriate personnel

Also include procedural guidelines for:

1. Meeting reporting and recordkeeping requirements
2. Detection, prevention, and reporting of suspicious transactions related to money laundering

II. PRIMARY REPORTS

1. Currency Transaction Reports (CTR) - IRS Form 4789
2. Currency and Monetary Instrument Report (CMIR) - U.S. Customs Form 4790
3. Reports of Foreign Financial Accounts - Treasury Form 90-22
4. Reports of Suspicious Transactions - OTS SAR Form 1601

III. PRIMARY RECORDS TO BE MAINTAINED

1. Persons with financial interest in foreign financial accounts - Section 103.32
2. Wire (funds) transfer (\$3,000 or more) - Section 103.33(e) and (g)
3. Monetary Instrument Sale for Currency (\$3,000 to \$10,000) - Section 103.29

IV. ANTI-MONEY LAUNDERING PROGRAM

Develop procedures to detect and/or prevent money laundering activities:

1. Define money laundering in its different forms (placement, layering, integration).
2. Address compliance with applicable laws and regulations.
3. Identify high risk business activities, businesses, and foreign countries.

V. CONDUCT ADEQUATE MONITORING AND AUDIT ACTIVITY TO ENSURE COMPLIANCE AND PROVIDE COMPREHENSIVE TRAINING TO APPROPRIATE EMPLOYEES