



DCU BULLETIN

Division of Credit Unions

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Focusing on Bank Secrecy Act (BSA) Compliance

This Bulletin serves the dual-purposes of alerting Washington state-chartered credit unions to the heightened sensitivity of Bank Secrecy Act (BSA) compliance, and that BSA compliance will be a major examination focus in 2005 and beyond. To these ends this Bulletin advises credit unions about new reporting requirements the Division of Credit Unions (Division) must follow and provides guidance as to Division examiner's expectations of state chartered credit unions. This Bulletin also discusses time frames and guidelines for resolving significant BSA violations found by Division examiners.

Background

In October 2004, the Financial Crimes Enforcement Network (FinCEN) entered into agreements (known as Memorandums of Understanding) with all federal banking regulators, including the National Credit Union Administration (NCUA), concerning the reporting of significant BSA violations. The agreement went into effect on December 1, 2004 and both the Division and all state credit union regulators will be bound to similar reporting requirements. Currently, FinCEN is negotiating with state regulators to develop separate agreements with each state. These agreements may cause slight variations from the guidance in this Bulletin for future BSA reporting requirements for the Division.

Reporting Expectations

Under the agreement entered into by NCUA and FinCEN, the Division is expected to identify and report significant BSA compliance violations to the NCUA, who will then report these violations to FinCEN. Significant BSA violations include pervasive violations, systemic violations, and repeat findings. Appendix A

contains definitions of pervasive, systemic, and repeat violations. Appendix B provides a list of Frequently Asked Questions (FAQs) that better define and illustrate significant BSA violations.

Correction of Violations

Once a significant BSA violation has been identified by examiners, it is important that credit union management correct the violation as soon as possible. Division examiners will set-up an acceptable time frame for the BSA violation to be corrected. Under NCUA plans, this time frame must be no longer than 90 days from the date the violation was discovered by the examiner. Individual credit unions will be required to forward documentation to the Division examiner that shows the significant BSA violation was satisfactorily corrected. After the examiner verifies that satisfactory correction was made, the Division will notify NCUA of the resolution. NCUA will in turn notify FinCEN that satisfactory correction was made. It is imperative that all significant BSA violations be corrected within 90 days of identification by Division examiners.

Exam Focus

The Division recommends that credit union management be proactive in identifying weaknesses and problems in their credit union's BSA compliance program. Specifically, credit unions should take the following steps to ensure BSA compliance:

- Enactment of strong BSA policies and procedures, which cover the required elements of BSA;
- Development of a system of internal controls to ensure ongoing BSA compliance;
- Assurance that employees receive sufficient BSA compliance training;
- Testing for BSA compliance, either by independent credit union staff or officials, or by an independent third party;
- Documentation that your credit union is properly meeting the BSA compliance requirements and retention of this documentation; and
- Stressing the importance of BSA compliance to all staff members.

At a minimum, a satisfactory BSA policy should cover the following required elements:

- ◆ Customer Identification Program (CIP)
 - Identification of a member's name, date-of-birth, address, and identification number prior to account opening;

- Verification of the information obtained.
- ◆ Currency Transaction Report (CTR) Filings
 - Are CTRs filed timely (within 15 days) when necessary (involves more than \$10,000 in cash-in or cash-out)?
 - Does the credit union properly exempt permitted people from filing CTRs by filing a “Designation of Exempt Person” form?
- ◆ Suspicious Activity Reports (SAR) Filings
 - Are SARs filed within 30 days after discovery of a suspicious activity?
 - Is staff aware of what activity might be termed “suspicious”?
- ◆ OFAC - Searching OFAC Lists for Prohibited Countries, Organizations and Individuals
 - Does the credit union block or freeze accounts and transactions that are found to match the prohibited OFAC listing?
 - Does the credit union report this information to FinCEN immediately?
- ◆ Money Transfer Services
 - Credit unions that provide money transfer services (i.e. wire transfers) must obtain and record specific information on each money transfer of \$3,000 or more.
- ◆ Maintain Necessary Information for the Purchase or Issuance, by Currency, Credit Union Checks, Cashier’s Checks, Traveler’s Checks, and Money Orders for Amounts Between \$3,000 and \$10,000.
- ◆ Other BSA Compliance Requirements

The importance of following the Bank Secrecy Act requirements cannot be over-emphasized. Federal government regulators, FinCEN, The Department of Homeland Security, OFAC and others, have elevated even more the importance of blocking transactions that occur at financial institutions that might benefit terrorism and drug trafficking. To this end, they have elevated the importance of BSA and are requiring that financial institutions, including credit unions and their regulators, elevate the importance of examining for BSA compliance. Federal monetary penalties can be assessed to financial institutions who do not comply

with BSA; and both criminal charges and civil money penalties can be brought against individuals who are willfully non-compliant with BSA requirements.

Senior management, including the Board of Directors, will need to ensure that their credit union's policy and procedures are compliant with BSA, that employees are properly trained on BSA, and that internal controls are in place to ensure that employees are properly implementing these policies and procedures.

The requirements for BSA compliance do not vary based on the asset size of the credit union; however, the cost and type of action to achieve compliance will vary. For example, a small, non-cash credit union, would need to have a BSA policy, but this credit union will have a very different policy (less complex and much smaller) than a large, multi-branch credit union.

Resources

Further guidance on BSA can be found at the following websites:

- FinCEN – www.fincen.gov (click on BSA guidance)
- CUNA Compliance - www.cuna.org/compliance (webinars & training)
- WA CU League Compliance Manual- www.compliance.waleague.org (look under Resources tab & under Operations & Security Tab, also see the June 9th Webinar.)
- NASCUS On-line University - www.nascusonline.org

Please contact Doug Lacy-Roberts at (360) 902-0507, if you have any questions about this Bulletin.

Appendix A

Definition of Pervasive, Systemic & Repeat BSA Violations

A **pervasive** violation is “all-encompassing”. A pervasive violation generally pertains to policies and procedures; it should be assessed from a strategic perspective. A partial list of examples follows:

- Absence of written policy and procedures
- Inadequate policy and procedures covering all essential elements
- Absence or lack of training for employees
- No independent review process
- Refusal to file a CTR or SAR for a *single* observable incident (could imply preferential treatment)
- Refusal to freeze an account when information appears to match a government listing

A **systemic** violation is a willful or reckless disregard for compliance with BSA provisions; it typically involves *multiple* incidents of noncompliance. A systemic violation should be assessed from a transactional perspective. A partial list of examples follows:

- Absence of a monetary transactions log
- Absence of CTR and/or SAR identification and filing process
- No records retention process
- No routine comparison with government lists
- Relying on sponsor organization to perform background checks
- Incomplete member or beneficiary information recorded in logs, CTRs and/or SARs
- No verification of member-furnished identifying information
- Not performing 314(a) searches in a timely manner
- Not reporting 314(a) matches in a timely manner
- More than one observable incident of not filing a CTR or SAR

Depending on the circumstances associated with an individual violation, a violation which, would usually be classified as systemic, may become pervasive.

A **repeat** violation is any violation (pervasive or systemic) that was previously identified and not resolved by a credit union.

Appendix B

FAQs: Frequently Asked Questions and Answers Regarding BSA Compliance

1. If a credit union has a BSA policy but it does not include **all** the required elements, is it a significant violation that has to be reported?

Yes. A credit union must have a BSA policy addressing all the required elements. If the BSA policy incorporates one or more required elements via referencing other written policies, this is acceptable.

An existing policy that needs improvement, but which contains all the required elements, may not be a significant violation. Determination that a significant BSA violation exists will depend on examiner judgment. Examiners should consider: 1) whether the policy is generally appropriate for the size and complexity of the credit union, 2) if the policy reflects the products and services offered by the credit union, and 3) if weak elements can be strengthened in a rapid manner (less than 3 months) with minimal or no examiner oversight.

2. If a credit union cannot locate its written policy but is following adequate procedures, is there a significant violation?

Yes. A credit union must have a board approved written policy. For example, this would occur when a credit union cannot readily produce its policy for review. No written policy is a pervasive violation, even if adequate procedures exist.

3. If a credit union generally files currency transaction reports (CTRs), but missed one or two during the exam periods, is there a significant violation?

It depends on examiner judgment; examiners should consider 1) the number of CTRs filed during a year and 2) the reason that the CTR was improperly filed. If a CU usually files 10 CTRs each year and forgets 2, this is a significant BSA violation. If a CU usually files 1,000 CTRs each year and forgets 2, this is probably not a significant BSA violation. In general, if the rate of error is more than 1 percent or greater than 20 CTRs, an examiner should assess the violation as significant. Description of the violation as pervasive or systemic will depend on whether there is no process/procedure for filing the CTR (pervasive) or there is a process, but it is not adequate (systemic).

In both cases, the CU must back-file the incomplete CTR, audit its filings to ensure no others were missed, and strengthen internal controls to reduce the likelihood that future CTRs will not be filed timely.

4. If CU staff members were given BSA training when they were initially hired but have not had training within a couple years, is there a significant violation?

It depends on examiner judgment; examiners should consider 1) whether changes have occurred in staffing (new hires), 2) if continuing staff retain knowledge of BSA requirements (up to date policies, regular completion of CTRs), 3) person(s) charged with oversight of the BSA program have sufficient knowledge to catch and correct errors, and 4) a process exists to identify staff members with inadequate BSA awareness and provide them with training.

5. If CU staff tell the member to break up large cash deposit into smaller amounts to avoid filing a CTR (in the interest of customer service), is there a significant violation? Does the CU have to file a CTR anyway?

Yes, there are multiple significant BSA violations and the CTR must be filed, regardless. This scenario demonstrates inadequate staff training (staff suggested the member engage in structuring – a money laundering activity), an inadequate process for aggregating transactions (staff doesn't anticipate the CU will "find" transactions if they are split), and weak oversight of the BSA program.

6. If a CU does not have an adequate BSA policy and examiners give them a sample policy, is the problem resolved?

No. While a sample policy can be of significant assistance to a CU, the CU must customize this policy to reflect the CU's operations, have the CU board approve and adopt the policy, and schedule staff training on the policy (if necessary) for the problem to be resolved. If all of this activity occurs prior to the conclusion of the exam, the problem can be reported as both identified (pervasive) and resolved on the exam report. The exam report would still be written to address the BSA issues, but the exam report would state the significant BSA violation has been adequately corrected.

7. Do small/non-cash operation CUs have to meet the same standards as large CUs?

Yes, but the cost and type of action taken to achieve compliance will vary. For example, all CUs must have a written BSA policy. A small, non-cash CU would probably have a smaller less complex policy than a large, multi-branch CU. Nevertheless, the small CU's written policy would need to address all products and services offered by the CU, establish a reasonable method for verifying member identity (when a new loan or share account is opened), and ensure review of the 314a list.

8. If a credit union fills out a CTR but systematically does so inaccurately or incompletely is there a violation?

Yes, the CTR must be filled out accurately and completely. Similar criteria as noted above would apply to the frequency of the omissions. One or two inaccurate CTRs out of a thousand would generally not represent a systematic violation while two out of ten would.