



**Ballard Spahr**  
LLP



# Current Issues in Bank Secrecy Act Compliance for the Gaming Industry

December 17, 2018

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# IRS-CI AND IRS EXAMS

## Discussion on Title 31 and BSA Exams

Ballard Spahr LLP, Philadelphia, PA

December 17, 2018



- Presentation by SSA Mark Young, SAs Angelo Horiates III and Marita Gehan, and RA David Witiak

# IRS-CI Gaming Initiative:

- Identify criminals (via SAR-C)
- Provide a casino point of contact
- Provide a Special Agent point of contact
- Work alongside with our law enforcement and regulatory partners (PA State Police and PA Gaming Control Board)
- Reinforce – only interested in criminals

# Criminal Investigation Mission:

CI serves the American public by investigating potential criminal violations of the Internal Revenue Code (T26) and related financial crimes (T31 BSA and T18 Money Laundering) in a manner that fosters confidence in the tax system and compliance with the law.

# CI Responsibilities:

- ▣ Enforcement of tax laws
  - Legal source
    - ▣ Earn income from legal source occupation but violate tax laws
    - ▣ Evasion, skimming, etc.
    - ▣ IRS is the only agency that investigates legal source income
  - Illegal source
    - ▣ Narcotics
    - ▣ Money laundering
- ▣ Money laundering violations
- ▣ Bank Secrecy Act Laws
  - Suspicious activity (SAR)
  - Currency Transaction Reports (CTR)

# Enforcement Actions (Press Releases)

- ▣ Artichoke Joe's Casino Turned a Blind Eye to Loan Sharking, Suspicious High-Value Chip Transfers, and Flagrant Criminal Activity for Years (\$8 Million)
- ▣ FinCEN Fines Cantor Gaming \$12 Million for Egregious and Systemic Violations of Anti-Money Laundering Rules (\$12 Million)
- ▣ California's Hawaiian Gardens Casino Fined \$2.8 Million for Repeated Anti-Money Laundering Violations
- ▣ FinCEN Fines Atlantic City Casino \$10 Million for Significant and Long Standing Anti-Money Laundering Violations

# Role of State Gaming Regulators

- ▣ What regulators expect
- ▣ Communication between state authorities and IRS
- ▣ Potential for additional fines
- ▣ Additional scrutiny of casino operations



# View Of Gaming Institutions In BSA Enforcement

“Casinos are good and important partners” (Director Blanco - August 2018)

- ▣ The value of BSA Data (provides leads, expand cases, and provides alerts)
- ▣ Utilizing information to ensure compliance (important for monitoring suspicious activity)
- ▣ Increasing information sharing through Section 314(b) of the USA Patriot Act.
- ▣ Cybersecurity and emerging payments (how to adapt to new challenges)

# Philadelphia SAR Review Team

- ❖ Multi-Agency Task Force to review SARs & develop potential criminal cases
- ❖ 100% review of the SARs coded as BSA/Money Laundering over certain threshold
- ❖ Criminal cases
- ❖ Referrals to other agents/agencies
- ❖ Notification of Law



# SAR Must Haves:

## ▣ Do Include:

- Approximate dollar amounts (*if actual is unknown*)
- Identification of the person making transaction
  - ▣ and others/associates
- Summary of allegation at the beginning of the SAR.
- Be direct
- Whether it's the first, 2<sup>nd</sup>, 3<sup>rd</sup> filing;
- Summary of transaction

# SAR Must Haves Con't:

- ▣ **Do Include:**
  - Info regarding contact with customer...
  - If the customer changed the transactions after learning that a CTR would be filed
  - Brochures, warning letters provided to customer
  - Suspicious comments made:
    - ▣ Anti-tax, anti-IRS, drugs, prostitution, etc.
    - ▣ Knowledge of the reporting requirements
    - ▣ Did the customer ask how to avoid the CTR
    - ▣ Did the customer ask you to not do a CTR

# SAR Must Haves Con't:

## ▣ Do Include:

- It is critical to save statements made by the customer.
- Please include the name of the employee who made the observation, had the conversation, etc.

# SAR Review Process:

- ▣ Tell us what you think is going on...
- ▣ It can be tough to simply read a SAR narrative and be able to determine with certainty what is happening
- ▣ Preliminary investigation may be generated as a result of your SAR, so be prepared...



# SAR Considerations:

- ▣ We are not interested in your “whales” or high rollers with a VERIFIED source of income unless, of course, you suspect something suspicious... (ie, activity prior to “suspicious” activity)
- ▣ We are interested in players unknown to you with unusual playing pattern and/or an unverified source of income

# Importance of SARs Con't:

- ▣ CTRs are triggered by an actual cash transaction of more than \$10,000. Casinos are required to file a SAR if it knows, or *suspects*, or even *has reason to suspect*, that a transaction involves funds derived from illegal activities.
- ▣ A casino will be fined if no SAR is filed when an executive has an actual suspicion, or with 20/20 hindsight when the casino employee *should have had a suspicion*.
- ▣ Potential conflicts of interest.



## FinCEN Section 314(b)

- ▣ Section 314(b) of the USA PATRIOT Act provides financial institutions with the ability to share information with one another, under a safe harbor that offers protections from liability, in order to better identify and report potential money laundering or terrorist activities. 314(b) information sharing is a voluntary program, and FinCEN strongly encourages information sharing through Section 314(b).

# IRS BSA Exam

## CTR Audit

- ▣ Accurate / Timely / Complete CTRs
- ▣ Delinquent CTRs
- ▣ Aggregation Procedures

# IRS BSA Exam (Cont.)

## SAR Audit

- ▣ Accurate / Timely / Complete SARs
- ▣ Do SARs have the Five Ws? Who, What, Why, Where and When
- ▣ Incident Reports
- ▣ Computer Data for back of the house SAR analysis, do you have BOH procedures?
- ▣ MTL Analysis / Chip Walk / Structuring / Patterns
- ▣ Slot Ticket Analysis Issued / Redeemed
- ▣ Negotiable Instruments Issued / Received

# IRS BSA Exam (Cont.)

## SAR Audit

- ▣ Wires
- ▣ Surveillance Logs
- ▣ Race & Sports Book Unknowns
- ▣ High Risk Individuals
- ▣ KYC / Source of Funds
- ▣ Due Diligence

# IRS BSA Exam (Cont.)

## Recordkeeping

- ▣ Front Money Accounts
- ▣ Credit Accounts
- ▣ NIL
- ▣ Wire Requirements

# IRS BSA Exam (Cont.)

## Casinos Preparation for a Title 31 Exam

- ▣ Respond to IDRs / initial / subsequent in a timely manner
- ▣ Staffing levels
- ▣ Look at AML Program as casinos changes and offers new services / games etc...update accordingly

# IRS BSA Exam (Cont.)

## Casinos Preparation for a Title 31 Exam

- ▣ Keep the lines of communication open
- ▣ DOCUMENT/ DOCUMENT/ DOCUMENT

# IRS BSA Exam (Cont.)

## Additional Topics For Conversation

- ▣ CTRs and using all available information to complete, non-critical fields
- ▣ Does the casino have policies and procedures to obtain, occupation, email, etc...
- ▣ TITO tickets and linking patrons to redeemed tickets if using a players card to aggregate for CTR purposes
- ▣ Continuing Activity SARs and suspicious behavior
- ▣ Procedures to evaluate the continued relationship with repeat SAR subjects
- ▣ EDD (Enhanced Due Diligence procedures)



# Title 31 Case Study

- ▣ Case Initiation
  - Referred from IRS Civil Collection
  
- ▣ Historical Relevance/Significance
  - FINCEN SAR/CTR Portal developed T31 Charges
  
- ▣ Affirmative Acts
  - Provided false SSN to multiple financial institutions
  - Multiple attempts by Subject to structure cash transactions
  - Subject resorted to using co-conspirators to conduct simultaneous transactions

# Title 31 Case Study (Cont.)

- ▣ Maintaining Source Documentation (Examples)
  - Customer Player Card Applications
  - Supervisor/Employee/Security Reports
  - Cage Photos
  - Video Surveillance

# Disclosures and Due Credit

- ❖ Cannot disclose the existence of a SAR in reports, affidavits for warrants, to the subject of a SAR

❖ THANK YOU FOR ALL  
YOUR EFFORTS

# QUESTIONS?



# Contact Information

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## ***Money Laundering Watch: British Columbia's Gaming Industry Reportedly Faces Serious Money Laundering Vulnerabilities***

By Mary K. Treanor on July 15, 2018



***First Part in a Two-Part Series on the Gaming Industry and AML***

***U.S. Regulatory Regime Favorably Cited in Report for B.C. Attorney General***

British Columbia's (B.C.) Attorney General David Eby recently released an independent and very detailed report examining money laundering in B.C.'s gaming industry and providing 48 recommendations to combat the problem. Eby appointed Peter German, a former deputy police commissioner and leading expert on money laundering, to conduct a six-month investigation into allegations of money laundering in the Lower Mainland casinos after reports emerged that one Vancouver-based casino accepted \$13.5 million in \$20 bills over the course of one month in 2015. See Peter M. German, QC, *Dirty Money: An Independent Review of Money Laundering in Lower Mainland Casinos Conducted for the Attorney General of British Columbia* (Mar. 31, 2018) (German Report).

Following German's investigation, which included over 150 interviews with industry and government insiders in B.C., Ontario, and the United States, German issued the German Report to detail his findings and recommendations. The report reveals that a multitude of alleged criminal syndicates, tied primarily to China, have used Vancouver-area casinos to launder money. It highlights the anti-money laundering (AML) challenges faced by a predominantly cashed-based industry, and also underscores the systemic issues that have made B.C.'s gaming industry an alleged breeding ground for money laundering: a dysfunctional, fragmented regulatory regime that lacks independence. To streamline and strengthen B.C.'s regulatory framework, the German Report recommends creating an independent gaming regulator analogous to the regulatory regime in the United States. The German Report focuses on the Nevada Gaming Commission and Nevada Gaming Control Board, whose Enforcement Division "acts as a first line of defence against organized crime and bulk cash buy-ins[,]” whereas the federal Financial Crimes Enforcement Network, “[i]n partnership with Internal Revenue Service, acts as the enforcement arm for most money laundering issues.”

In announcing the German Report, Eby blamed the former Liberal government for “turn[ing] a blind eye to the escalating money laundering in B.C. casinos.” He also stated his acceptance of all 48 of these recommendations.

In this post, we will describe the findings and recommendations of the German Report. In the next post, we will contrast the B.C. regulatory regime described in the German Report with the AML regulatory regime in the United States involving the gaming industry, and the recent enforcement actions which it has produced.

### *The German Report's Findings*

The German Report states that criminal syndicates, largely based out of China, began laundering dirty money in Vancouver's casinos on a large scale beginning around 2010. In a typical scheme, dubbed the “Vancouver Model,” Chinese individuals agree to accept cash, typically in \$20 stacks, in Canada from a lender. The lender and an underground banker in China then settle accounts. After this, the individual uses the cash to buy in at a casino, gambles, and receives either a check or a high denomination of bills upon leaving the casino. At its peak in July 2015, B.C. casinos reported \$20 million per month in suspicious transactions. However, this number already has dropped precipitously, with casinos reporting only \$200,000 in suspicious transactions in March 2018.

The German Report identifies three main causes of the Vancouver Model: (1) a dysfunctional and fragmented regulatory regime; (2) a lack of regulatory independence, and (3) inadequate resources to effectively monitor the industry.

According to the German Report, B.C.'s regulatory regime is comprised of several layers of bureaucracy fraught with dysfunction and "divisive rivalries" among the various regulatory entities. Moreover, these regulatory entities serve dual – and, at times conflicting – roles. The British Columbia Lottery Corporation (BCLC), whose sole shareholder is the province, has the "primary goal" of "maximiz[ing] the revenue which government obtains from gaming." The BCLC currently accrues about 65% of the gaming industry's revenue, which is used to fund the province's social welfare programs. However, the BCLC is also tasked with supervising the "conduct and management" of the industry. The BCLC contracts with service providers to operate casinos and is responsible for reporting suspicious activity to B.C.'s Financial Transactions and Reports Analysis Centre of Canada (FinTRAC). FinTRAC, in turn, reviews reports detailing suspicious activity and disseminates material to numerous agencies.

The Gaming Policy and Enforcement Branch (GPEB) serves as the primary regulator of the industry and specifically regulates all "gaming operations, facilities, employees, equipment and activities in the providence." However, the GPEB's power is constrained by the fact that it cannot encroach upon the BCLC's jurisdiction. This means that the GPEB is precluded from undertaking "any activity related to the conduct, management or operation of gaming." As a result, the report finds, the "GPEB relies ninety percent on [BCLC] investigators and [service provider] surveillance reports." Moreover, the GPEB also operates as the B.C. government's policy center for gaming. As the report explains, GPEB employees are often "mired down" with work assigned by the B.C. government– such as position papers and briefing notes – to "the detriment of enforcement and other responsibilities."

According to the German Report, the BCLC and GPEB historically have operated at odds with one another rather than work in coordination. As a result, both entities lack key information possessed by the other, leading to the "perception that GPEB and, to a lesser degree, BCLC do not sufficiently understand the economics and business of gaming." Moreover, as the report notes, GPEB employees are "frustrated by the lack of tools to regulate BCLC and to carve out a role in the AML landscape." The GPEB is "constantly being reminded by the BCLC that it does not have conduct and manage responsibility, leaving BCLC in the role of pseudo-AML regulator of its own franchisees, the casino operators."

This fragmented regulatory scheme also has led to the imposition of onerous, oftentimes duplicative requirements on casinos and service providers. For example, service providers are subject to separate audits by the BCLC, GPEB, FinTRAC, and the providers' own company auditors. In addition, casino operators are responsible for completing and submitting transactional reports to both BCLC and GPEB.

Finally, the German Report finds that the current framework lacks sufficient resources. It describes the BCLC's current AML unit as small and emphasizes that fact that the unit does not work nights or weekends.



BCLC has one senior employee on call to help casino service providers after traditional business hours. As a result, the report explains, the BCLC currently fails to adequately address AML issues in real-time.

## *The German Report's Recommendations*

To address its findings of dysfunction, the German Report recommends the following:

- Creating an independent gaming regulator to regulate the industry in one streamlined, coordinated approach analogous to the United States' AML regulatory framework;
- Amending the governing law to "clearly delineate the roles and responsibilities" of BCLC and the independent regulator;
- Requiring the BCLC to report to the independent regulator;
- Requiring service providers, instead of the BCLC, to complete all necessary reports to FinTRAC;
- Creating a Transaction Analysis Team to meet at least once a week to review suspicious transaction reports;
- Creating a Gaming Enforcement Police Service ("GEPS") to provide around-the-clock AML surveillance; and
- Imposing mandatory training for front-line gaming personnel.

Attorney General Eby has stated his government's commitment to implement all 48 recommendations. After receiving an interim report in December, Eby's government has already implemented some of the regulations. It credits this early implementation to the recent arrest of an international money laundering suspect, Dan Bai Shun Jin, in May.

In the next post, we will contrast the B.C. regulatory regime described in the German Report with the AML regulatory regime in the United States involving the gaming industry, and the recent enforcement actions which it has produced.

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## ***Money Laundering Watch: The U.S. Casino and Gaming Industry: AML/BSA Regulation and Enforcement***

By Mary K. Treanor, Peter D. Hardy & Terence M. Grugan on July 16, 2018



### ***Second Part of a Two-Part Series on the Gaming Industry and AML***

As we blogged yesterday, British Columbia's (B.C.) Attorney General David Eby recently released an independent and very detailed report examining money laundering in B.C.'s gaming industry and providing 48 recommendations to combat the problem. See Peter M. German, *QC, Dirty Money: An Independent Review of Money Laundering in Lower Mainland Casinos conducted for the Attorney General of British Columbia* (Mar. 31, 2018) (German Report). As we noted yesterday, when discussing the U.S. regulatory system, the German Report favorably cites the Nevada Gaming Commission and Nevada Gaming Control Board, whose Enforcement Division "acts as a first line of defence against organized crime and bulk cash buy-ins[.]" and further observes that the federal Financial Crimes Enforcement Network, "[i]n partnership with Internal Revenue Service, acts as the enforcement arm for most money laundering issues."

The U.S.'s more robust, streamlined AML regulatory regime, although hardly perfect, stands in stark contrast to the dysfunction alleged in the German Report that plagues B.C.'s current framework. In this

post, we describe the U.S. AML regulatory regime for the gaming industry, and the recent enforcement actions which it has produced. Although the pace of AML enforcement has been somewhat sporadic, it appears to be increasing over time in regards to the gaming industry. Certainly, attention by regulators — as well as by the industry itself — to AML/BSA compliance has increased over the last several years.

## *The U.S. AML Regulatory Framework for the Gaming Industry*

As a threshold matter, the Financial Crimes Enforcement Network (FinCEN) has authority to investigate casinos for compliance with and violations of the Bank Secrecy Act (BSA). FinCEN, in turn, has delegated to the Internal Revenue Service (IRS) its authority to examine casinos for compliance with the BSA. Under this framework, if the IRS identifies significant BSA violations during a casino examination, FinCEN initiates an investigation into that casino and, depending on the investigation's outcome, may assess a civil penalty against the casino. As a result, the IRS and FinCEN work in conjunction while enjoying broad mandates that are not at odds with one another.

And, in contrast to the B.C. system described in the German Report, the U.S. has implemented more streamlined regulatory requirements for casinos pursuant to the Bank Secrecy Act (BSA), including:

- Filing suspicious activity reports (“SARs”) for suspicious transactions of at least \$5,000;
- Filing currency transaction reports (“CTRs”) for cash ins or cash outs exceeding \$10,000;
- Complying with certain recordkeeping requirements for up to five years, including a casino's receipt of funds for each customer, bookkeeping entries for debits or credits into a customer's casino account, and credit extensions exceeding \$10,000; and
- Implementing AML compliance programs.

FinCEN issued guidance in 2010 regarding AML/BSA compliance programs in the gaming industry, stating that, “at a minimum,” such a program must include:

- A system of internal controls to assure ongoing compliance with the BSA;
- Internal or external independent testing for compliance with a scope and frequency commensurate with the risks of money laundering and terrorist financing posed by the products and services provided;
- Training of casino personnel, including training in the identification of unusual or suspicious transactions;
- An individual or individuals to assure day-to-day compliance with the BSA;
- Procedures for using all available information to determine and verify, when required, the name, address, social security or taxpayer identification number, and other identifying information for a person;

- Procedures for using all available information to determine the occurrence of any transactions or patterns of transactions required to be reported as suspicious;
- Procedures for using all available information to determine whether a record required under the BSA must be made and retained; and
- For casinos and card clubs with automated data processing systems, use of the programs to aid in assuring compliance.

Arguably, the gaming industry remains one of the last bastions of a major business that still often deals significantly in cash — in a world increasingly driven by technology and credit. To that end, some gaming businesses may attract a disproportionate share of customers seeking to avoid ensconced BSA reporting and record-keeping requirements, including the CTR filing requirement. Similar to some of the allegations in the German Report, some casinos also may attract certain individuals from across the globe who potentially are attempting to undermine certain laws in their home country, including tax reporting obligations.

### *AML Enforcement and the Gaming Industry*

In recent years, FinCEN has shown an increased focus on AML compliance in the gaming industry. It assessed only three civil penalties against casinos, for a total of \$1.6 million, from 2003 to 2014. In contrast, it imposed approximately \$110 million against casinos from 2015 through 2016 and has pursued four significant enforcement actions since 2016.

As we have blogged, FinCEN announced on May 3, 2018 that it imposed a \$5 million civil monetary penalty against Artichoke Joe's for the casino's alleged deficiencies in its BSA compliance. FinCEN asserted that Artichoke Joe's AML program failed to implement sufficient procedures to identify loan-sharking operations. It found that: (1) the club's senior management admitted loan-sharking operations were commonplace and observed by employees; (2) the club failed to file SARs and CTRs in compliance with the BSA; and (3) the club failed to undertake an independent audit after illegal loan sharking was initially detected.

FinCEN also pursued three large enforcement actions in 2016, about which we have also blogged:

- Cantor Gaming: FinCEN assessed a \$12 million civil penalty against Cantor Gaming for purportedly “egregious and systemic” AML compliance failures on October 3, 2016. It found that Cantor Gaming failed to (1) provide adequate AML training for its officers and employees; (2) use all available information to identify and report suspicious transactions; and (3) maintain adequate internal controls to detect money laundering.
- Hawaiian Gardens Casino: On July 15, 2016, FinCEN imposed a \$2.8 million civil penalty against the casino for allegedly repeatedly violating its BSA requirements. FinCEN attributed these failures to the club's lack of a compliance culture, emphasizing that: (1) its leadership failed to meet as

required by its charter; (2) its leadership failed to review and approve its risk assessment; and (3) its management failed to implement policies and procedures for customer identification.

- Sparks Nugget: On April 5, 2016, FinCEN imposed a \$1 million civil penalty against the company for purportedly engaging in willful and repeated AML violations. FinCEN alleged that: (1) the company's committee for deciding whether to file SARs never actually met and it included members that did not know that they were on the committee; (2) the company prohibited its compliance managers from interacting with BSA examiners; and (3) the casino used customer information only to further its business interests and not to comply with the BSA.

To subscribe to *Money Laundering Watch*, visit [www.moneylaunderingwatchblog.com/subscribe](http://www.moneylaunderingwatchblog.com/subscribe).

## ***Money Laundering Watch: FinCEN Extends \$3 Million Carrot to Card Club and Casino: Reduce Assessed Civil Penalty by Completing Compliance Undertakings***

By Peter D. Hardy, Stefanie Jackman & Terence M. Grugan on May 7, 2018



FinCEN announced on May 3, 2018 that Artichoke Joe's, a card club and casino located in San Bruno, California and founded in 1916, has entered into a revised civil money penalty assessment regarding alleged deficiencies under the Bank Secrecy Act (BSA). The most interesting aspect of this revised assessment is that it allows the casino to reduce its original \$8 million penalty by \$3 million if it successfully completes certain compliance undertakings.

No press release has been issued to date by FinCEN regarding this revised assessment, so its specific genesis is unclear. Nonetheless, the revised assessment illustrates that financial institutions facing Anti-Money Laundering (AML)/BSA enforcement actions might be able to mitigate the financial consequences — not only when negotiating the initial penalty assessment, but even after it has been imposed — by undertaking steps towards enhanced compliance and monitoring. It is also unclear whether the onerous nature of the

original assessment, when compared to the available financial resources of the assessed institution, may have played a role in the revision.

On November 15, 2017, FinCEN originally assessed a civil money penalty of \$8 million against Artichoke Joe's, doing business as Artichoke Joe's Casino (AJC), which represented a "financial institution" and a "card club" within the meaning of the BSA . The original assessment contained no section regarding compliance undertakings for the casino to perform. According to the original assessment, the FinCEN action was not the first run-in with law enforcement experienced by AJC:

. . . . The Internal Revenue Service (IRS) examines card clubs for compliance with the BSA under authority delegated by FinCEN. IRS conducted an examination of AJC in 2015 that identified significant violations of the BSA.

On May 9, 2011, AJC entered into a stipulated settlement with the California Bureau of Gambling Control. AJC agreed to pay a fine of \$550,000, with \$275,000 stayed for a two-year period, and agreed to modify its surveillance, work with the city of San Bruno to improve coordination with law enforcement, replace employees at the Pai Gow tables, and provide additional training on loan-sharking, illegal drugs, and compliance with the BSA.

The press release issued at the time by FinCEN was more explicit:

"For years, Artichoke Joe's turned a blind eye to loan sharking, suspicious transfers of high-value gaming chips, and flagrant criminal activity that occurred in plain sight. FinCEN's \$8 million civil penalty results from the card club's failure to establish adequate internal controls and its willful violations of the Bank Secrecy Act," said Jamal El-Hindi, Acting Director of FinCEN. "Casinos, card clubs and others in the gaming industry should consider their risk of exploitation by criminal elements, and understand that they will be held accountable if they disregard anti-money laundering and illicit finance laws. This significant action highlights the need for all entities, including those in the gaming industry, to build a robust culture of compliance into their policies and procedures to ensure they are not facilitating illicit activities."

. . . . In March 2011, AJC was the subject of a raid by state and Federal law enforcement which led to the racketeering indictment and conviction of two AJC customers for loan-sharking and other illicit activities conducted at AJC. AJC senior-level employees knew that loan-sharks were conducting criminal activity through the card club and using AJC gaming chips to facilitate illegal transactions. Nonetheless, AJC failed to file any Suspicious Activity Reports (SARs) on this activity. For example, there were several instances in which loan-sharks provided AJC chips to customers on the gaming floor within plain sight of AJC employees.

Indeed, the original and revised civil assessments allege that from October 2009 through November 2017, AJC:

- Failed to implement an adequate system of internal controls to assure ongoing compliance with the BSA, including by (i) having AML policy which had blank spaces or contained placeholder language such as "Insert explanation of how we intend to accomplish;" (ii) failing to monitor and review subsequent activity by customers on whom AJC previously had filed a SAR; and (iii) failing to have

internal controls to mitigate the risks associated with “backline betting,” which allows customers to pool or co-mingle their bets with relative anonymity.

- Failing to use all available information to identify and verify customer information, and to file complete SARs that fully describe the extent of suspicious activity, including through an adequate narrative section.
- Failing to file SARs regarding AJC chips allegedly used to facilitate loan-sharking.
- Responding to a specific government inquiry about loan-shark activity by stating, through a former Facilities Manager, that “It’s a Casino. There’s always [expletive] loan-sharks.”
- Failing to conduct adequate AML/BSA independent testing, such as by conducting AJC’s first independent test only after the executive of search warrants and arrests by state and federal officials.

The assessments explain that FinCEN arrived at the original assessment of \$8 million by considering the financial condition of AJC and ability to pay; the size and sophistication of AJC (described as “one of the larger clubs operating in California”); the severity and duration of the BSA violations at issue; AJC’s awareness of loan-sharking activity on its premises; AJC’s adoption of remedial measures and cooperation with the IRS and FinCEN; and FinCEN’s “recent enforcement actions against casinos and card clubs and the impact that its penalty against AJC would have on compliance with the BSA by the casino and card club industry.”

This is hardly the first time that FinCEN has brought an AML/BSA enforcement action against a casino. As we have blogged, because the gaming industry has been known to attract some bad actors who attempt to use its financial services to conceal or transfer illicit wealth, AML compliance remains a key concern in this growing business sector.

### *Successful Completion of Undertakings May Yield \$3 Million Reduction in Penalty*

The revised assessment contains a new Section IV, entitled “Undertakings.” It further states that “FinCEN hereby imposes a penalty in the amount of \$8,000,000, with \$3,000,000 suspended pending compliance with the Undertakings set forth in Section IV of the Consent. If AJC fails to comply with the Undertakings set forth in Section IV of the Consent, AJC shall pay the entire penalty of \$8,000,000.”

The compliance Undertakings, which entail a written certification of compliance by AJC involving a narrative section supported by “exhibits sufficient to demonstrate compliance,” are relatively typical for compliance requirements contained within a settlement with the government. As noted, what is unusual is that they have been entered into almost six months after the initial penalty assessment.





Summarized, the Undertakings require AJC to:

- Hire a qualified independent consultant, subject to FinCEN approval, to conduct two annual reviews of the effectiveness of AJC's AML program, and to submit an annual written report regarding each review. The annual reviews will describe any recommended modifications or enhancements to AJC's AML program, and the consultant's workpapers will be available to FinCEN upon request. AJC must either implement any recommendations or propose alternatives, and must provide a written report to FinCEN regarding its implementation of any recommendations.
- Maintain a BSA compliance officer.
- Adopt and maintain an AML program which addresses specific issues identified by FinCEN in the assessment.
- Hire (another) qualified independent consultant, subject to FinCEN approval, to conduct a "look back" regarding transactions from December 31, 2011 to December 31, 2014 to determine whether activity was properly reported in SARs. Again, the consultant will prepare a written report for FinCEN; the consultant's workpapers will be available to FinCEN; and AJC must comply with any recommendation from the consultant or FinCEN that additional SARs be filed.

It is unclear whether the parties encountered an impasse when originally entering into the November 2017 assessment regarding future compliance undertakings, whether it was anticipated at the time that a revised assessment was on the horizon once the details were worked out, or whether there was some other behind-the-scenes scenario. Regardless, the revised assessment underscores the need for, and opportunities presented by, post-violation remediation.



# Department of the Treasury Financial Crimes Enforcement Network

## Guidance

**FIN-2010-G003**

**Issued: June 30, 2010**

**Subject: Casino or Card Club Compliance Program Assessment**

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This document describes factors that a casino or card club may need to consider in assessing the effectiveness of its Bank Secrecy Act (“BSA”) compliance program. The BSA requires casinos and card clubs to develop and implement compliance programs tailored to their business activities and risk profiles. A casino or card club may not need to address each of the factors described in this document. Also, a casino or card club should not construe the factors below as exhaustive and the only ones required to be addressed.

### I. Elements of a BSA Compliance Program

A casino or card club is required to develop and implement a BSA compliance program that adequately addresses the risks posed by its products, services, customer base, and geographical location for the potential of money laundering and terrorist financing. At a minimum, each BSA compliance program<sup>1</sup> must provide for:

- A system of internal controls to assure ongoing compliance with the BSA;
- Internal or external independent testing for compliance with a scope and frequency commensurate with the risks of money laundering and terrorist financing posed by the products and services provided;
- Training of casino personnel, including training in the identification of unusual or suspicious transactions;
- An individual or individuals to assure day-to-day compliance with the BSA;
- Procedures for using all available information to determine and verify, when required, the name, address, social security or taxpayer identification number, and other identifying information for a person;
- Procedures for using all available information to determine the occurrence of any transactions or patterns of transactions required to be reported as suspicious;
- Procedures for using all available information to determine whether a record required under the BSA must be made and retained; and
- For casinos and card clubs with automated data processing systems, use of the programs to aid in assuring compliance.

### II. Criteria for Assessing a BSA Compliance Program

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<sup>1</sup> See 31 C.F.R. § 103.64(a). Compliance with this requirement satisfies the obligation under Section 352 of the USA PATRIOT Act to implement an anti-money laundering (“AML”) program. See 31 C.F.R. § 103.120(d).

A casino or card club may need to consider the following criteria, among others, when assessing its BSA compliance program:

- Management awareness and commitment to compliance;
- Comprehensiveness of policies, procedures, and internal controls and whether policies, procedures, and internal controls need updating;
- Level and frequency of training and whether training is appropriate for the business and compliance functions performed by personnel (*e.g.*, front-line employees);
- Compliance officer's authority, responsibilities, and extent of control and effectiveness, as well as the expertise of the compliance staff;
- Effectiveness of a compliance committee (if established);
- Adequacy of internal or external audit reports in confirming whether the independent review:
  - Evaluated the comprehensiveness of the BSA compliance program and was conducted by an individual knowledgeable of the BSA's requirements,
  - Provided a fair and unbiased appraisal of the BSA compliance program, including BSA-related policies, procedures, and internal controls, as well as other requirements such as reporting and record retention,
  - Determined whether the casino or card club is operating in compliance with the requirements of the BSA and the casino or card club's own policies, procedures and internal controls, and
  - Included testing of internal controls and transactional systems and procedures to identify problems and weaknesses and, if necessary, recommend to management appropriate corrective actions;
- Any BSA compliance deficiencies identified by audit reports and effectiveness of any subsequent corrective actions taken;
- Extent of usage of appropriate automated systems and programs to support its compliance program;
- Adequacy of account opening and documentation policies, procedures and processes;
- Adequacy of policies, procedures and processes for the types of financial services offered or types of negotiable instruments accepted;
- Adequacy of procedures and processes for filing currency transaction reports;
- Adequacy of procedures and processes for detecting suspicious transactions or patterns of suspicious transactions and filing suspicious activity reports;
- Whether there are areas of the operation which require special compliance considerations (*e.g.*, creation of specific types of records, availability of records, records retention); and
- Whether supervision of employees is adequate.

### III. Basis for Revising a BSA Compliance Program

Based on its assessment, a casino or card club should consider the following in determining whether to revise its BSA compliance program:

- Results of independent testing, including internal or external reviews or audits;
- Results of examinations by the Internal Revenue Service or other governmental authorities;
- Significant changes in cage or floor operations;

- Significant changes in the types of financial services offered or types of negotiable instruments accepted;
- Implementation of automated systems and programs that affect compliance;
- Amendments to BSA regulations;
- Amendments to BSA reporting forms;
- New BSA guidance or advisories including, frequently asked questions;
- SAR Activity Reviews – Trends, Tips & Issues, with articles on casinos, card clubs or gambling as well as Suspicious Activity Report (SAR) bulletins;
- The extent to which FinCEN Form 103, Currency Transaction Reports by Casinos (“CTRCs”) filed during specified time frames were:
  - filed late,
  - included P.O. Boxes for customers’ addressees;
  - omitted critical information items;
- The extent to which the casino or card club received correspondence indicating that CTRCs were filed that included errors or omissions that prevented processing, or indicating the existence of reporting errors or omissions, such as:
  - no street address,
  - incorrect social security numbers, and
  - no date of birth; and
- The extent to which FinCEN Form 102, Suspicious Activity Report by Casinos and Card Clubs (“SARCs”), had:
  - no subject information,
  - no characterization of suspicious activity, or
  - inadequate narratives.

Deficiencies could result in BSA civil money penalties or other enforcement actions. Also, a casino or card club may need to consider corrective action, as appropriate. Deficiencies that may warrant taking corrective action include, but are not limited to the following:

- Failure to implement a compliance program;
- A significant breakdown in internal controls or lack of adherence to policy, procedures and controls to assure compliance with the BSA;
- Inadequate testing, training, or other failures in an essential element of a BSA compliance program;
- Compliance program continues to be deficient or violations continue to occur after the institution becomes aware of problems;
- Failure to file SARCs when warranted:
  - Failure to investigate potential suspicious activity,
  - Failure to document reason for deciding not to file a SARC for activity initially identified as potentially suspicious, and
  - Failure to include all relevant information in a SARC;
- Failure to file CTRCs;

- Filing of CTRCs that lack key information (*i.e.*, customer name; address; social security number (“SSN”) or other government identification number;<sup>2</sup> identification credential with issuer and number; amount of currency; or date of transaction);
- Failure to create or retain required records or to provide all the information required by those records;
- Management participation in BSA violations; and
- Assisting customers in structuring transactions to evade the reporting or recordkeeping requirements.

In conclusion, an effective BSA compliance program should reflect a casino or card club’s products, services, customer base, and geographical location. It is a sound practice for a casino or card club to periodically re-assess its BSA compliance program to assure sufficiency and effectiveness.

For questions about this guidance, please contact FinCEN’s Regulatory Helpline at (800) 949-2732.

\* \* \* \* \*

For additional guidance, see *Casino or Card Club Risk-Based Compliance Indicators*, FIN-2010-G002 (June 30, 2010) and *Frequently Asked Questions – Casino Recordkeeping, Reporting and Compliance Program Requirements*, FIN-2007-G005 (November 14, 2007) and FIN-2009-G004 (September 30, 2009), and *Recognizing Suspicious Activity - Red Flags for Casinos and Card Clubs*, FIN-2008-G007 (August 1, 2008). Other reference material includes *Structuring by Casino Patrons and Personnel*, FIN-2009-A003 (July 1, 2009). See also *In the matter of the Tonkawa Tribe of Oklahoma and Edward E. Street - FinCEN No. 2006-1* (March 24, 2006).

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<sup>2</sup> When a SSN is not entered on a CTRC in the case of a foreign national, a foreign country code as well as passport number or non-resident alien registration number must be recorded. See FinCEN Form 102, Instructions, Item 12, for country code.

**UNITED STATES OF AMERICA  
DEPARTMENT OF THE TREASURY  
FINANCIAL CRIMES ENFORCEMENT NETWORK**

<b>IN THE MATTER OF:</b>	)	
	)	
	)	
<b>CG Technology, L.P.,</b>	)	<b>Number 2016-05</b>
<b>f/k/a Cantor G&amp;W (Nevada), L.P.</b>	)	
<b>d/b/a Cantor Gaming</b>	)	
	)	
<b>Las Vegas, Nevada</b>	)	

**ASSESSMENT OF CIVIL MONEY PENALTY**

**I. INTRODUCTION**

The Financial Crimes Enforcement Network (FinCEN) has determined that grounds exist to assess a civil money penalty against CG Technology, L.P., formerly known as, Cantor G&W (Nevada) L.P. d/b/a Cantor Gaming (CG Technology), pursuant to the Bank Secrecy Act (BSA) and regulations issued pursuant to that Act.<sup>1</sup> CG Technology admits to the facts set forth in Attachment A and that its conduct violated the BSA. CG Technology consents to this assessment of a civil money penalty and enters into the CONSENT TO THE ASSESSMENT OF CIVIL MONEY PENALTY (CONSENT) with FinCEN.

The CONSENT is incorporated into this ASSESSMENT OF CIVIL MONEY PENALTY (ASSESSMENT) by reference.

FinCEN has the authority to investigate casinos and their partners, directors, officers, and employees for compliance with and violation of the BSA pursuant to 31 C.F.R. § 1010.810,

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<sup>1</sup> The Bank Secrecy Act is codified at 12 U.S.C. §§ 1829b, 1951–1959 and 31 U.S.C. §§ 5311–5314, 5316–5332. Regulations implementing the Bank Secrecy Act currently appear at 31 C.F.R. Chapter X.

which grants FinCEN “[o]verall authority for enforcement and compliance, including coordination and direction of procedures and activities of all other agencies exercising delegated authority under this chapter.”

CG Technology operates race and sports books in Nevada. CG Technology also offers mobile gaming within the state of Nevada and provides gaming technology to casino customers globally. CG Technology currently holds non-restricted gaming licenses, originally acquired in 2009, with approvals from the Nevada Gaming Commission to operate a race book, sports pool, off-track parimutuel race wagering, and off-track parimutuel sports wagering at multiple establishments in Nevada, including the M Resort Spa Casino, the Hard Rock Hotel & Casino, the Tropicana, the Cosmopolitan, the Venetian Casino Resort, the Palms Casino Resort and the Silverton Casino Lodge.

The Internal Revenue Service (IRS) examines casinos for compliance with the BSA under authority delegated from FinCEN. In 2010, IRS examined the operations of CG Technology and identified significant BSA violations. Subsequent investigations from FinCEN and the United States Attorney’s Offices for the Eastern District of New York and District of Nevada identified additional significant BSA violations.

## **II. RESOLUTION WITH THE UNITED STATES DEPARTMENT OF JUSTICE**

On the same date as the CONSENT, CG Technology entered into a Settlement Agreement with the United States Attorney’s Offices for the Eastern District of New York and District of Nevada, which have agreed not to proceed against CG Technology for conduct described in its Statement of Facts. Under that Agreement, CG Technology agreed to pay a combined penalty and forfeiture amount of \$16,500,000 and engage in the remedial steps also

outlined in the Remedial Framework set forth in Attachment B to the CONSENT and this ASSESSMENT.

### **III. DETERMINATIONS**

From March 1, 2009 through September 28, 2015, CG Technology willfully violated the BSA's program, reporting, and recordkeeping requirements.<sup>2</sup> CG Technology willfully (a) failed to implement and maintain an effective anti-money laundering program;<sup>3</sup> (b) failed to report certain suspicious activity;<sup>4</sup> (c) failed to report certain transactions involving currency in amounts greater than \$10,000;<sup>5</sup> and (d) failed to keep appropriate records as required by the BSA and its implementing regulations.<sup>6</sup>

These violations, and the governing facts and law surrounding the violations, are described more fully in Attachment A, which is incorporated by reference.

### **IV. CIVIL MONEY PENALTY**

FinCEN has determined that CG Technology willfully violated the program, reporting, and recordkeeping requirements of the BSA and its implementing regulations, as described in the CONSENT and in Attachment A, and that grounds exist to assess a civil money penalty for these violations.<sup>7</sup>

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<sup>2</sup> In civil enforcement of the BSA under 31 U.S.C. § 5321(a)(1), to establish that a financial institution or individual acted willfully, the government need only show that the financial institution or individual acted with either reckless disregard or willful blindness. The government need not show that the entity or individual had knowledge that the conduct violated the BSA, or that the entity or individual otherwise acted with an improper motive or bad purpose. CG Technology admits to "willfulness" only as the term is used in civil enforcement of the BSA under 31 U.S.C. § 5321(a)(1).

<sup>3</sup> 31 U.S.C. §§ 5318(a)(2) and 5318(h) and 31 C.F.R. § 1021.210.

<sup>4</sup> 31 U.S.C. § 5318(g) and 31 C.F.R. § 1021.320.

<sup>5</sup> 31 U.S.C. § 5313 and 31 C.F.R. §§ 1010.306(d), 1021.311, 1021.312.

<sup>6</sup> 31 C.F.R. § 1021.410.

<sup>7</sup> 31 U.S.C. § 5321 and 31 C.F.R. § 1010.820.



FinCEN has determined that the penalty in this matter will be \$12,000,000, of which \$6,000,000 will be concurrent with the forfeiture agreed to by CG Technology in the Settlement Agreement with the United States Attorney's Offices for the Eastern District of New York and District of Nevada. Accordingly, the penalty imposed by FinCEN will be satisfied by the forfeiture and one payment of \$6,000,000 to the U.S. Department of the Treasury.

## **V. UNDERTAKINGS**

By executing the CONSENT, CG Technology agrees to the undertakings set forth in the Remedial Framework in Attachment B. Failure to comply with any provision of the Remedial Framework will constitute a violation of the CONSENT. If FinCEN determines that a failure to comply with the Remedial Framework has occurred, FinCEN may take any enforcement action against CG Technology it deems appropriate, notwithstanding the Release in Part VIII below. Additional actions taken by FinCEN may include, but are not limited to, the imposition of additional civil money penalties, injunctive orders, or ordering other remedial actions within the authorities of FinCEN.

## **VI. CONSENT TO ASSESSMENT**

To resolve this matter, and only for that purpose, CG Technology consents to this assessment of a civil money penalty in the sum of \$12,000,000 set forth in Part IV above, and to the undertakings set forth in the Remedial Framework in Attachment B. CG Technology admits to the Statement of Facts set forth in Attachment A and admits that it willfully violated the BSA's program, reporting, and recordkeeping requirements.

CG Technology recognizes and states that it enters into the CONSENT freely and voluntarily and that no offers, promises, or inducements of any nature whatsoever have been

made by FinCEN or any employee, agent, or representative of FinCEN to induce CG Technology to enter into the CONSENT, except for those specified in the CONSENT.

CG Technology understands and agrees that the CONSENT embodies the entire agreement between CG Technology and FinCEN relating to this enforcement matter only, as described in Part III above and in Attachment A. CG Technology further understands and agrees that there are no express or implied promises, representations, or agreements between CG Technology and FinCEN other than those expressly set forth or referred to in this document and that nothing in the CONSENT or in this ASSESSMENT is binding on any other agency of government, whether Federal, State, or local.

## **VII. PUBLIC STATEMENTS**

CG Technology expressly agrees that it shall not, nor shall its attorneys, agents, partners, directors, officers, employees, affiliates, or any other person authorized to speak on its behalf, make any public statement contradicting either its acceptance of responsibility set forth in the CONSENT or any fact in the DETERMINATIONS section of the CONSENT or Attachment A to the CONSENT. FinCEN has sole discretion to determine whether a statement is contradictory and violates the terms of the CONSENT. If CG Technology, or anyone claiming to speak on behalf of CG Technology, makes such a contradictory statement, CG Technology may avoid a breach of the agreement by repudiating such statement within 48 hours of notification by FinCEN. If FinCEN determines that CG Technology did not satisfactorily repudiate such statement(s) within 48 hours of notification, FinCEN may void, in its sole discretion, the releases contained in the CONSENT and reinstitute enforcement proceedings against CG Technology. CG Technology expressly agrees to waive any statute of limitations defense to the reinstated enforcement proceedings and further agrees not to contest any admission or other

findings made in the CONSENT or Attachment A to the CONSENT. This paragraph does not apply to any statement made by any present or former officer, director, employee, or agent of CG Technology in the course of any criminal, regulatory, or civil case initiated against such individual, unless such individual is speaking on behalf of CG Technology or unless CG Technology later ratifies such claims, directly or indirectly. CG Technology further agrees that, upon notification by FinCEN, CG Technology will repudiate such statement to the extent it contradicts either its acceptance of responsibility or any fact in the CONSENT or Attachment A to the CONSENT.

#### **VIII. RELEASE**

Execution of the CONSENT, and compliance with the terms of this ASSESSMENT and the CONSENT, settles all claims that FinCEN may have against CG Technology for the conduct described in Section III of the CONSENT and in Attachment A to the CONSENT. Execution of the CONSENT, and compliance with the terms of this ASSESSMENT and the CONSENT, does not release any claim that FinCEN may have for conduct other than the conduct described in Section III of the CONSENT and Attachment A to the CONSENT, or any claim that FinCEN may have against any party other than CG Technology, such parties to include, without limitation, any other director, officer, or employee of CG Technology. Upon request, CG Technology shall truthfully disclose to FinCEN all factual information not protected by a valid claim of attorney-client privilege or work product doctrine with respect to the participation of its current or former directors, officers, employees, or agents in the conduct described in Section III of the CONSENT and Attachment A to the CONSENT.

If FinCEN determines, in its sole judgment, CG Technology has breached any portion of its agreement, FinCEN may void, in its sole discretion, the releases contained in the CONSENT



**UNITED STATES OF AMERICA  
DEPARTMENT OF THE TREASURY  
FINANCIAL CRIMES ENFORCEMENT NETWORK**

**IN THE MATTER OF:** )  
 )  
 )  
 ) **Number 2015-02**  
**Trump Taj Mahal Associates, LLC, d/b/a** )  
**Trump Taj Mahal Casino Resort** )  
**Atlantic City, New Jersey** )

**ASSESSMENT OF CIVIL MONEY PENALTY**

**I. INTRODUCTION**

The Financial Crimes Enforcement Network (“FinCEN”) has determined that grounds exist to assess a civil money penalty against Trump Taj Mahal Associates, LLC d/b/a Trump Taj Mahal Casino Resort (“Trump Taj Mahal” or “the Company”),<sup>1</sup> pursuant to the Bank Secrecy Act (“BSA”) and regulations issued pursuant to that Act.<sup>2</sup>

Trump Taj Mahal admits to the facts set forth below and that its conduct violated the BSA. Trump Taj Mahal consents to the assessment of a civil money penalty and enters the CONSENT TO THE ASSESSMENT OF CIVIL MONEY PENALTY (“CONSENT”) with FinCEN.

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<sup>1</sup> The Company, along with Trump Entertainment Resorts, Inc., Trump Entertainment Resorts Holdings, L.P., Trump Plaza Associates, LLC, Trump Marina Associates, LLC, Trump Entertainment Resorts Development Company, LLC, TER Development Co., LLC, and TERH LP Inc. (collectively referred to as “the Debtors”), filed for bankruptcy protection on September 9, 2014 in the United States Bankruptcy Court in the District of Delaware (Bankr. Ct. Dist. Del. Case No. 11-12103 (KG) (the “Bankruptcy Case”).

<sup>2</sup> The Bank Secrecy Act is codified at 12 U.S.C. §§ 1829b, 1951-1959 and 31 U.S.C. §§ 5311-5314, 5316-5332. Regulations implementing the Bank Secrecy Act appear at 31 C.F.R. Chapter X.

The CONSENT is incorporated into this ASSESSMENT OF CIVIL MONEY PENALTY (“ASSESSMENT”) by reference.

FinCEN has authority to investigate casinos for compliance with and violation of the BSA pursuant to 31 C.F.R. § 1010.810, which grants FinCEN “[o]verall authority for enforcement and compliance, including coordination and direction of procedures and activities of all other agencies exercising delegated authority under this chapter.”

Trump Taj Mahal is a hotel and casino, located on the Boardwalk of Atlantic City, New Jersey. The casino has over 160,000 square feet of gaming space consisting of over 2,600 slot machines, 204 table and poker games, one keno lounge and a simulcast book. The hotel operates 18 restaurants, several bars, lounges, a pool, spa and 2,248 hotel rooms.

Trump Taj Mahal was a “financial institution” and a “casino” within the meaning of the BSA and its implementing regulations during the time relevant to this action. 31 U.S.C. § 5312(a)(2); 31 C.F.R. § 1010.100(t). The Internal Revenue Service, through the Small Business/Self-Employed Division (“IRS SB/SE”), examines casinos for compliance with the BSA under authority delegated by FinCEN. Since 2003, IRS SB/SE has conducted four examinations of Trump Taj Mahal that identified repeated significant violations of the BSA. In addition, in 1998, FinCEN assessed a \$477,000 penalty against Trump Taj Mahal for BSA violations.

The Company has filed for Chapter 11 bankruptcy protection three times since 2004. It emerged from its first bankruptcy in May 2005 and reentered bankruptcy in February 2009. It emerged from that bankruptcy in July 2010. When the company emerged from bankruptcy in 2010, following the 2010 examination by IRS SB/SE and the transactions that were within the scope of that examination, a new management team took over and a new board of directors was appointed at

the company's parent level. In September 2014, however, it once again entered bankruptcy. As of the signing of the Consent, the Company remains in Chapter 11.

On March 4, 2015, the Bankruptcy Court approved the Debtors' Motion, pursuant to Bankruptcy Rule 9019, to approve its settlement with FinCEN, as set forth in the CONSENT.

## **II. DETERMINATIONS**

Trump Taj Mahal willfully violated the BSA's program, reporting, and recordkeeping requirements from 2010 through 2012.<sup>3</sup> Importantly, many of these violations were previously cited by IRS SB/SE in previous examinations of Trump Taj Mahal since 2003. As described below, Trump Taj Mahal (a) failed to implement and maintain an effective anti-money laundering program; (b) failed to report suspicious activity related to several financial transactions at the casino; (c) failed to properly file Currency Transaction Reports; and (d) failed to keep appropriate records as required by the BSA and its implementing regulations.

### **A. Violations of the Requirement to Establish and Implement an Effective Anti-Money Laundering Program**

The BSA and its implementing regulations require casinos to develop and implement a written anti-money laundering ("AML") program reasonably designed to assure and monitor compliance with the BSA. 31 U.S.C. §§ 5318(a)(2), 5318(h); 31 C.F.R. § 1021.210(b)(1). Trump Taj Mahal was required to implement an AML program that, at a minimum, provided for: (a) a system of internal controls to assure ongoing compliance; (b) independent testing of the casino's

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<sup>3</sup> In civil enforcement of the Bank Secrecy Act under 31 U.S.C. § 5321(a)(1), to establish that a financial institution or individual acted willfully, the government need only show that the financial institution or individual acted with either reckless disregard or willful blindness. The government need not show that the entity or individual had knowledge that the conduct violated the Bank Secrecy Act, or that the entity or individual otherwise acted with an improper motive or bad purpose. The Company admits to "willfulness" only as the term is used in civil enforcement of the Bank Secrecy Act under 31 U.S.C. § 5321(a)(1).

AML compliance program by casino personnel or parties external to the casino; (c) training of personnel; (d) the designation of an individual or individuals responsible for assuring day-to-day compliance; (e) procedures for using all available information to determine and verify name, address, social security or taxpayer identification number, and other identifying information for a person, to the extent determining and verifying the information is otherwise required under the BSA; (f) procedures for using all available information to determine the occurrence of any transactions or patterns of transactions required to be reported as suspicious; (g) procedures for using all available information to determine whether any records must be made and maintained pursuant to the BSA; and (h) for casinos with automated data processing systems, use of such systems to aid in assuring compliance. 31 C.F.R. § 1021.210(b)(2).

As described in more detail below, Trump Taj Mahal failed to implement an adequate system of internal controls to ensure ongoing compliance with the BSA. Trump Taj Mahal failed to timely, accurately, and completely file Currency Transaction Reports (CTRs). In addition, Trump Taj Mahal failed to implement policies, procedures, and internal controls to comply with recordkeeping obligations under the BSA. Trump Taj Mahal's AML program also lacked adequate policies, procedures and internal controls to monitor transactions for suspicious activity and file suspicious activity reports (SARs).

#### **B. Violations of Suspicious Activity Reporting Requirements**

The BSA and its implementing regulations require a casino to report a transaction that the casino "knows, suspects, or has reason to suspect" is suspicious, if the transaction is conducted or attempted by, at, or through the casino, and the transaction involves or aggregates to at least \$5,000 in funds or other assets. 31 C.F.R. § 1021.320(a)(2). A transaction is "suspicious" if the transaction: (a) involves funds derived from illegal activity; (b) is intended or conducted in order to hide or



disguise funds or assets derived from illegal activity, or to disguise the ownership, nature, source, location, or control of funds or assets derived from illegal activity; (c) is designed, whether through structuring or other means, to evade any requirement in the BSA or its implementing regulations; (d) has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the casino knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or (e) involves use of the casino to facilitate criminal activity. 31 C.F.R.

§ 1021.320(a)(2)(i)-(iv).

Within the scope period of the 2010 and 2012 IRS SB/SE examinations, Trump failed to file approximately 100 SARs. During the three-month examination scope for the 2010 BSA exam, Trump Taj Mahal filed 32 SARs, but failed to file 41 others, which represents a 56% failure rate. Similarly, during the three-month exam scope for the 2012 BSA exam, Trump Taj Mahal filed 69 SARs, but failed to file 55 others, which represents a failure rate of 44%. The suspicious activity included patrons engaged in minimal gaming activity, avoiding the CTR filing requirement by structuring marker payments and chip redemptions to avoid reporting, and apparent laundering of funds through the issuance and redemption of slot ticket in/ticket-out tickets.<sup>4</sup>

Furthermore, Trump Taj Mahal lacked policies and procedures to use all available data to aid in the monitoring of slot ticket issuance and redemption transactions, rated play at table games,<sup>5</sup> and

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<sup>4</sup> Modern slot machines use ticket-in, ticket-out (“TITO”) technology. TITO slot machines print out a slip of paper with a bar code indicating the amount of money represented. The ticket can, in turn, be redeemed for cash at an automated kiosk or inserted for play into other TITO machines.

<sup>5</sup> Player rating records generally refer to the records a casino maintains on a patron’s gaming activity for marketing purposes. These records can also be used in detect and evaluate suspicious activity.

slot player transactions for patrons who may have engaged in minimal gaming or other suspicious activity.

The Casino also did not have policies and procedures in place to monitor cage marker<sup>6</sup> and front money<sup>7</sup> transactions for suspicious activity. These policies and procedures are important to BSA compliance because they are essential to determining if a patron is gaming in a manner that may be considered suspicious.

Trump Taj Mahal also did not have policies and procedures in place to monitor data from slot machines for reporting requirements. The failure to implement policies and procedures to use this data resulted in the Casino being cited for SAR reporting violations in 2010 and the subsequent 2012 examination. Specifically, the Casino did not monitor bills-in (cash) slot machine play to identify suspicious activity. Failure to incorporate these elements into the suspicious activity monitoring program led to multiple failures to identify suspicious activity and file SARs. Trump Taj Mahal was aware of its deficient suspicious activity monitoring and reporting as early as 2007; however, despite being on notice of these deficiencies, failed to take adequate action to comply with this requirement.

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<sup>6</sup> A cage marker is a short term credit line provided to the patron for gaming by the casino. A patron will typically complete a casino credit application to request a marker or credit extension. Once a casino completes a marker, it becomes a negotiable instrument which resembles a depository institution's counter check. Although marker play is commonly referred to as "casino credit," a casino does not offer loans in the traditional sense that a depository institution offers loans. If a customer wins, a casino expects a marker to be paid off at that time and it will return the paid marker to a customer. A customer can pay the marker off with currency, cash equivalents, a personal check, or funds transfer to a casino's depository institution. A customer can also mail in a check to a casino to pay a marker off. However, if a customer does not redeem a marker by the preceding methods, he authorizes a casino to complete the credit instrument and to debit his/her checking account at a depository institution.

<sup>7</sup> "Front money" is money deposited with the casino in advance by a patron.

### **C. Violations of Currency Transaction Reporting Requirements**

The BSA and its implementing regulations require casinos to report transactions that involve either “cash in” or “cash out” of more than \$10,000 during a single gaming day. 31 C.F.R. § 1021.311. A casino must aggregate transactions in currency -- treat the transactions as a single transaction -- if the casino has knowledge that the transactions are conducted by, or on behalf of, the same person. 31 C.F.R. § 1021.313. A casino must report transactions in currency through the filing of currency transaction reports. Trump Taj Mahal repeatedly violated the requirement to properly file CTRs. During the three-month scope period of the 2010 BSA examination, Trump Taj Mahal had failures to verify, record, and report required information for 134 reportable transactions. Of the 134 violations, 89 violations related to transactions from nineteen different patrons that involved discrepancies between the customer’s name and Social Security Number. Even after Trump Taj Mahal was notified by the IRS of these discrepancies, it failed to verify the identifying information provided by casino patrons.

Trump Taj Mahal’s CTR filing deficiencies continued in 2012. During a one-month period, Trump Taj Mahal failed to file 30 CTRs totaling \$500,000, stemming from the Casino’s failure to adequately monitor and report when a patron inserts more than \$10,000 into a slot machine in a given day. The failure to adequately monitor cash inserted into slot machines also caused Trump Taj Mahal to incorrectly file 10 additional CTRs. Furthermore, the Casino failed to properly file 22 CTRs as a result of failing to record social security numbers for post-transaction aggregations of cash buy-ins by patrons at gaming tables.

### **D. Violations of Recordkeeping Requirements**

The BSA imposes special recordkeeping requirements on casinos. Casinos are required to maintain a separate record containing a list of each transaction between the Casino and its customers

involving certain monetary instruments having a face value of \$3,000 or more. The list must contain the time, date, and amount of the transaction; the name and permanent address of the customer; the type of instrument; the name of the drawee or issuer of the instrument; all reference numbers and the name or casino license number of the casino employee who conducted the transaction. Applicable transactions must be placed on the list in the chronological order in which they occur. 31 C.F.R. § 1021.410(b)(9).

The 2012 BSA examination revealed that over 100 marker deposits and checks received for marker payments of \$3,000 were not maintained on the casino's negotiable instrument log, and the casino failed to log all markers which were deposited into its bank account during the entire period of the 2012 exam. Notably, this was also a repeat violation, as the 2010 examination revealed 26 violations of this same requirement, in addition to other recordkeeping requirement failures related to Trump Taj Mahal's negotiable instrument log.

### **III. CIVIL MONEY PENALTY**

FinCEN has determined that Trump Taj Mahal willfully violated the program, reporting, and recordkeeping requirements of the Bank Secrecy Act and its implementing regulations, as described in the CONSENT, and that grounds exist to assess a civil money penalty for these violations. 31 U.S.C. § 5321 and 31 C.F.R. § 1010.820.

FinCEN has determined that the penalty in this matter will be \$10,000,000.

### **IV. UNDERTAKING**

By execution of the CONSENT, Trump Taj Mahal agrees to the following UNDERTAKING: The Company shall secure and retain an independent, external qualified party or entity (the "Third-Party Reviewer"), not subject to any conflict of interest, and subject to FinCEN's reasonable determination of non-objection, to examine the Company's Bank Secrecy Act

compliance program and evaluate whether the program is reasonably designed to ensure and monitor compliance with the requirements of the BSA and the FinCEN rules applicable to casinos. Three reviews will occur: the first will commence within six months of the entry of the order of the Bankruptcy Court approving the CONSENT; the second will occur in 2017; and the third will occur in 2019. The first review will have a review scope of September 9, 2014 through the commencement date of the first review, with no less than six months' worth of transactional analysis. The second and third reviews will each cover the previous two years, with no less than six months' worth of transactional analysis. The Third-Party Reviewer will prepare a written report for the audit committee and the board of directors setting forth its findings, and will transmit the report and all draft reports to FinCEN and IRS SB/SE simultaneous with any transmission to Trump Taj Mahal or its agents. To the extent that the report demonstrates any material deficiencies in the Company's programs and procedures, the Company shall address and rectify the deficiencies as soon as is reasonably practical.

## **V. CONSENT TO ASSESSMENT**

To resolve this matter, and only for that purpose, Trump Taj Mahal consents to the assessment of a civil penalty in the sum of \$10,000,000 and to the undertaking set forth in Part IV above, and admits that it violated the BSA's program, reporting, and recordkeeping requirements. The civil money penalty will be allowed as a general unsecured claim in the Company's Bankruptcy Case subject to the rights of the United States to assert its setoff and recoupment rights. The Company reserves all rights and defenses in connection with any all assertions of such setoff or recoupment rights.

Trump Taj Mahal recognizes and states that it enters into the CONSENT freely and voluntarily and that no offers, promises, or inducements of any nature whatsoever have been made

by FinCEN or any employee, agent, or representative of FinCEN to induce Trump Taj Mahal to enter into the CONSENT, except for those specified in the CONSENT.

Trump Taj Mahal understands and agrees that the CONSENT embodies the entire agreement between Trump Taj Mahal and FinCEN relating to this enforcement matter only, as described in Section II above. Trump Taj Mahal further understands and agrees that there are no express or implied promises, representations, or agreements between Trump Taj Mahal and FinCEN other than those expressly set forth or referred to in this document and that nothing in the CONSENT or in this ASSESSMENT is binding on any other agency of government, whether Federal, State or local.

The CONSENT was made effective upon approval of the Bankruptcy Court by its order of March 4, 2015. Nothing in the CONSENT or this ASSESSMENT shall preclude any proceedings brought by FinCEN to enforce the terms of the CONSENT or this ASSESSMENT. To the extent that FinCEN finds it necessary to enforce the terms of the CONSENT or this ASSESSMENT, the Company agrees that such proceeding(s) may be withdrawn to the District Court for adjudication pursuant to 28 U.S.C. § 157(d).

## **VI. RELEASE**

Execution of the CONSENT, and compliance with the terms of this ASSESSMENT and the CONSENT, settles all claims that FinCEN may have against Trump Taj Mahal for the conduct described in Section II of the CONSENT. Execution of the CONSENT, and compliance with the terms of this ASSESSMENT and the CONSENT, does not release any claim that FinCEN may have for conduct by Trump Taj Mahal other than the conduct described in Section II of this ASSESSMENT, or any claim that FinCEN may have against any director, officer, owner, employee, or agent of Trump Taj Mahal, or any party other than Trump Taj Mahal. Upon request, Trump Taj Mahal shall truthfully disclose to FinCEN all factual information not protected by a valid claim of





- 4.26.6 Bank Secrecy Act Examiner Responsibilities

**Part 4. Examining Process**

**Chapter 26. Bank Secrecy Act**

**Section 6. Bank Secrecy Act Examiner Responsibilities**

- 4.26.6.1 Overview
- 4.26.6.2 Identification
  - 4.26.6.2.1 Notification After Identification

**4.26.6 Bank Secrecy Act Examiner Responsibilities**

- 4.26.6.3 Education
  - 4.26.6.3.1 Education During a BSA Examination

**4.26.6.1 (11-14-2006) Overview**

- 4.26.6.4 BSA Examinations
  - 4.26.6.4.1 Preplan
    - 4.26.6.4.1.1 Scope and Depth
      - 4.26.6.4.1.1.1 Risk Analysis
    - 4.26.6.4.1.2 Evaluation of Program, Policies, Procedures, and Internal Controls

1. The purpose of the Bank Secrecy Act (BSA) examination is to:
  - Determine a financial institution’s compliance with the Federal government’s anti-money laundering (AML) statutes and regulations, with an emphasis on AML program requirements;
  - Examine financial institutions for BSA compliance, with an emphasis on conducting a risk-based analysis of the entity under examination, and on examining the AML compliance program within the financial institution as well as selective transaction-based testing, to determine if the financial institution has the appropriate internal controls in place to enforce BSA compliance in a consistent and effective manner; and,
  - Identify areas of noncompliance with the BSA as manifest in AML program operations and in business operations (including trends, patterns, or schemes designed to evade the filing of any required reports or recordkeeping).

2. The BSA examiner is responsible for:
  - a. Identifying non-bank financial institutions (NBFIs) and forwarding the information to the Workload Selection Unit (WSU).



- 4.26.6.4.1.3 b. Examining financial institutions for BSA compliance. Civil and criminal penalties may be applicable for those that are noncompliant.
- 4.26.6.4.1.4 c. Advising financial institutions under IRS jurisdiction of their BSA responsibilities in connection with a BSA examination.
- 4.26.6.4.2 3. For purposes of IRC 6103, the BSA examiner is essentially working for the Department of the Treasury, and not as an IRS employee, thus he/she cannot access tax returns or tax return information.
- 4.26.6.4.2.1 Interview **4.26.6.2 (11-14-2006)**
- 4.26.6.4.2.1.1 **Identification**
  - 1. The BSA coordinator is responsible for the identification of NBFIs subject to the registration, reporting, recordkeeping, and compliance program requirements under the BSA. The BSA examiner is responsible for assisting in the identification of NBFIs.
  - 2. The BSA examiner may assist in the identification by use of the following sources. This list is not all inclusive:
    - a. Field contacts
    - b. Physical observation
    - c. Neighborhood publications
    - d. Trade or business associations
  - 3. When in the field, the BSA examiner should continually look for new NBFIs, which may not be included in the Title 31 database.
  - 4. During each interview, the BSA examiner should inquire as to the identity of local competitors in the area. The BSA examiner should provide all names of identified entities to the BSA coordinator to ensure they are included in the Title 31 database.
- 4.26.6.4.2.2 Group Manager Concurrent Meeting **4.26.6.2.1 (11-14-2006)**
- 4.26.6.4.3 Retained Copies of Reports a. Field contacts
- 4.26.6.4.4 Inspection of Books and Records b. Physical observation
- 4.26.6.4.5 Lack of Records c. Neighborhood publications
- 4.26.6.4.6 Delinquent BSA Forms Acquisition Procedures d. Trade or business associations
- 4.26.6.4.7 Closing 3. When in the field, the BSA examiner should continually look for new NBFIs, which may not be included in the Title 31 database.
- 4.26.6.4.7 Closing 4. During each interview, the BSA examiner should inquire as to the identity of local competitors in the area. The BSA examiner should provide all names of identified entities to the BSA coordinator to ensure they are included in the Title 31 database.

**4.26.6.2.1 (11-14-2006)****Notification After Identification**

- 1. A copy of Letter 1052, Notification of Possible IRS Check to Verify Maintenance of Required Records and Filing Reports (<http://publish.no.irs.gov/catlg.htm>), should be issued by the

- the Examination
- 4.26.6.4.7.1 Processing the Administrative Case File
    - WSU to newly identified entities and a copy retained in the administrative file. If the business states that they did not receive it, the examiner should issue another copy to the business. IRM 4.26.6.3.1(4)
- 4.26.6.3 (11-14-2006)**
- Education**
- 4.26.6.4.8 Workpapers
    - 1. The BSA examiner is responsible for ensuring that the financial institution is informed of the reporting, registration, recordkeeping, and compliance program requirements of the BSA.
  - 4.26.6.4.8.1 Automated Workpapers
    - 2. All requests for educational outreach to financial industry groups or large audiences must be first forwarded through the BSA group manager to the appropriate BSA Stakeholder Liaison BSA Specialist.
  - 4.26.6.4.8.3 Workpaper #105
    - 4.26.6.3.1 (11-14-2006)**
    - Education During a BSA Examination**
    - 1. Education is an ongoing process and an integral part of each BSA examination, since the regulations under 31 CFR 103 continually change.
    - 2. The BSA examiner needs to determine if the financial institution continues to qualify as a NBFI.
    - 3. If the financial institution is a NBFI, the BSA examiner has an opportunity to:
      - a. Discuss the reporting, recordkeeping, and compliance program requirements applicable to the financial institution;
      - b. Provide current applicable forms and publications;
      - c. Discuss the procedures for filing timely, accurate, and complete reports;
      - d. Discuss Money Services Business (MSB) registration requirements, if applicable;
      - e. Discuss Suspicious Activity Reporting;
      - f. Discuss obligations and responsibilities in combating money laundering;
- Administrative Plan to Close Lead Sheet
- 4.26.6.4.8.4 Workpaper #110
- Pre-Plan Analysis
- 4.26.6.4.8.5 Form 4318 Exam Workpaper Index-Title 31
- 4.26.6.4.8.5.1 Form 9984-Activity Record



- 4.26.6.4.9 6. The BSA examiner must always be alert to potential money laundering schemes, as well as failures to file required reports, to maintain required records, and to have an effective AML compliance program.
  - 4.26.6.4.9.1 Administrative File **4.26.6.4.1 (11-14-2006)**
  - Using **Preplan**
  - Automated Workpapers
- 4.26.6.5 Examination Information Report, Form 5346
  - 2. A quality BSA examination begins with a thorough preplan. The scope and depth of the BSA examination will depend upon the facts and circumstances in each case.
  - 2. At a minimum, a preplan should consist of:
    - a. Researching the Currency and Banking Retrieval System (CBRS) to determine:
      - The financial institution's filing history
      - The cash transactions between the financial institution and a bank or other financial institutions
      - If any BSA reports have been filed by or on behalf of the NBFIs and/or officers
      - Any incomplete or inaccurate documents filed, lack of filings, timeliness of filings, and any unusual or questionable transactions
      - Copies of any research conducted should be included in the administrative file. (Reminder: SARs not filed by the financial institution under examination cannot be revealed to or discussed with such financial institution. Refer to IRM 4.26.4.) For more information on CBRS, refer to Section 4.
  - 3. A preplan should also at a minimum consist of:
    - a. Reviewing the historical administrative file for any prior BSA correspondence, educational contact, or compliance examination if available. The BSA examiner should especially note the employee's knowledge of the BSA and areas of noncompliance, as well as review any reports, letters, referrals, or any corrective action documented by the financial institution within the administrative file.
    - b. Verifying the NBFIs have been previously notified via Form Letter 1052 and has been included in the Title 31 database.
- 4.26.6.6 Information Items
- 4.26.6.7 Safety
- 4.26.6.8 Technical Assistance
- 4.26.6.9 BSA Program Web Site
- 4.26.6.10 Activity Code
- 4.26.6.11 Power of Attorney
- 4.26.6.12 Disclosure
- Exhibit 4.26.6-1 Notification of Possible IRS Check to Verify Maintenance of Required Records and Filing

- Reports, Letter 1052
    - Exhibit 4.26.6-2 BSA Appointment Letter, Letter 3493
    - Exhibit 4.26.6-3 BSA Casino Appointment Letter, Letter 3494
    - Exhibit 4.26.6-4 Examination Information Report, Form 5346
  - c. Reviewing state and local laws and regulations pertaining to NBFIs. Determine if they require any records useful in the BSA examination.
  - d. Researching the Internet, information available from the appropriate state agencies, UCC filings, etc. for any available information on the NBFIs.
  - e. Ensuring that the administrative file contains documentation of CI's clearance.
  - f. Obtaining and reviewing copies of internal audits or external agency audits or reviews specific to BSA policies, procedures, or operations.
  - g. Obtaining and reviewing copies of compliance programs of the entity subject to examination, including but not limited to:
    - BSA compliance policies and procedures
    - BSA specific operations policies and procedures
    - BSA training
    - Monitoring
    - Reporting policies and procedures.
4. The steps taken during pre-planning, as outlined in 2(a) through 3(g) must be documented in the administrative file. The BSA examiner should complete workpaper #110 Pre-Plan Analysis. IRM 4.26.6.4.8.4 provides guidelines for the development of workpaper content and organization. These guidelines are provided to promote quality and consistency in workpapers and should be used when conducting a Title 31 examination.
  5. The BSA examiner must not use any Integrated Data Retrieval System (IDRS) information in preplanning or while conducting a BSA examination.
  6. While conducting the BSA examination, the BSA examiner is essentially working for the Treasury Department and cannot access tax returns or tax return information according to IRC 6103.

**4.26.6.4.1.1 (11-14-2006)**

### Scope and Depth

1. The scope and depth of the BSA examination should be sufficient to assure the BSA examiner that the financial institution being examined is:
  - a. Subject to BSA;
  - b. Has a written AML compliance program that meets statutory and regulatory requirements;
  - c. Is implementing a written AML compliance program that meets the statutory and regulatory requirements and that would identify structured transactions, trends and patterns of structuring, and other suspicious activities; and,
  - d. Is in compliance with all other applicable BSA recordkeeping and reporting requirements.
2. The scope and depth of each BSA examination will depend on the facts and circumstances in each case. Factors which should be considered are inadequate records, poor internal control, unusual currency flows, or possible violations found.
3. The scope and depth will be documented in the administrative file.
4. The scope and depth should emphasize a top-down examination process. Evaluate the financial institution's adequacy and effectiveness of its internal controls, training and audit testing. Determine if the controls and procedures in place for the computer and manual systems are reasonable to ensure compliance with BSA.
5. The content of the pre-plan will depend in part upon whether the exam target is a national entity or an agent of the national entity. An examination of a national entity will be more complex, and should focus primarily on the AML compliance program. For exams of agents, utilize the national entity to assist in identifying agents with the largest volumes as possible exam targets.
6. AML compliance program evaluations/examinations are usually accomplished in three stages:
  - a. Review the adequacy of the written AML program;

- b. Determine whether the written program, or the program requirements of the BSA have been adequately implemented; and,
  - c. Assess whether breakdowns in the program, or any element thereof, places the institution at risk for BSA violations, money laundering, or other financial crimes.
7. The scope and depth of a BSA examination should initially include the most current 6-month period. The reason for choosing the most current period is that the BSA examiner and the Treasury need to know the financial institution's current compliance level.
8. The selected period can include high volume periods, or a period related to certain known events. When selecting the period, consider that peak business activity periods may vary for the different types of financial services offered which may result in different periods selected for each service.
9. If significant BSA program deficiencies are discovered, the examination should articulate the exact nature of the program deficiency(s) (e.g., internal controls, training, audit, designated personnel). This will reduce the need for an extensive transaction test approach. For example, if after examining 3 months of records, it was determined that a financial institution had adequate internal controls, independent testing, designated personnel, and training, all of which are designed to ensure BSA compliance, the examination or transaction testing period could be limited to the 3 months examined without further selective transaction-based testing of the full 6 months. If no serious violations or anomalies were detected during this period, the examination should be closed. If the financial institution lacks an adequate compliance program, or the examiner detects problems during the 3-6 month review period, the examination period should be expanded appropriately.
10. If the financial institution has been previously examined and only minor deficiencies were noted, a more limited scope examination should be considered.
11. Factors to consider in determining the appropriate scope of the BSA examination include:
  - a. Whether the IRS previously conducted a BSA examination.

- b. Whether a prior examination revealed significant BSA compliance program deficiencies, or recordkeeping or reporting deficiencies.
  - c. Whether there are any outstanding orders or agreements between FinCEN and the institution.
  - d. Whether any civil penalties have been assessed against the institution in the last three years.
  - e. Whether there have been significant increases or decreases in the levels of BSA reports filed in the last 12 months.
  - f. Whether CBRS reflects currency transactions inconsistent with the nature of financial services offered.
  - g. Whether CBRS indicates large currency transactions with respect to the financial institution, but few currency transaction reports (CTRs) filed by the financial institution.
  - h. Whether the IRS or FinCEN have received tips from law enforcement or state, local, or tribal regulatory agencies about the financial institution.
  - i. Whether the financial institution is referenced in SARs filed by other financial institutions.
  - j. Whether the financial institution is located within a High Intensity Drug Trafficking Area (HIDTA) or High Intensity Financial Crime Area (HIFCA).
  - k. For casinos, whether a relatively small number of Currency Transaction Reports by Casinos (CTRCs) were filed in comparison with the casino's gross annual gaming revenue.
  - l. For currency exchangers, the examiner can select the period based on the review of the cash and teller reconciliations. The examiner should review the bank, the cash, and the teller reconciliations to identify large transactions. Look for increases or decreases in the amount of ending cash on hand or amounts deposited in or withdrawn from the correspondent bank.
12. As BSA examiners identify potential recordkeeping or reporting violations, additional steps should be taken to document the transactions and establish that the financial institution had



both knowledge of the transaction and knowledge of the reporting requirements.

13. Only the apparent violations, which have actually been detected during the time period of the BSA examination, are considered for inclusion on a Letter 1112 (Title 31 Violation Notification Letter) or Form 5104 (Report of Apparent Violation of Financial Recordkeeping and Reporting Regulations). At no time, should the BSA examiner include any apparent violations that have possibly occurred in time periods outside the scope of the examination without expanding the scope.
14. The depth of the BSA examination includes those transactions that may reasonably give rise to a BSA reporting, registration, recordkeeping, or compliance program requirement.
15. Statistical sampling, while helpful for evaluating the internal controls of the financial institutions with respect to BSA compliance, may not be effective if there are too few transactions to make the sample meaningful. However, in examinations of the largest financial services institutions, statistical sampling can be a useful technique when used in conjunction with examinations of all transactions of a defined timeframe.
16. If a financial institution has several branches or locations and potential violations are identified at one, the BSA examiner should consult with the BSA coordinator and manager to consider conducting BSA examinations at the additional branches or locations.

#### **4.26.6.4.1.1.1 (06-01-2005)**

### **Risk Analysis**

1. Risk analysis is the required approach when starting the exam, evaluating the AML compliance program, and expanding/contracting the scope and depth of an examination. It is the process used to decide "Is it worthwhile to examine this issue".
2. The BSA examiner should focus on entities that have the highest risk for non-compliance with BSA reporting and recordkeeping requirements, and to spend the least amount of resources on those entities in compliance.

3. The BSA examiner should emphasize evaluating the financial institution's adequacy and effectiveness of internal controls, training, and internal monitoring, including those computer and other systems, controls and procedures in place to reasonably to ensure compliance with the BSA
4. If internal controls, internal monitoring, designation of compliance personnel, and training are adequate, the transaction testing period could be limited.
5. If the financial institution lacked an adequate compliance program or failed to implement their program, or the examiner detected problems during the 3-6 month review period, the examination period could be expanded appropriately.
6. It is not intended that the BSA examiner examine every transaction for the current 3-6 month period. Selective transaction-based testing should be done.
7. The BSA examiner should compare the potential benefits to be derived from expanding the scope and depth of an examination to the resources required to perform the examination, and the potential outcome generated from expanding/contracting the scope. The objective of risk analysis is to focus the examination on issues of merit.
8. The examiner should determine if identifying additional violations would improve compliance or change the conclusion of the examination ( Form 5104 or CI Referral vs. L-1112).
9. The BSA examiner should determine the compliance impact being the inherent character of the item, evidence of potential for risk for money laundering, intent to mislead.
10. The BSA examiner will analyze risk at various stages throughout the compliance examination.
11. IRM 4.26.6.4.1.1 Scope and Depth refers to risk based auditing in several sections:
  - Emphasize a top-down exam process;
  - AML compliance program examination;
  - Scope to include the most current 6-month period;
  - Factors to consider in determining appropriate scope; and,

- Document changes to the scope of an examination.

#### **4.26.6.4.1.2 (11-14-2006)**

##### **Evaluation of Program, Policies, Procedures, and Internal Controls**

1. Each financial institution must develop and implement a written AML compliance program reasonably designed to assure and monitor compliance with Title 31 regulations (31 CFR 103.125). Determine if a written AML program exists and obtain a copy.
2. An analysis of the financial institution's AML compliance program should include a review of the policies, procedures, and internal controls established and implemented to comply with the BSA registration, reporting, and recordkeeping requirements.
3. The analysis of the written AML compliance program should ensure that it:
  - a. Is written and is available for examination;
  - b. Designates a Compliance Officer;
  - c. Provides for training of appropriate employees;
  - d. Provides for testing and evaluation of the effectiveness of the program has been by persons independent of the Compliance Officer
  - e. Establishes and implements policies, procedures, techniques, systems, and money laundering or the support of other criminal activity, including terrorist activity;
  - f. Is reasonable and appropriate for the business, and is commensurate with the risks posed by the locations, size, and the nature and volume of the financial services provided by the business; and,
  - g. Provides for verifying customer identification, filing required reports, creating and retaining records, and responding to law enforcement.
4. After analyzing the policies, procedures, and internal controls, the BSA examiner should evaluate the compliance program to:

- a. Determine whether the program has been adequately implemented;
- b. Determine whether there has been a systemic breakdown of internal controls or a lack of adherence to policy and procedures to assure compliance;
- c. Determine whether the financial institution was aware of any problems in its compliance program, and whether it took corrective action;
- d. Assess whether any breakdowns in the program could place the financial institution at increased risk of being used by customers who are trying to launder money or commit other types of financial crimes;
- e. Review any updates to the policies, procedures, and internal controls, which were put in effect after the period being examined, but before the examination was concluded;
- f. Identify any weaknesses or deficiencies in the program that could or did result in failures to correctly file required CTRs, other required reports, and/or failure to comply with the BSA recordkeeping and record retention requirements; and,
- g. Establish who has knowledge when a reportable currency transaction occurs. More than one employee may have such knowledge, including employees who did not personally conduct or witness the transaction.
  1. In the case of single transactions over \$10,000, this will generally be the person conducting the transaction on behalf of the financial institution.
  2. In the case of multiple currency transactions, which when aggregated exceed the reporting threshold, this person may be a financial institution employee who witnesses the multiple transactions, or an employee who aggregates and reviews the financial institution's records for multiple transactions.

#### **4.26.6.4.1.3 (11-14-2006)**

##### **BSA Examination Techniques**

1. The BSA examiner must determine if the financial institution meets the definition of a Money Services Business (MSB) for each type of financial service or product offered.

2. If the financial institution provides more than one type of financial service, the BSA examiner must review the records for each type of financial service or product offered, and determine if a written AML compliance program exists which is adequate to cover the added risk involved with providing multiple financial services.
3. Examination techniques used to conduct BSA examinations will vary significantly depending upon whether the financial institution processes its customer transactions by or through a computer system, and has retained those records in machine-readable form as required by the BSA.
4. When computer records are available, the BSA examiner should request downloads of records from either the financial institution or the agent's headquarters to be available at the initial appointment. The BSA examiner should review the data sorted by name, address, and/or phone number fields (or whatever data fields are required) to detect structured transactions, unreported transactions, potential suspicious transactions, errors, and/or deficiencies in the financial institution's BSA compliance system or program.
5. If computerized records are available for some transactions but not for others, a combination of manual examination techniques and computer auditing techniques should be utilized.
6. Use of a Computer Audit Specialist (CAS) must be considered on all BSA examinations if:
  - a. A large number of transactions need review;
  - b. A large volume of records need review; or,
  - c. The NBFi maintains a computerized recordkeeping system.
7. Assess the AML compliance programs of the entity subject to examination against AML program requirements, including but not limited to: compliance policies and procedures, BSA specific operations policies and procedures, training, monitoring, and reporting policies and procedures.
8. Review internal audits or external agency audits or reviews specific to BSA policies, procedures, or operations for relevant BSA issues to determine if any deficiencies were identified, any

corrective actions were recommended, and if the corrective actions have been implemented.

9. CBRS should be reviewed to determine if any CTRs, Reports of International Transportation of Currency or Monetary Instruments (CMIRs), SARs, or FBARs were filed in the names of employees, agents, or nominees which may indicate possible unreported transactions.
10. When violations are found, the BSA examiner should document the facts and circumstances with respect to the violation. BSA examiners should advise the financial institution's management of their findings and solicit an explanation from them as to why each violation occurred.
11. Refer to IRM 4.26.9 for in-depth BSA examination techniques for various types of NBFIs.
12. If structured transactions are detected, refer to IRM 4.26.13.

#### **4.26.6.4.1.4 (06-01-2005)**

##### **Initial Contact**

1. The initial contact may be made by telephone, letter, or a cold call visit in person. Cold call visits require management approval.
2. Whether the initial contact is made by letter or telephone call, the BSA examiner will need to:
  - Use the Initial Title 31 Entity Contact Check Sheet during the initial telephone conversation with the entity;
  - Prepare an initial IDR and Letter 3493 Bank Secrecy Act Appointment Letter or Letter 3494 Bank Secrecy Act (Title 31) Casino Appointment; and,
  - Send the appointment letter with the IDR to the entity.
3. The BSA examiner should complete workpaper #130, Initial Title 31 Entity Contact Check Sheet. IRM 4.26.6.4.8.6 provides guidelines for the development of workpaper content and organization. These guidelines are provided to promote quality and consistency in workpapers and should be used when conducting a Title 31 examination.

4. Letter 3493, Bank Secrecy Act (Title 31) Appointment Letter, or Letter 3494, Bank Secrecy Act (Title 31) Casino Appointment Letter, should be issued prior to a BSA examination. See *Exhibit 4.26.6-2* and See *Exhibit 4.26.6-3*.
5. Prior to contacting any tribally-owned entity, the BSA examiner must coordinate with TEGE's office of Indian Tribal Governments (ITG).
6. The BSA examiner should request the appropriate records on Form 4564, Information Document Request (IDR), and submit this form to the financial institution at the time the initial appointment is scheduled. Examples of IDRs for each type of NBFIs are included in IRM 4.26.9. The IDRs are examples that must be expanded or contracted as the facts and circumstances of each BSA examination warrant.
7. The IDR should request that a copy of the AML compliance program be provided in advance of the appointment. The BSA examiner should review copies of the AML compliance program of the financial institution subject to examination, including but not limited to: BSA compliance policies and procedures, BSA specific operations policies and procedures, BSA training, monitoring, and reporting policies and procedures.
8. The IDR should also request copies of all internal audits or external agency audits in advance of the appointment. The BSA examiner should review the copies of internal audits or external agency audits or reviews specific to BSA policies, procedures, or operations. The BSA examiner should note any deficiencies reported and corrective actions recommended.
9. The IDR should also request that a download of computer records be available at the initial appointment. Requesting these computer records prior to the examination will assist the financial institution in securing computer records from their Headquarters if required.
10. An Examining Officer Activity Record is used to record all contacts with the financial institution and any other case activity. The BSA examiner must document what was discussed with specific personnel and the date(s) of those discussions.

#### **4.26.6.4.2 (11-14-2006)**

##### **Initial Appointment Meeting**

1. The BSA examiner should utilize workpaper #135, Initial Appointment Agenda, for the initial meeting. Refer to IRM 4.26.6.4.8.7 for guidelines on the development of workpaper content and organization.
2. The Title 31 compliance examination should be conducted at the place of business.
3. The BSA examiner should assess the internal controls of the entity. This should be documented on the Policies, Procedures and Internal Controls Lead Sheet #140.
4. The AML Compliance Program - Title 31 Lead Sheet is mandatory and requires a conclusion.
5. The BSA examiner should work with the entity/POA to establish a Mutual Commitment Date (MCD) and determine the number of expected field visits. Record the MCD on the Form 4318. The MCD should be reasonable and attainable.
6. The BSA examiner should consider the following factors when determining an MCD:
  - Number of anticipated additional visits;
  - Days between visits to get information properly prepared; and,
  - Availability of records.
7. Notify the manager if there is a need to change the MCD by more than 30 calendar days.

#### **4.26.6.4.2.1 (11-14-2006)**

##### **Interview**

1. A thorough interview is essential in conducting a quality BSA examination. It is extremely important for the BSA examiner to establish and document the level of BSA knowledge that the owners, managers, and employees of a financial institution have at the beginning of the BSA examination. Knowledge of the BSA is an important factor in establishing the degree of compliance with the BSA reporting, registration, recordkeeping, and compliance program requirements.



2. The BSA examiner must prepare a Memorandum of Interview(s) (MOI) at the end of each interview to summarize the significant facts obtained during the interview(s).
3. The BSA examiner should focus on the following areas during the interview:
  - a. Policies and procedures;
  - b. Internal controls and cash controls;
  - c. BSA knowledge;
  - d. Related entities;
  - e. AML compliance programs;
  - f. Training;
  - g. Method of keeping books and records;
  - h. Internal approval authority;
  - i. Reporting and recordkeeping responsibilities as they relate to the BSA; and,
  - j. Management oversight and compliance officers.
4. The BSA examiner must interview the person(s) responsible for compliance with the BSA including both compliance personnel, and business operations and management personnel. During the interview, the BSA examiner should, at a minimum, inquire as to:
  - a. The name and title of officers or employees who handle cash transactions and who are responsible for filing CTR's;
  - b. The specific duties and responsibilities of those individuals;
  - c. The responsible persons' knowledge of the reports and records required under the BSA;
  - d. The internal controls of the NBFi with regard to cash transactions (including approval authority by dollar amount);
  - e. The types of records maintained on transactions required to be reported on CTRs;

- f. The types of records maintained to meet BSA recordkeeping requirements;
  - g. The types of records maintained on all other transactions;
  - h. The history of filing CTRs;
  - i. The procedures used by the NBFIs to ensure that the information contained in the records and reports is complete and accurate;
  - j. The amount of cash on hand, sources and uses of cash, and cash controls;
  - k. The training of employees relative to BSA regulations and any written or oral policies or procedures regarding cash transactions;
  - l. Local competition/competitors offering the same or similar services;
  - m. The type of computer system used;
  - n. The volume of BSA relevant transactions, both in terms of number of transactions and dollar volume, on a daily, weekly, and monthly basis, with documented variations for such factors as seasonality;
  - o. The presence of an AML compliance program with all elements as required by 31 CFR 103.125;
  - p. The understanding by staff of the AML compliance program's function;
  - q. The internal controls of the NBFIs with regard to suspicious activity reporting, when such reporting is required by the BSA;
  - r. The internal (or external) controls in place to ensure compliance with BSA requirements; and,
  - s. The processes used internally to identify and correct issues that can lead to compliance problems.
5. Note that the above list is not all inclusive. Refer to IRM 4.26.9 for a list of possible interview questions.

6. The BSA examiner should ask open-ended questions throughout the interview. The BSA examiner should not ask questions that require only a " yes" or "no" answer.
7. The interview should be documented on the Initial Interview Questions and Notes-Title 31. IRM 4.26.6.4.8.7.2 provides guidelines for the development of workpapers content and organization.

#### **4.26.6.4.2.1.1 (06-01-2006)**

### **Developing the Audit Plan**

1. When an in-depth examination is warranted, the BSA examiner should determine whether the financial institution's records are prepared or processed through a computer system prior to developing the audit plan. If the financial institution's records are computerized, a Computer Audit Specialist (CAS) should be assigned to the case and involved in the development of the audit plan. Computer assisted auditing techniques identify and aggregate currency transactions with greater precision and overall efficiency.
2. The audit plan will include procedures for evaluating the financial institutions AML compliance program including its policies, procedures, and internal controls related to compliance. The analysis should be directed to identifying potential weaknesses and deficiencies that may exist in the financial institution's AML compliance program and that could result in failures to properly file required forms and maintain required records.
3. The audit plan should also have procedures that will identify employees or customers who may be structuring currency transactions in an effort to circumvent the BSA reporting and recordkeeping requirements.
4. When conducting examinations at Headquarters, use the Headquarters information to complete a risk based analysis of their agents/branches for possible new examination entities. Risk based analysis should include analyzing discontinued or denied agents/branches.

#### **4.26.6.4.2.2 (06-01-2006)**

### **Group Manager Concurrence Meeting**

1. The Group Manager Concurrence Meeting (GMCM) must occur within 30 calendar days after completion of the initial appointment meeting.
2. The BSA examiner should schedule the concurrence meeting as soon as the date of the initial appointment is set.
3. GS-13 BSA examiners are encouraged to utilize a GMCM in order to provide updates on cases and obtain guidance from managers.
4. GS-12 BSA examiners and below are required to use the GMCM.
5. The BSA examiner should be prepared to discuss:
  - The initial appointment meeting and MCD;
  - Plan for completing the case; and,
  - Concerns.
6. The GMCM should be documented on the Group Manager Concurrence Meeting Check Sheet (Workpaper #125)

#### **4.26.6.4.3 (11-14-2006)**

##### **Retained Copies of Reports**

1. During a BSA examination, the BSA examiner must inspect retained copies of BSA reports filed by the NBF to ensure timely, complete, and accurate reporting.
2. The retained copies must be verified against the CBRS to determine that they were actually filed and to compare the information on the retained report against the CBRS filing.
3. The retained copies must be requested for all filings within the examination period on CBRS to ensure that the five-year retention requirements have been met.

#### **4.26.6.4.4 (11-14-2006)**

##### **Inspection of Books and Records**

1. The review of books and/or records as well as policies and procedures is critical in order to measure the degree of compliance with the BSA. (Refer to IRM 4.26.5.)

2. The BSA examiner must utilize the required records, including AML program records, maintained by the NBF to determine the level of compliance.
3. The BSA examiner must be alert to situations which may be an attempt to evade the reporting requirements, such as:
  - a. A single transaction structured as multiple transactions of \$10,000 or less;
  - b. Currency transactions structured to appear as non-currency transactions, i.e., the issuance of a check to the customer by a financial institution which then cashes the check for the customer; or,
  - c. A pattern or series of transactions of \$10,000 or less conducted over a period of time by or for the same person. (Refer to IRM 4.26.13 for an in-depth discussion on structuring).

#### **4.26.6.4.5 (11-14-2006)**

##### **Lack of Records**

1. When the BSA examiner determines that records are lacking or inadequate, it may be necessary to request records from banks and other third parties.
2. The BSA examiner can request that the NBF obtain the information from the third-party record keeper.
3. Where possible, the BSA examiner should request third-party information on Form 4564, IDR. A copy of all Forms 4564 must be maintained in the BSA examination administrative file.
4. Third party contact notification (IRC section 7602 (c)(1)) is not applicable in BSA examinations.
5. If the third party will not accept the request on Form 4564, the BSA examiner should consider issuing a Treasury Summons, TD F 90-22.31. (Refer to IRM 4.26.8 for Treasury summons procedures.)
6. The BSA examiner must discuss lack of records and the recordkeeping requirements with the appropriate official(s) of the financial institution. This discussion should address the impact of the lack of records on the effectiveness of the AML

compliance program and on the ability of the officials to monitor their own compliance with BSA requirements.

#### **4.26.6.4.6 (11-14-2006)**

##### **Delinquent BSA Forms Acquisition Procedures**

1. During a BSA examination, the BSA examiner may find that the financial institution failed to file required reports. How delinquent forms will be secured will be determined by the BSA examiner on a case by case basis. Refer to IRM 4.26.8. for an in-depth discussion on securing delinquent BSA Forms.

#### **4.26.6.4.7 (11-14-2006)**

##### **Closing the Examination**

1. If no BSA violations have been found, then prepare the closing letter Letter 4029. Close the administrative file to the manager following the procedures in IRM 4.26.6.4.9.
2. The BSA examiner must discuss apparent violations with the manager. If BSA violations are found which are technical, minor, infrequent, isolated, or not substantive and such violations do not meet the criteria to FinCEN under the Referral Guidelines, a Letter 1112, Title 31 Violation Notification Letter, should be issued. See IRM 4.26.8.
3. If apparent BSA violations are found which meet the referral criteria cited in IRM 4.26.8, the apparent violations should be discussed with the manager who may recommend preparing a Form 5104, Report of Apparent Violation of Financial Recordkeeping and Reporting Regulations (where criminal referral is not recommended) or Form 2797, Referral Report of Potential Criminal Fraud Cases (where criminal referral is recommended). See IRM 4.26.8.
4. If information is discovered which may be considered for a possible income tax examination, prepare Form(s) 5346 , Examination Information Report(s). See IRM 4.26.6.5.

#### **4.26.6.4.7.1 (11-14-2006)**

##### **Processing the Administrative Case File**

1. The administrative file should be assembled using the current BSA lead sheet package and the file should be forwarded to the group manager (see procedures below).

2. After review, the manager will forward the administrative file as directed by the WSU.

#### **4.26.6.4.8 (11-14-2006)**

##### **Workpapers**

1. This section provides guidelines for the development of workpaper content and workpaper organization. These guidelines are provided to promote quality and consistency in BSA examiner workpapers.
2. BSA examination workpapers should fully disclose the scope, depth, time period covered and techniques used during the compliance examination. The workpapers should be neat, legible, concise, well organized, and provide an adequate audit trail.
3. The BSA examiner must prepare a summary memorandum detailing the results of the BSA examination. The summary memorandum should briefly summarize the facts and circumstances and steps the NBFIs has agreed to take to correct the violations.
4. The BSA examiner should include all BSA lead sheets and documents that support the BSA examination conclusions. Examples of supporting documents are:
  - a. Bank account records such as bank statements, deposit tickets, copies of cashed checks or deposited items;
  - b. Cash receipts journals and other internal control records;
  - c. Copies of CTRs, FBARs, CTFCs, SARs, Suspicious Activity Reports by Casinos and Card Clubs (SARCs) and CMIRs;
  - d. MSB registration form and acknowledgement letter;
  - e. Daily cash reconciliations;
  - f. Customer control cards;
  - g. Wire transfer send and receive forms; and,
  - h. Money order daily sales summaries.

#### **4.26.6.4.8.1 (11-14-2006)**

##### **Automated Workpapers**

1. The proper use of a computer can improve the quality and efficiency of conducting an examination through the use of automated workpapers.
2. The BSA examiner should use the computer to prepare workpapers using the Title 31 Master Template found on the BSA Website in a way that will most efficiently and effectively document the examination process.
3. The Title 31 Master Template is located on the BSA Website at <http://sbse.wsb.irs.gov/FR/BSA/Reengineering/default.htm>

#### **4.26.6.4.8.2 (11-14-2006)**

##### **Workpaper Format**

1. Standard tools are used to document the BSA examiner's decisions. Tools include lead sheets, check sheets, workpapers, letters, and IDRs, and the Quick Reference Guides to Tools.
2. Tools have these features in common:
  - Each tool has its own reference number based on its category.
  - The tools are placed in the administrative file based on the reference number.

3. The tools' numbering system is:

<b>Numbering Series</b>	<b>Category</b>
100s	Administrative and Planning
200s	Memoranda
300s	Title 31 Issues
400s	Violations
500s	Miscellaneous

4. A workpaper reference number is required when comments or calculations are made on a separate lead sheet or workpaper.
5. Each lead sheet is self-contained; it includes all facts, law, conclusions, and entity position for that issue.
6. Form 4318 is now an index for all case documents.



7. The Input Sheet is the first place to go (after creating the entity folder) to prepare a case for examination. Using the Input Sheet means that the examiner does not need to fill in the entity's information on each of the tools that the examiner uses. The entity's information is automatically entered onto tools in the folder.

#### **4.26.6.4.8.3 (11-14-2006)**

##### **Workpaper #105 Administrative Plan to Close Lead Sheet**

1. The BSA examiner should use workpaper #105, Administrative Plan to Close Lead Sheet, as a guide for the exam planning phase.
2. The Administrative Plan To Close Lead Sheet consists of the following steps:
  - Keeps the examiner focused on a plan to close;
  - Keeps the examiner organized;
  - Lets the examiner know what the next steps are;
  - Lists all the steps that need to be completed;
  - Makes sure the examiner has completed the steps in each section before proceeding to the next one; and,
  - Ensures that the examiner is prepared to go to the next step.
3. The Administrative Plan To Close Lead Sheet consists of the following steps:
  - Preplan
  - Securing Power of Attorney
  - Initial Contact
  - Examination Process
  - Referrals/Notification
  - Case Closing
  - Additional Items

4. The Administrative Plan To Close Lead Sheet:
  - Keeps the examiner focused on a plan to close;
  - Keeps the examiner organized;
  - Lets the examiner know what the next steps are;
  - Lists all the steps that need to be completed;
  - Makes sure the examiner has completed the steps in each section before proceeding to the next one; and,
  - Ensures that the examiner is prepared to go to the next step.

#### **4.26.6.4.8.4 (11-14-2006)**

##### **Workpaper #110 Pre-Plan Analysis**

1. The first item on the Administrative Plan to Close Lead Sheet is Pre-Plan.
2. This is where the examiner will:
  - Create the Form 4318 Exam Workpaper Index
  - Create Activity Record Form 9984
  - Use Pre-Plan Analysis Lead Sheet
3. Workpaper #110, Pre-Plan Analysis, can be found in the Primary Case Folder.
4. In conducting the exam pre-plan, the SA examiner will:
  - Review case built materials;
  - Review and analyze CBRS;
  - Protect SARs not filed by the financial institutions under examination;
  - Review the historical case file;
  - Prepare initial interview notes tailored for the financial institution and services provided; and
  - Develop the examination plan.

**4.26.6.4.8.5 (11-14-2006)****Form 4318 Exam Workpaper Index-Title 31**

1. The first step under "Pre-Plan" is to create the Form 4318, Exam Workpaper Index.
2. The primary purpose of a Form 4318 is to serve as a Table of Contents for all documentation connected with the administrative file.
3. Form 4318 can be found in the Primary Case Folder.

**4.26.6.4.8.5.1 (11-14-2006)****Form 9984-Activity Record**

1. Form 9984 is used to record all contact with the financial institution and any other case activity. The BSA examiner must document what was discussed with specific personnel and the date(s) of those discussions.
2. The BSA examiner should complete the items in the header that are not pre-filled from the Input Sheet:
  - Date assigned/opened
  - Taxpayer's Business Name and Address
  - Taxpayer's Phone Number - Residence and Business
  - Representative has POA/TP's Authorization (if applicable)

**4.26.6.4.8.5.2 (11-14-2006)****Develop the Exam Plan**

1. The last bulleted item on the "Pre-Plan Analysis Lead Sheet" is "Develop the Exam Plan".
2. In developing the exam plan, the BSA examiner will:
  - Prepare and complete to the extent possible the mandatory lead sheets; and
  - Prepare and complete to the extent possible issue specific lead sheets.

3. Examination steps must be tailored for the industry and the depth of the issue. Examination steps can be adjusted after the initial appointment.

#### **4.26.6.4.8.5.3 (11-14-2006)**

### **Mandatory Lead Sheets**

1. Each of the mandatory tools is indicated on the Form 4318.
2. Mandatory tools can be found in the Primary Case Folder.
3. The BSA examiner should refer to the Quick Reference Guide to Tools to determine which tools are mandatory.

#### **4.26.6.4.8.5.4 (11-14-2006)**

### **Lead Sheets**

1. Issues specific lead sheets have been created for several BSA issues and can be located in the Title 31 Master Template in the Issues Specific Lead Sheets folder.
2. The BSA examiner should tailor the examination steps to the entity. Adjustment(s) can be made after the initial appointment.

#### **4.26.6.4.8.6 (11-14-2006)**

### **Workpaper #130 Initial Title 31 Contact Check Sheet**

1. The third item on the Administrative Plan to Close Check Sheet- Title 31 is to utilize the Initial Title 31 Entity Contact Sheet.
2. The BSA examiner should use the Initial Title 31 Entity Contact Check Sheet when:
  - Calling the entity on the phone for the first time;
  - Preparing and mailing Letter 3493, Bank Secrecy Act (Title 31) Appointment Letter or Letter 3494 Bank Secrecy Act (Title 31) Casino Appointment; or,
  - Performing a cold call visit.
3. Workpaper 130, Initial Title 31 Entity Contact Check Sheet, can be found in the Primary Case Folder.

4. Letter 3493, Bank Secrecy Act (Title 31) Appointment Letter or Letter 3494, Bank Secrecy Act (Title 31) Casino Appointment Letter, can be found in the Letters and Agreements Folder.

#### **4.26.6.4.8.6.1 (11-14-2006)**

### **Initial Title 31 IDR (Form 4564)**

1. The BSA examiner should prepare the initial IDR using the information recorded on the Initial Entity Contact Check Sheet during the telephone conversation with the entity.
2. Form 4564 can be found in the Information Documents Requests Folder.
3. IDRs are numbered in the upper right hand corner (Request Number).
4. The BSA examiner should save the completed IDR to the Primary Case Folder.

#### **4.26.6.4.8.7 (11-14-2006)**

### **Examination Process**

1. The fourth step under the Administrative Plan to Close Lead Sheet is Conduct the Examination Process.
2. This Examination Process includes:
  - Completing and updating the Risk Analysis workpaper;
  - Using the Initial Appointment Agenda as a guide for the meeting;
  - Completing the Initial Interview Questions lead sheet.

#### **4.26.6.4.8.7.1 (11-14-2006)**

### **Workpaper #135 Initial Appointment Agenda**

1. The second item under the Examination Process on the Administrative Plan to Close Lead Sheet is use of the Initial Appointment Agenda.
2. The BSA examiner should use the Initial Appointment Agenda as a guide for the meeting.

3. Workpaper #135, Initial Appointment Agenda, can be found in the Primary Case Folder.

#### **4.26.6.4.8.7.2 (11-14-2006)**

### **Workpaper #205 Initial Interview Questions**

1. The last item under the Examination Process is the Initial Interview Questions lead sheet.
2. When preparing the interview questions, the BSA examiner should tailor questions to the entity and issues.
3. The BSA examiner should keep a list of questions for the entity that occur when preparing the exam plan.
4. Record questions on workpaper #205, Initial Interview Questions and Notes.
5. The title of the Initial Interview Questions and Notes lead sheet has a hyperlink to an intranet site that has guidance for completing the lead sheet.
6. Workpaper #205, Initial Interview Questions and Notes, can be found in the Primary Case Folder.

#### **4.26.6.4.9 (11-14-2006)**

### **Administrative File**

1. In order to create a well organized, professional case file, the workpapers in the case file should be arranged in the numbering sequence shown on Form 4318, Exam Workpaper Index-Title 31 (top to bottom).
2. The number sequence is:

<b>Numbering Series</b>	<b>Category</b>
100s	Administrative and Planning
200s	Memoranda
300s	Title 31 Issues
400s	Violations
500s	Miscellaneous

3. Inside left hand side of case file

- a. Computer CD or Disk if applicable
4. Enclose the following forms (if applicable):
  - a. Case Control Document (CCD)
  - b. Competitor's List for Workload Selection Unit (WSU)
  - c. Original Form 5346's, if applicable
  - d. Copy of Letter 1112, Title 31 Violation Notification Letter, and any attachments. See IRM 4.26.8.
  - e. Copy of Form 5104, Report of Apparent Violation of Financial Recordkeeping and Reporting Regulations, and all attachments. See IRM 4.26.8.
  - f. Copy of Form 13639, Fraudulent Intent Referral Memorandum (FIRM);
  - g. Copy of Form 2797, Referral Report of Potential Criminal Fraud Case;
  - h. "To Be Opened by Addressee Only" Envelope with SARs should be secured in To Be Opened by Addressee Only Envelope and Document 6441 (a coversheet for documents requiring protection) must be attached to the outside of the envelope; and
  - i. Form 4318 package.
5. SARs, where the filer is not the financial institution under examination, will be treated as confidential information related to a case and must be protected from unauthorized disclosure. The SARs should be secured in "To be Opened by Addressee Only" envelope and Document 6441 (a coversheet for documents requiring protection) is to be used as a cover sheet to alert others to the sensitive nature of the information. (Reminder: SARs not filed by the financial institution under examination cannot be revealed to or discussed with such financial institution. Refer to IRM 4.26.4.)

#### **4.26.6.4.9.1 (11-14-2006)**

##### **Administrative File Using Automated Workpapers**

1. The BSA examiner should verify that the completed tools have been saved into the primary case folder:

- Form 4318
  - Mandatory workpapers
  - Lead sheets
  - IDRs
2. Each tool should be numbered and named according to the issue worked on.
  3. The BSA examiner should copy the primary case folder (after decryption) to a CD or disk to be included in the administrative file.
  4. The entity folder should be deleted from the computer once saved to a disk or CD.
  5. Attach the Case Control Document to the administrative file folder.
  6. Enclose referral forms.

#### **4.26.6.5 (11-14-2006)**

##### **Examination Information Report, Form 5346**

1. Information discovered during the BSA examination may be used for other purposes when the information has a "high degree of usefulness in criminal, tax, or regulatory investigations or proceedings... the conduct of intelligence or counter-intelligence activities, including analysis, to protect against domestic and international terrorism."
2. The BSA examiner should not request records during a BSA examination for any purpose other than for conducting the BSA examination. Information is not to be requested during a BSA examination for tax compliance purposes.
3. If information is developed during the BSA examination that warrants referral for a possible tax examination, the BSA examiner should complete the Form 5346, Examination Information Report, on the customer or the financial institution, as applicable. (Access Form 5346 at <http://publish.no.irs.gov/catlg.htm>).
4. Some examples of transactions that may warrant submitting a Form 5346 are:



- a. Large cash deposits with inadequate records;
  - b. The lack of cash deposits by a financial institution that usually generates large amounts of cash;
  - c. Any other suspicious transaction that indicates the correct amount of income may not have been reported for Title 26 purposes; and,
  - d. Potential structuring cases.
5. The following project codes should be used on leads generated from BSA examinations ( Forms 5346):
- a. Project Code 441 should be used on the income tax examination resulting from the lead.
  - b. Project Code 147 should be used if the income tax case is referred for fraud.

#### **4.26.6.6 (11-14-2006)**

##### **Information Items**

1. Any information acquired during a BSA examination which is not an apparent BSA violation, but that warrants referral to CI will be forwarded by memorandum. The memorandum is sent from the group manager to the Special Agent in Charge (SAC) as an information item. A copy of the memorandum should be forwarded to the Territory Manager.
2. Apparent BSA violations committed by banks or other financial institutions which are not under the jurisdiction of IRS Compliance, but have been identified during a BSA examination, should be submitted to FinCEN as follows:
  - a. Prepare an IRS memorandum and attach all supporting documentation.
  - b. Submit the information item using the same procedures as a 5104 referral. (Refer to IRM 4.26.8.)

#### **4.26.6.7 (11-14-2006)**

##### **Safety**

1. Safety of the BSA examiner should be a primary concern when conducting a BSA examination. If there is a safety concern, there are several options available to the BSA examiner:
  - a. Notify the BSA manager and Criminal Investigation.
  - b. Manager may direct the examiner to team up with another BSA examiner to complete the BSA examination.
  - c. Ask the financial institution to bring all records to the IRS office.
  - d. Follow IRS safety procedures.

#### **4.26.6.8 (11-14-2006)**

##### **Technical Assistance**

1. The BSA examiner should contact the group manager with any questions pertaining to the BSA or if technical and/or procedural assistance is needed.
2. If necessary, the group manager will contact the BSA Policy Technical Advisors or Analysts for additional assistance. If needed, Technical Advisors and Analysts will forward a formal question to FinCEN through the BSA Policy Liaison to FinCEN. The response will be relayed back to the BSA group manager.

#### **4.26.6.9 (11-14-2006)**

##### **BSA Program Web Site**

1. The BSA examiner should frequently access the BSA program web site to obtain the most current program information.
2. The web site address is  
<http://sbse.web.irs.gov/FR/BSA/default.htm>.

#### **4.26.6.10 (11-14-2006)**

##### **Activity Code**

1. Time spent on BSA activities should be charged to Activity code 591.

#### **4.26.6.11 (11-14-2006)**

##### **Power of Attorney**

1. The use of Form 2848, Power of Attorney and Declaration of Representative, is not appropriate for BSA examinations. Refer to IRM 4.26.8 for instructions regarding the appropriate Power of Attorney for BSA examinations.

**4.26.6.12 (11-14-2006)****Disclosure**

1. The IDRS contains Title 26 income tax information and must not be accessed for BSA purposes.
2. UNAX is always a consideration. The BSA examiner should only access information that is necessary and relevant to the BSA examination.
3. Refer to IRM 4.26.14 14 for an in-depth discussion on disclosure.

**Exhibit 4.26.6-1 (11-14-2006)****Notification of Possible IRS Check to Verify Maintenance of Required Records and Filing Reports, Letter 1052**

Here is the link to Letter 1052.

**Exhibit 4.26.6-2 (11-14-2006)****BSA Appointment Letter, Letter 3493**

Here is the link to Letter 3493.

**Exhibit 4.26.6-3 (11-14-2006)****BSA Casino Appointment Letter, Letter 3494**

Here is the link to Letter 3494.

**Exhibit 4.26.6-4 (11-14-2006)****Examination Information Report, Form 5346**

Here is the link to Form 5346.

*Page Last Reviewed or Updated: 10-Sep-2017*



- 4.26.7 Bank Secrecy Act Penalties
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## Part 4. Examining Process

### Chapter 26. Bank Secrecy Act

#### Section 7. Bank Secrecy Act Penalties

##### 4.26.7 Bank Secrecy Act Penalties

###### Manual Transmittal

June 20, 2012

###### Purpose

(1) This transmits a revision to IRM 4.26.7, Bank Secrecy Act, Bank Secrecy Act Penalties.

###### Material Changes

(1) The text is revised to incorporate provisions of recent legislation and regulations affecting BSA penalties.

(2) Citations from 31 CFR Part 103 were renumbered to 31 CFR Chapter X, effective March 1, 2011.

###### Effect on Other Documents

This supersedes IRM 4.26.7 dated November 17, 2006

###### Audience

Intended audience is employees of the Bank Secrecy Act Program in the Small Business/Self Employed (SB/SE) Division, and can be referenced by all field compliance personnel.

###### Effective Date

(06-20-2012)

William P. Marshall  
Director, Fraud/BSA  
Small Business/Self-Employed

###### 4.26.7.1 (06-20-2012)

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| <ul style="list-style-type: none"> <li>Money Laundering Program Violations</li> <li>• 4.26.7.3.7 MSB Registration Violations</li> <li>• 4.26.7.4 Determining Intent Under the BSA</li> <li>• 4.26.7.4.1 Negligence</li> <li>• 4.26.7.4.2 Civil Willfulness</li> <li>• 4.26.7.4.3 Establishing Willfulness           <ul style="list-style-type: none"> <li>• 4.26.7.4.3.1 Knowledge of the Law</li> <li>• 4.26.7.4.3.2 Indications of Willfulness</li> </ul> </li> <li>• 4.26.7.5 Criminal Penalties for Violation of Bank Secrecy Act</li> <li>• 4.26.7.6 Forfeiture Authority</li> </ul> | <p><b>Overview</b></p> <p>1. The Bank Secrecy Act (BSA), as amended, and related regulations at 31 CFR Chapter X (formerly Part 103) provide for civil and criminal penalties as well as forfeiture of assets. BSA penalties depend on the type of entity, the type of activity involved, and the degree of intent. Apparent violations are found through examination or information from informants.</p> <p>2. Although, generally, the BSA examiner does not propose penalties arising from the violations, the elements of each violation must be known to determine which facts are relevant to the examination process.</p> <p><b>4.26.7.2 (06-20-2012)</b></p> <p><b>Penalty Authority</b></p> <p>1. BSA civil examinations are conducted by BSA regulators. Final authority to assess civil penalties rests with the Secretary of the Treasury, 31 USC 5321, and is delegated to the Financial Crimes Enforcement Network (FinCEN), 31 CFR 1010.810 (formerly 103.56). Authority to examine certain financial institutions for compliance with 31 CFR Chapter X (formerly Part 103) is delegated to the IRS, 31 CFR 1010.810(b)(8) (formerly 103.56(b)(8)).</p> <p>2. The authority to enforce the <i>Report of Foreign Bank and Financial Accounts</i> (FBAR) reporting and recordkeeping requirements found at 31 USC 5314 and 31 CFR sections 1010.350 and 1010.420 (formerly 103.24 and 103.32) was redelegated from FinCEN to the Commissioner of Internal Revenue by a Memorandum of Agreement between FinCEN and IRS. For these requirements, IRS conducts examinations and can assess penalties.</p> <p>3. IRS Criminal Investigation (CI) has authority under 31 CFR 1010.810(c)(2) (formerly 103.56(c)(2)) to investigate all criminal violations except those of 31 CFR 1010.340 (formerly 103.23) (<i>Reports of Transportation of Currency or Monetary Instruments</i>, CMIR). Customs investigates civil and criminal violations of the CMIR. 31 CFR 1010.810(c)(1) (formerly 103.56(c)(1)). Courts impose criminal penalties.</p> <p>4. A civil monetary penalty may be imposed for any BSA violation notwithstanding the fact that a criminal penalty is imposed for the same violation, 31 USC 5321(d).</p> |
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**4.26.7.3 (06-20-2012)**

**Civil Penalties**

1. 31 USC 5321 provides overall civil penalty provisions for violations of the BSA and for violations of certain related statutes. It provides authority for assessing penalties when regulations for those penalties have not been issued. The penalties apply to violations of the BSA itself, the regulations under the BSA, or any geographic targeting or special measures order issued by Treasury, as well as penalties for taking certain actions, such as structuring, with the intent to evade BSA reporting or recordkeeping requirements.
2. 31 CFR 1010.820 (formerly 103.57), which was issued under the authority of 31 USC 5321, is the primary penalty regulation. It addresses civil penalties arising from violations of the BSA reporting and recordkeeping requirements, as well as structuring penalties.
3. Other Code provisions and regulations provide for civil penalties for violations of special BSA requirements. For example, 31 USC 5330 and 31 CFR 1022.380(e) (formerly 103.41 (e)) provide for civil penalties for failure to register a money services business (MSB).

**4.26.7.3.1 (06-20-2012)**

**Negligence**

1. For each negligent violation of any requirement of the BSA, the penalty may not exceed \$500. It is assessed only against financial institutions and nonfinancial trades or businesses. 31 USC 5321(a)(6) and 31 CFR 1010.820(h) (formerly 103.57(h)). Civil money penalties for negligent violations of the BSA are, in practice, extremely rare.
2. Negligence is discussed in this Section at 4.26.7.4.1.

<b>Penalties for Negligent Violations</b>			
<b>Violation</b>	<b>Persons Subject to Penalty</b>	<b>Penalty Up To</b>	<b>Authority</b>

<b>Penalties for Negligent Violations</b>			
<b>Violation</b>	<b>Persons Subject to Penalty</b>	<b>Penalty Up To</b>	<b>Authority</b>
Negligent violation of any provision of the BSA or any regulation prescribed under the BSA	Any financial institution or non-financial trade or business	\$500	31 USC 5321 (a)(6)(A) 31 CFR 1010.820(h) (formerly 103.57(h))
Pattern of negligent violations of any provision of the BSA or any regulation prescribed under the BSA	Any financial institution or non-financial trade or business	Additional \$50,000	31 USC 5321 (a)(6)(B)

**4.26.7.3.2 (06-20-2012)**

**"Non-Willful" Violation of FBAR Requirements**

1. Any person who violates or causes any violation of the FBAR requirements of 31 USC 5314 may be assessed a penalty not to exceed \$10,000 per violation. 31 USC 5321(a)(5)(B).
2. Such penalty is not applicable if the violation was due to reasonable cause and the amount of the transaction or the balance in the account at the time of the transaction was properly reported.

<b>Penalty for "Non-Willful" FBAR Violations</b>			
<b>Violation</b>	<b>Persons Subject to Penalty</b>	<b>Penalty Up To</b>	<b>Authority</b>

Violation of 31 USC 5314 FBAR requirements unless such violation was due to reasonable cause, and the amount of the transaction or the balance in the account at the time of the transaction was properly reported	Any person who violates or causes any violation	\$10,000	31 USC 5321 (a)(5)(B) (31 CFR 1010.820(g) (formerly 31 CFR 103.57(g)) does not reflect the current FBAR penalties.)
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**4.26.7.3.3 (06-20-2012)**

**Willful Violations of Recordkeeping and Reporting Requirements**

1. Where the violation is willful, the penalty depends on the type of violation. There are different penalties for recordkeeping, reporting, and program violations, as well as for other types of violations, such as failure by an MSB to register.
2. Within the types of willful violations, there are variations in penalties as well, depending on the particular provision violated.
3. A penalty may be assessed on a partner, director, officer, or employee, as well as the business, for certain willful violations identified in section 5321(a), and against any person for other violations, such as the FBAR reporting and recordkeeping violations.

<b>Penalties for Willful Violation of Recordkeeping Requirements</b>			
<b>Violation</b>	<b>Persons Subject to Penalty</b>	<b>Penalty Up To</b>	<b>Authority</b>



<b>Penalties for Willful Violation of Recordkeeping Requirements</b>			
<b>Violation</b>	<b>Persons Subject to Penalty</b>	<b>Penalty Up To</b>	<b>Authority</b>
Failure to comply with any recordkeeping requirement for a financial institution, except 31 CFR 1010.420 (formerly 103.32) (FBAR).	<ul style="list-style-type: none"> <li>Any domestic financial institution, and</li> <li>Any partner, director, officer, or employee.</li> </ul>	\$1,000.	31 CFR 1010.820 (c) (formerly 103.57(c))
Failure to comply with the recordkeeping requirements of 31 USC 5314, 31 CFR 1010.420 (formerly 103.32) (FBAR) for violations occurring prior to 10/23/04.	Any person willfully violating, or willfully causing any violation of 31 USC 5314.	The greater of: <ul style="list-style-type: none"> <li>the amount (not to exceed \$100,000) equal to the balance in the account at the time of the violation, or</li> <li>\$25,000.</li> </ul>	31 CFR 1010.820 (g)(2) (formerly 103.57(g)(2))

<b>Penalties for Willful Violation of Recordkeeping Requirements</b>			
<b>Violation</b>	<b>Persons Subject to Penalty</b>	<b>Penalty Up To</b>	<b>Authority</b>
Failure to comply with the recordkeeping requirements of 31 USC 5314, 31 CFR 1010.420 (formerly 103.32) (FBAR) for violations occurring after 10/22/04.	Any person willfully violating, or willfully causing any violation of 31 USC 5314.	The greater of: <ul style="list-style-type: none"> <li>• \$100,000, or</li> <li>• 50 percent of the balance in the account at the time of the violation.</li> </ul>	31 USC 5321(a)(5)(C)

<b>Penalties for Willful Violation of Reporting Requirements</b>			
<b>Violation</b>	<b>Persons Subject to Penalty</b>	<b>Penalty Up To</b>	<b>Authority</b>

<b>Penalties for Willful Violation of Reporting Requirements</b>			
<b>Violation</b>	<b>Persons Subject to Penalty</b>	<b>Penalty Up To</b>	<b>Authority</b>
<p>Failure to comply with any reporting requirement for financial institutions, including report retention requirements.</p> <p>Exceptions:</p> <ul style="list-style-type: none"> <li>• Failure to report a foreign account (FBAR) 31 USC 5314, 31 CFR 1010.350 (formerly 103.24).</li> <li>• Failure to report a transaction with a foreign financial agency 31 USC 5315.</li> </ul>	<ul style="list-style-type: none"> <li>• Any domestic financial institution or nonfinancial trade or business and</li> <li>• Any partner, director, officer, or employee.</li> </ul>	<p>The greater of:</p> <ul style="list-style-type: none"> <li>• the amount involved in the transaction (not to exceed \$100,000) or</li> <li>• \$25,000.</li> </ul>	<p>31 USC 5321 (a)(1), 31 CFR 1010.820 (f) (formerly 103.57(f))</p>

<b>Penalties for Willful Violation of Reporting Requirements</b>			
<b>Violation</b>	<b>Persons Subject to Penalty</b>	<b>Penalty Up To</b>	<b>Authority</b>
Failure to comply with the reporting requirements of 31 USC 5314, 31 CFR 1010.350 (formerly 103.24) (FBAR) for violations occurring prior to 10/23/04.	Any person willfully violating, or willfully causing any violation of 31 USC 5314, 31 CFR 1010.350 (formerly 103.24).	The greater of: <ul style="list-style-type: none"> <li>• the amount (not to exceed \$100,000) equal to the balance in the account at the time of the violation, or</li> <li>• \$25,000.</li> </ul>	31 CFR 1010.820(g) (2) (formerly 103.57(g) (2)). This regulation has not been changed to reflect the amendment to section 5321. It provides the prior law, which is still applicable to violations occurring prior to 10/23/04.

<b>Penalties for Willful Violation of Reporting Requirements</b>			
<b>Violation</b>	<b>Persons Subject to Penalty</b>	<b>Penalty Up To</b>	<b>Authority</b>
Failure to report a transaction with a foreign financial agency, 31 USC 5315, or not complying with an injunction under Sec. 31 USC 5320 enforcing compliance with section 5315.	Any person	\$10,000	31 USC 5321 (a)(3). Note that the regulations for Sec. 5315 are found in 31 CFR Part 128 not Chapter X (formerly Part 103). Because of this, IRS delegated exam authority in 31 CFR 1010.810 (formerly 103.56) does not extend to this requirement.

<b>Penalties for Willful Violation of Reporting Requirements</b>			
<b>Violation</b>	<b>Persons Subject to Penalty</b>	<b>Penalty Up To</b>	<b>Authority</b>
Failure to comply with requirements to report transportation of monetary instruments that includes currency (CMIR) found in 31 USC 5316, 31 CFR 1010.340 (formerly 103.23).	Any person	The amount of the currency or monetary instruments transported, mailed or shipped less any amount forfeited under the authority of 31 CFR 1010.830 (formerly 103.58).	31 USC 5321 (a)(2), 31 CFR 1010.820(f) (formerly 103.57(f))

**4.26.7.3.4 (06-20-2012)****Willful Violation of Other Duties**

1. Under 31 USC 5314, 31 CFR 1010.360 (formerly 103.25) establishes a procedure under which the Secretary of the Treasury may issue regulations requiring designated financial institutions to report certain financial transactions with designated foreign financial agencies. Notice of such reporting requirements need not be published in the Federal Register, but notice must be served personally upon the affected financial institution(s).
2. A Geographical Targeting Order (GTO) to report or record may be issued under 31 USC 5326, 31 CFR 1010.370 (formerly 103.26). The Secretary, upon the Secretary's own initiative or at the request of an appropriate Federal or state law enforcement official, may issue an order requiring any domestic financial institution or group of domestic financial institutions in a geographic area, and any other person participating in the type of transaction, to file a report in the manner and to the extent specified in the order, if it is found that reasonable grounds

exist for concluding that additional recordkeeping and/or reporting requirements are necessary to carry out the purposes of the BSA.

3. Special measures, including reporting, recordkeeping, and prohibited transactions that are specially ordered under 31 USC 5318A for one or more domestic financial institutions and domestic financial agencies, may be required after a finding by the Secretary that a jurisdiction, financial institution, or transaction is of primary money laundering concern. Special Measures for some entities appear in the regulations at 31 CFR 1010.651 (formerly 103.186) et. seq.
4. Financial institutions and agencies that engage in private banking or offer correspondent accounts to foreign entities, for example a credit union or an agent of a foreign financial institution, must establish due diligence (or in some cases, enhanced due diligence), policies, procedures, and controls that are reasonably designed to detect and report instances of money laundering through those accounts, especially when special measures apply. 31 USC 5318(i), 31 CFR 1010.610 and 1010.620 (formerly 103.176 and 103.178). Correspondent accounts for foreign shell banks are prohibited, 31 USC 5318(j), 31 CFR 1010.630 (formerly 103.177). Both sections 5318 and 5318A are viewed as complementary international counter money laundering provisions and share the same penalty, 31 USC 5321(a)(7).
5. The information-sharing rules of section 314 of the USA PATRIOT Act allowed the Secretary to make conforming regulations that have been issued as part of 31 CFR Chapter X (formerly Part 103). For this reason IRS does have examination authority, 31 CFR 1010.810 (formerly 103.56). The regulations are found in 31 CFR 1010, Sub Part E. A report to FinCEN is required if a positive "hit" is found after a request for information is made through FinCEN from law enforcement. No report is required for information-sharing among financial institutions, although there are mandatory procedures.
6. A financial institution's anti-money laundering (AML) program must comply with section 314(a) requirements if that financial institution is subject to those requirements.

<b>Penalties for Willful Violation of Other Duties</b>			
<b>Violation</b>	<b>Persons Subject to Penalty</b>	<b>Penalty</b>	<b>Authority</b>
Failure to report a transaction with a foreign financial agency required by regulations under the authority of 31 CFR 1010.360 (formerly 103.25), for violations occurring prior to 10/23/04.	Specified financial institutions that are required to provide such reports by a regulation promulgated under 31 CFR 1010.360(a) (formerly 103.25(a)).	The greater of: <ul style="list-style-type: none"> <li>• The amount (not to exceed \$100,000) of the transaction or</li> <li>• \$25,000.</li> </ul>	31 USC 5321(a)(5), 31 CFR 1010.820 (g) (formerly 103.57(g))
Failure to report a transaction with a foreign financial agency required by regulations under the authority of 31 CFR 1010.360 (formerly 103.25) for violations occurring after 10/22/2004	Specified financial institutions that are required to provide such reports by a regulation promulgated under 31 CFR 1010.360(a) (formerly 103.25(a)).	The greater of: <ul style="list-style-type: none"> <li>• \$100,000, or</li> <li>• 50 percent of the amount of the transaction.</li> </ul>	31 USC 5321(a)(5), 31 CFR 1010.820 (g) (formerly 103.57(g))



<b>Penalties for Willful Violation of Other Duties</b>			
<b>Violation</b>	<b>Persons Subject to Penalty</b>	<b>Penalty</b>	<b>Authority</b>
Failure to comply with a geographic targeting order issued under 31 USC 5326, 31 CFR 1010.370 (formerly 103.26)	<ul style="list-style-type: none"> <li>• Any domestic financial institution and</li> <li>• Any partner, director, officer, or employee.</li> </ul>	Up to the greater of the amount involved in the transaction (not to exceed \$100,000) or \$25,000.	31 USC 5321(a)(1), 31 CFR 1010.820 (f) (formerly 103.57(f))
Failure to comply with any special measures order issued under 31 USC 5318A.	Any domestic financial institution or agency	An amount equal to not less than twice the amount of the transaction but not more than \$1,000,000.	31 USC 5321(a)(7)

<b>Penalties for Willful Violation of Other Duties</b>			
<b>Violation</b>	<b>Persons Subject to Penalty</b>	<b>Penalty</b>	<b>Authority</b>
Failure to comply with due diligence requirements for financial institutions having a private banking or correspondent account for a foreign person set forth at 31 USC 5318(i) or prohibition of managing a correspondent account with a foreign shell corporation 31 USC 5318(j) and at 31 CFR 1010.605-630 (formerly 103.175-178).	Any financial institution or agency included in 31 USC 5318(i).	An amount equal to not less than twice the amount of the transaction, but not more than \$1,000,000.	31 USC 5321(a)(7)

<b>Penalties for Willful Violation of Other Duties</b>			
<b>Violation</b>	<b>Persons Subject to Penalty</b>	<b>Penalty</b>	<b>Authority</b>
Failure to comply with the information sharing rules regarding reporting by Sec. 314 of the USA PATRIOT Act and found at 31 CFR 1010, Subpart E (formerly Part 103, Subpart H).	<ul style="list-style-type: none"> <li>• Any financial institution, as defined in 31 CFR 1010.505 (formerly 103.90) and</li> <li>• Any partner, director, officer, or employee.</li> </ul>	\$25,000	31 USC 5321(a)(1)
Failure to follow procedures for information sharing required by Sec. 314 of the USA PATRIOT Act and found at 31 CFR 1010, Subpart E (formerly Part 103, Subpart H).	Financial institution or association of financial institutions	Loss of Safe Harbor Protections given in the act.	Public Law 107-56 Sec. 314, 31 CFR 1010.540 (b)(5) (formerly 103.110 (b)(5))

**4.26.7.3.5 (06-20-2012)****Structuring and Related Prohibited Actions**

1. See IRM 4.26.13 for a complete discussion of structuring transactions to avoid certain BSA requirements.
2. Structuring requires showing a purpose or intent to avoid specific requirements of the BSA. These specific requirements are listed in 31 USC 5324:
  - Reporting by filing a *Currency Transaction Report (CTR)* (31 USC 5313(a))
  - Recordkeeping by creating and maintaining records for the issuance or sale of a bank check, cashier's check, traveler's check, or money order of \$3,000 or more or any regulation prescribed under any section (31 USC 5325)
  - Reporting or recordkeeping imposed by any order issued under section 5326, geographical targeting order reports or records
  - Recordkeeping imposed by any regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91-508 (that affect Title 12 and are not under IRS BSA examination authority)
  - Reporting on *Report of Cash Payments Over \$10,000 Received in a Trade or Business, Form 8300* (31 USC 5331)
  - Reporting on the CMIR (31 USC 5316)
3. The Secretary of the Treasury is authorized by 31 USC 5321(a)(4) to impose a civil money penalty on any person who violates any provision of section 5324. A civil penalty for the above actions relating to structuring regarding the CTR (31 CFR 1010.314 (formerly 103.63)) is found in the regulations at 31 CFR 1010.820 (e) (formerly 103.57(e)).
4. IRS does not have examination authority under 31 CFR 1010.810 (b)(8) (formerly 103.56(b)(8)), which delegates examination authority over financial institutions to examine individuals for structuring unless they themselves are included in the definition of financial institution – for example, an MSB customer (who is the sole proprietor of an MSB) purchasing money orders from another MSB.

<b>Civil Penalties for Structuring and Related Prohibited Actions</b>
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<b>Violation</b>	<b>Persons Subject to Penalty</b>	<b>Penalty Up To</b>	<b>Authority</b>
Structuring transactions, or taking related actions in violation of 31 USC 5324, 31 CFR 1010.314 (formerly 103.63)	Any person	The amount of coins and currency involved in the transaction for which such penalty is imposed, reduced by the amount of any forfeiture to the United States in connection with the transaction for which the penalty was imposed.	31 USC 5321(a)(4) 31 CFR 1010.820 (e) (formerly 103.57(e))

#### **4.26.7.3.6 (06-20-2012)**

##### **Anti-Money Laundering Program Violations**

1. The Secretary of the Treasury may require a class of domestic financial institutions or nonfinancial trades or businesses to maintain appropriate procedures to ensure compliance with the BSA and its regulations or to guard against money laundering. 31 USC 5318(a)(2).
2. All financial institutions must establish anti-money laundering (AML) programs, 31 USC 5318(h). Those financial institutions required to have AML programs appear in the regulations at 31 CFR Chapter X (formerly 31 CFR Part 103). However at the present time, regulations have not been adopted for some types of financial institutions and they are currently exempted from this requirement. 31 CFR 1010.205 (formerly 103.170).
3. Every bank is required to have a written customer identification program. 31 CFR 1020.220 (formerly 103.121). For most, it is part of their AML program. Although a credit union under IRS examination authority is not required to have an AML program, it is required, as a bank, to have a customer identification program. A bank must create and retain, for five years, certain

customer records as a part of its customer identification program.

<b>Penalties for Program Violations</b>			
<b>Violation</b>	<b>Persons Subject to Penalty</b>	<b>Penalty Up To</b>	<b>Authority</b>
Failure to establish an anti-money laundering (AML) compliance program under 31 USC 5318(h) and various regulations appearing at 31 CFR Chapter X (formerly Part 103).	<ul style="list-style-type: none"> <li>Any financial institution required to establish a program and</li> <li>Any partner, director, officer or employee</li> </ul>	\$25,000. For a violation of section 5318(a)(2) of this title or a regulation prescribed under section 5318(a)(2), a separate violation occurs for each day the violation continues and at each office, branch, or place of business at which a violation occurs or continues.	31 USC 5321(a)(1)

<p>Failure to establish a written customer identification program 31 CFR 1020.220 (formerly 103.121), which includes failure to create and retain records of customer identification.</p>	<ul style="list-style-type: none"> <li>Any financial institution required to establish a program and</li> <li>Any partner, director, officer, or employee</li> </ul>	<p>\$25,000. For a violation of section 5318(a)(2) of this title or a regulation prescribed under section 5318(a)(2), a separate violation occurs for each day the violation continues and at each office, branch, or place of business at which a violation occurs or continues.</p>	<p>31 USC 5321(a)(1)</p>
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**4.26.7.3.7 (06-20-2012)**

**MSB Registration Violations**

1. The failure to comply with the MSB registration requirement includes failure to retain a copy of the registration or agent list.
2. A person who fails to register, as required by 31 CFR 1022.380 (formerly 103.41), is subject to a penalty of \$5,000 per day, whether or not the failure to register was willful.
3. The instructions to *Registration of Money Services Businesses*, FinCEN Form 107, define "owner or controlling person" for purposes of responsibility to register to include, for a corporation, "the largest single shareholder." The instructions also provide that if two or more persons own equal numbers of shares of a corporation, they can enter into an agreement to determine who will register the corporation. See the instructions to Form 107 for additional information.

<b>Penalty for MSB Registration Violations</b>			
<b>Violation</b>	<b>Persons Subject to Penalty</b>	<b>Penalty Up To</b>	<b>Authority</b>
Failure to comply with any requirements of 31 USC 5330 or 31 CFR 1022.380 (formerly 103.41) that is registration of a money services business.	Any person who is required to comply.	\$5,000 per day	31 USC 5330 (e), 31 CFR 1022.380(e) (formerly 103.41(e))

#### **4.26.7.4 (06-20-2012)**

##### **Determining Intent Under the BSA**

1. Civil penalties vary depending on intent. There may be a violation, but the penalty amount depends on whether the person was negligent, or willfully or intentionally violated legal requirements.
2. There is no overall definition of intent in the BSA. The common law (case law) definitions of negligence and intent are used to establish which penalties are appropriate.
3. In determining intent, generally one looks to the knowledge of the person involved. This includes knowledge of the facts involved and knowledge of legal requirements relating to those facts.
4. Intent is determined by analyzing all the facts and circumstances of the case and it is often shown by circumstantial evidence. The BSA examiner must thoroughly document facts on the issue of intent.

#### **4.26.7.4.1 (06-20-2012)**

##### **Negligence**

1. Negligence is usually defined as the failure to use the care that a reasonable person would use in the same or similar circumstances.



2. There are two principal areas where a reasonable person would exercise care for financial reporting and recordkeeping. A reasonable business person would normally:
  - Exercise care to learn about legal requirements in his area of business.
  - Exercise care to see that his business had sufficient internal controls to meet those requirements.
3. When normal business care is not exercised in one or both of these areas, there is a case for negligence.
4. Negligence is the lack of reasonable cause for a failure to use the care normally expected in the same or similar circumstances. For additional suggestions on the type of facts that establish negligence, see the Penalty Handbook, IRM 20.1.1.3.1.

#### **4.26.7.4.2 (06-20-2012)**

##### **Civil Willfulness**

1. Civil willfulness is established by evidence showing a voluntary intentional violation of a known legal duty.
2. If a person does not know of that legal duty but it can be shown that the person made conscious efforts to avoid learning of the duty, willfulness may be imputed under the concept of "willful blindness" or "reckless disregard" .

#### **4.26.7.4.3 (06-20-2012)**

##### **Establishing Willfulness**

1. Two steps in establishing willfulness are:
  - a. Establishing knowledge of the law, and
  - b. Evaluating indicators of willfulness.

#### **4.26.7.4.3.1 (06-20-2012)**

##### **Knowledge of the Law**

1. An apparent violator's knowledge about applicable legal requirements may be an indicator of willfulness if those requirements are not met. Knowledge may be established in several ways.

2. Notification by IRS:
  - The Letter 1052 describes the BSA requirements of most businesses in general. When receipt of the Letter 1052 has been acknowledged, knowledge is established.
  - Special mailings are good evidence of knowledge if controls have been set up for returned mail.
  - Educational visits, where the financial institution signs that it has received information concerning BSA, are proof of knowledge.
  - A prior BSA examination may prove knowledge.
3. Actions of the apparent violator:
  - Previously filed reports.
  - Stated awareness of the law.
  - Structuring transactions to avoid the filing of CTRs may show awareness of the law.
4. Education by principals for whom the violator is acting as an agent. Many financial institutions have training programs to inform their agents about BSA reporting and recordkeeping requirements.
5. Education by the business community:
  - Many businesses belong to business organizations that have newsletters and handbooks relating to BSA requirements.
  - Many businesses have legal and accounting professionals who may be advising them about their BSA responsibilities.

#### **4.26.7.4.3.2 (06-20-2012)**

##### **Indications of Willfulness**

1. A showing of willfulness by the apparent violator that causes a failure to report or keep records is based on the facts and circumstances of each case.
2. Failure to file required reports - Evidence of willful failure to report may include:

- a. Filings on some transactions but not on others, especially where the unreported transactions involved the same individual(s).
  - b. Failure to comply with AML requirements that leads to reporting or recordkeeping violations.
3. Failure to maintain required records - Evidence of willful failure to record includes:
- a. Documentary evidence that the same individual conducted multiple transactions within a very short period of time so it was clear that the transactions were related and should have triggered a recordkeeping requirement.
  - b. Evidence that the records were false and the violator must have known-- for example, retention of a photocopied identification document, which differs from the information provided on the form.
  - c. Failure to comply with requirements that leads to reporting or recordkeeping violations.

#### **4.26.7.5 (06-20-2012)**

##### **Criminal Penalties for Violation of Bank Secrecy Act**

1. IRS Criminal Investigation has BSA criminal examination authority under 31 CFR 1010.810(c)(2) (formerly 103.56(c)(2)) except for examinations related to the CMIR, which are examined by Customs. If an examination has criminal potential, see IRM 4.26.8, Special Procedures. Most Federal BSA criminal penalties are provided for in 31 USC 5322 and 31 CFR 1010.840 (formerly 103.59).
2. 18 USC 1960 provides for criminal penalties for certain MSBs for failure to comply with the state licensing requirements or with the registration requirement for MSBs under 31 USC 5330 and 31 CFR 1022.380 (formerly 103.41).
3. Criminal penalties for structuring are provided for in 31 USC 5324(d) and 31 CFR 1010.840 (formerly 103.59).

#### **4.26.7.6 (06-20-2012)**

##### **Forfeiture Authority**

1. ) BSA criminal and civil forfeiture authority was moved by section 372 of the USA PATRIOT Act from Title 18 to 31 USC 5317 (c). The code at 31 USC 5317(c)(2) provides for civil forfeiture proceedings. The code provision is quite broad. Any property involved in a violation of Sections 5313 (currency reporting requirements), 5316 (exporting and importing monetary instruments), or 5324 (criminal structuring), or any conspiracy to commit such violation, and any property traceable to any such violation or conspiracy, may be seized and forfeited to the United States. The Secretary of the Treasury has discretionary authority to remit or mitigate the forfeiture.
2. Forfeiture authority under related regulation 31 CFR 1010.830 (formerly 103.58) is narrower in that it mentions neither the CTR nor the structuring transactional amounts. This regulation provides only that any currency or other monetary instruments, which are in the process of any transportation and for which a report (the CMIR) is required under section 1010.340 (formerly 103.23), are subject to seizure and forfeiture to the United States if the report has not been filed or contains material omissions or misstatements.
3. Generally, a BSA examiner can, with appropriate issuance approval, serve a BSA civil summons for the purpose of BSA civil examinations. See IRM 4.26.8, Special Procedures for summons procedures. However, for the purpose of perfecting seizures and forfeitures related to BSA civil enforcement, the Chief, Criminal Investigation, or a delegate must authorize summons issuance, 31 CFR 1010.912(b) (formerly 103.72(b)).
4. Amounts seized and forfeited reduce penalties assessed for violation of the reporting requirements regarding exporting and importing monetary instruments, 31 USC 5321(a)(2), 31 CFR 1010.820(d) (formerly 103.57(d)) and the structuring prohibitions, 31 USC 5321(a)(4), 31 CFR 1010.820(e) (formerly 103.57(e)).
5. Customs has forfeiture authority along with its examination authority over the CMIR, 31 CFR 1010.810(b)(7) (formerly 103.56 (b)(7)). It also has authority to examine for criminal violations of the CMIR requirements, 31 CFR 1010.810(c)(1) (formerly 103.56 (c)(1)).

*Page Last Reviewed or Updated: 10-Sep-2017*



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## Part 4. Examining Process

### Chapter 26. Bank Secrecy Act

#### Section 9. Examination Techniques For Bank Secrecy Act Industries

##### 4.26.9 Examination Techniques For Bank Secrecy Act Industries

##### 4.26.9.1 (06-01-2006)

##### Overview

1. This section discusses basic information and examination and auditing techniques for several types of financial institutions that fall under the Bank Secrecy Act (BSA). The information is intended to assist BSA examiners in conducting a BSA examination. All cases are subject to factual development. BSA examiners should adapt the procedures in this section, as necessary, to each particular situation.
2. The primary goals of any BSA examination are to:
  - a. Determine whether the financial institution has established and implemented an effective anti-money laundering compliance program;
  - b. Determine whether the financial institution is in compliance with all recordkeeping and reporting requirements;
  - c. Determine if there are weaknesses or violations, assist the financial institution to understand the BSA requirements and encourage compliance; and,
  - d. Refer serious or repeated BSA violations to the Financial Crimes Enforcement Network (FinCEN) or Criminal Investigation (CI), as appropriate.

##### 4.26.9.2 (06-01-2006)

**Examination Casino and Card Clubs Overview**

Techniques

- 4.26.9.2.6.1 **1** Review of Currency Transaction Report by Casinos (CTRCs) 2. Casinos and card clubs duly licensed or authorized to do business as casinos or card clubs and which have gross annual gaming revenues (GAGR) in excess of \$1,000,000 are financial institutions subject to the requirements of the BSA provisions of Title 31. Casinos and card clubs which have revenues of \$1,000,000 or less are not financial institutions subject to the BSA, and are instead subject to the requirements of IRC 6050I.
- 4.26.9.2.6.2 Receipt of Currency by the Casino (Cash-in) 2. Pursuant to a 1985 memorandum of agreement with the Department of Treasury, certain casinos in Nevada are exempted from direct application of BSA recordkeeping and currency transaction reporting requirements. Instead, these casinos are subject to Nevada Gaming Commission Regulation 6A, if they have GAGR of \$10,000,000 or more and have table games statistic win of \$2,000,000 or more. Nevada casinos which have over \$1,000,000 in GAGR are not subject to Nevada Gaming Commission Regulation 6A and are instead subject to the reporting, recordkeeping and compliance program requirements of the BSA. Nevada casinos with a GAGR of \$1,000,000 or less are subject to the reporting requirements of IRC 6050I.
- 4.26.9.2.6.3 Payment of Currency by the Casino (Cash-out) 3. Whenever the term casino is used in the regulations or in this IRM, the term expressly includes card clubs, and the same requirements therefore apply, unless a different treatment for card clubs is explicitly stated in 31 CFR Part 103.
- 4.26.9.2.6.4 Single vs. Multiple Transactions 4. Unlike other financial institutions, which exist solely for the purpose of conducting financial transactions, casinos primarily function as entertainment and recreational facilities. However, as with other financial institutions, casinos provide a wide range of financial services to their customers including:
  - 4.26.9.2.6.5 a. Acceptance of funds for deposit and withdrawals of funds on deposit,
  - 4.26.9.2.6.5 b. Issuance of credit and receipts of payments on credit,
  - 4.26.9.2.6.6 c. Check cashing services,
  - 4.26.9.2.7 d. Issuance of checks,
  - 4.26.9.2.7 e. Wire transfers of funds, and
  - 4.26.9.2.7 f. Currency exchanges.
- 4.26.9.2.6.5 a. Acceptance of funds for deposit and withdrawals of funds on deposit,
- 4.26.9.2.6.5 b. Issuance of credit and receipts of payments on credit,
- 4.26.9.2.6.6 c. Check cashing services,
- 4.26.9.2.7 d. Issuance of checks,
- 4.26.9.2.7 e. Wire transfers of funds, and
- 4.26.9.2.7 f. Currency exchanges.

- 4.26.9.2.7.1  
Review of Currency Transaction Report by Casinos (CTRCs) 5. Casinos vary in size and sophistication from small one owner gambling parlors, offering a limited number of games and services, to large corporate luxury mega facilities offering a full range of games, services and entertainment. In addition to a gambling casino, the larger resort type casino complex may include hotel facilities, restaurants, bars and lounges, theaters and showrooms, sports and health facilities, convention space, and various exclusive shops and stores.
  - 4.26.9.2.7.2  
Review of Suspicious Activity Report by Casinos 6. The requirements of the BSA apply only to transactions taking place between the gambling casino and its customers. Currency transactions between the hotel and/or other outlets within the casino complex and their customers are subject to the requirements covered under IRC 6050I.
  - 4.26.9.2.7.3  
Receipt of Currency by the Casino (Cash-in) 7. Casinos often maintain branch offices in cities around the nation that primarily serve as marketing offices. Occasionally, these offices will accept currency for deposit to a customer's casino account or in payment of markers. The funds are usually placed on deposit in the branch office's bank account and wire transferred to the casino. The BSA applies not only to the casino, but also to its branch offices and other places of business.
  - 4.26.9.2.7.4  
Payment of Currency by the Casino (Cash-out) 8. Authority to examine casinos to determine compliance with the BSA reporting, recordkeeping, and compliance program requirements has been delegated by Treasury to the IRS in 31 CFR 103.56(b)(8).
- 4.26.9.2.1 (06-01-2006)**
- Organization**
- 4.26.9.2.7.5  
Detail Listings of Transactions 1. Casinos that are duly licensed or authorized to do business are regulated by state, tribal, or local governments. As such, their organizational structure may vary depending upon applicable laws and regulations as well as the needs of management within each individual casino. Generally, however, a typical gambling casino is organized into two separate, yet related, operations; the casino floor and the casino cage. Larger casinos may have more than one casino floor and/or more than one casino cage. *See Exhibit 4.26.9-1.*
  - 4.26.9.2.7.6  
Review of Recordkeeping 2. The casino floor is the area of the casino where all gaming activities occur. It is usually organized into Gaming Pits and Slot Zones and operates under the direction of the Casino Manager.





- of the Records
  - 4.26.9.3.6 Evidence
  - 4.26.9.3.7 Check Cashers Position
  - 4.26.9.3.8 Money Laundering Trends
    - 4.26.9.3.8.1 Examination Techniques
  - 4.26.9.4 Credit Unions Overview
    - 4.26.9.4.1 Organization
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      - 4.26.9.4.2.1 Reporting Requirements
      - 4.26.9.4.2.2 Recordkeeping Requirements
      - 4.26.9.4.2.3 AML Program Requirements
    - 4.26.9.4.3 Records Commonly Found
      - 4.26.9.4.3.1 Terminology
      - 4.26.9.4.3.2 Cash Control System
      - 4.26.9.4.4 Interview
- Under the supervision of the Casino Cage Manager, the casino cage operates much like a commercial bank and is generally organized into five components:
- a. Main bank - The area of the casino cage where all currency is stored. It is through the main bank that currency is transferred from the gaming tables, to and from the cashier's windows and to or from the casino's commercial banking institution. The main bank maintains an inventory of coins and chips.
  - b. Chip bank - The area of the casino cage where all of the gaming chips are stored. It is through the chip bank that chips are transferred to and from the gaming tables and to or from the cashiers' windows.
  - c. Marker bank - The area of the casino cage where all marker activity related to credit accounts is recorded, processed and stored.
  - d. Credit management - The area of the casino cage where customer credit accounts are managed.
  - e. Cashier (Teller) windows - The area of the casino cage where financial transactions between the casino cage and its customers occur. The windows are staffed by cashiers who conduct the financial transactions and prepare source documents.
7. The casino marketing department is responsible for retaining and bringing new business into the casino. Within the marketing department, casino hosts, who cater to high roller's needs, may assist players in opening deposit and credit accounts and issuing complimentary gifts and services to customers.
8. The casino surveillance department is an important resource in deterring and detecting suspicious or criminal activities. Surveillance employees monitor casino activities using a variety of technologies, including video cameras, monitors, recorders, video printers, switches, selectors and other equipment. Monitored activities that are unusual, suspicious, or potentially criminal in nature are noted in a surveillance log. Videotapes and/or CD-ROMs generally will be maintained for a period of time established by the casino's state, tribal or local regulator.



- 4.26.9.5.1.4.26.9.2.2 (06-01-2006)  
 AML Law  
 Program  
 Requirements  
 Casinos and card clubs in the United States, its territories and possessions, and on Indian lands, with gross annual gaming revenue in excess of \$1,000,000 are defined as financial institutions under 31 CFR 103.11(n)(5)(i) (for casinos) and 31 CFR 103.11(n)(6)(i) (for card clubs). A separate location is a branch if it is operating under the same casino license or tribal compact. If the additional casino location has a separate and distinct casino license or tribal compact, then it is a separate financial institution.
  - 4.26.9.5.2 Records Commonly Found
  - 4.26.9.5.3 Interview
  - 4.26.9.5.4 Review of the Records
  - 4.26.9.5.5 Evidence
  - 4.26.9.5.6 Currency Dealer or Exchangers Position
  - 4.26.9.5.7 Money Laundering Trends
  - 4.26.9.5.7.1 Examination Techniques
  - 4.26.9.6 Money Orders Overview
  - 4.26.9.6.1 Nationwide Money Orders
  - 4.26.9.6.1.1 Private Money Orders
  - 4.26.9.6.2 Law
- 4.26.9.2.2.1 (06-01-2006)**  
**Reporting Requirements**
1. FinCEN Form 103 (CTRC) must be filed by certain casinos and card clubs on each transaction in currency involving cash-in or cash-out of more than \$10,000. (31 CFR 103.22(b)(2))
  2. Transactions in currency involving cash-in include, but are not limited to:
    - a. Purchases of chips, tokens and other gaming instruments
    - b. Front money deposits
    - c. Safekeeping deposits
    - d. Payments on any form of credit, including markers and counter checks
    - e. Bets of currency
    - f. Currency received by a casino for transmittal of funds through wire transfer for a customer
    - g. Purchases of a casino's check
    - h. Exchanges of currency for currency, including foreign currency. (31 CFR 103.22(b)(2)(i))

- 4.26.9.6.2.31 Reporting Requirements
  - 4.26.9.6.2.2 a. Redemptions of chips, tokens, and other gaming instruments
  - 4.26.9.6.2.3 b. Front money withdrawals
  - 4.26.9.6.2.3 c. Safekeeping withdrawals
  - 4.26.9.6.2.4 d. Advances on any form of credit, including markers and counter checks
  - 4.26.9.6.2.4 e. Payments on bets, including slot jackpots
- 4.26.9.6.3 Records Commonly Found
  - f. Payments by a casino to a customer based on receipt of funds through wire transfer for credit to a customer
- 4.26.9.6.4 Interview
  - g. Cashing of checks or other negotiable instruments
  - h. Exchanges of currency for currency, including foreign currency
- 4.26.9.6.5 Review of the Records
  - h. Reimbursements for customers' travel and entertainment expenses by the casino
- 4.26.9.6.6 Evidence
  - i. Payment for tournament, contest or other promotions. (31 CFR 103.22(b)(2)(ii))
- 4.26.9.6.7 Money Order Business Position
  - 4. Multiple currency transactions shall be treated as a single transaction if the casino has knowledge that they are by or on behalf of any person and result in either cash-in or cash-out totaling more than \$10,000 during any gaming day. (31 CFR 103.22(c)(3))
- 4.26.9.6.8 Money Laundering Trends
  - 5. A CTRC must be filed within 15 calendar days following the day the reportable transaction occurs. (31 CFR 103.27(a)(1))
- 4.26.9.6.8.1 Examination Techniques
  - 6. FinCEN Form 105, Report of International Transportation of Currency or Monetary Instruments (CMIR), must be filed by any person who transports, mails, ships, has someone else transport, mail, or ship currency or monetary instruments in excess of \$10,000 into or out of the country or who receives such items into the United States from abroad. (31 CFR 103.23)
- 4.26.9.7 Money Transmitter Overview
  - 4.26.9.7.1 Law
    - 7. FinCEN Form 105 must be filed at the time of entry into the United States or at the time of departure, mailing or shipping from the United States. (31 CFR 10327(b)(1))

- 4.26.9.7.1.1 Any person receiving currency or monetary instruments in Reporting excess of \$10,000 from outside the United States is required to Requirements file FinCEN Form 105 within 15 days. (31 CFR 103.27(b)(2))
- 4.26.9.7.1.2 Registration Treasury Department Form TD F 90.22.1, Report of FBAR must Requirements be filed for any financial interest in or signature or other
- 4.26.9.7.1.3 authority over a bank, securities, or other financial account Recordkeeping which exceeds \$10,000 at any time during the calendar year. (31 Requirements CFR 103.24)
- 4.26.9.7.1.4 AML 10. The FBAR must be filed by June 30th of the succeeding year. (31 Program Requirements CFR 103.27(c))
- 4.26.9.7.2 11. Pursuant to an agreement with the Department of Treasury, Nevada casinos are exempt from the BSA, but are instead Records subject to recordkeeping and currency transaction reporting Commonly requirements under the Nevada Gaming Commission Found Regulation 6A. Casinos in Nevada are required to file the
- 4.26.9.7.2.1 Terminology following reports:
  - 4.26.9.7.3 a. FinCEN Form 103-N, Currency Transaction Report by Interview Casinos - Nevada (CTRC-N) must be filed by Nevada casinos
  - 4.26.9.7.4 for each transaction in currency involving cash-in or cash- Review out of more than \$10,000.
  - 4.26.9.7.5 b. FinCEN Form 102, Suspicious Activity Report by Casinos and Evidence Card Clubs (SARC), must be filed for any suspicious
  - 4.26.9.7.6 any law or regulation and involves or aggregates at least Money \$3,000 in funds or other assets.
  - 4.26.9.7.7 12. Transactions are to be separately aggregated on a currency Transmitters received and currency paid out basis.
  - 4.26.9.7.7 Money Laundering Trends **4.26.9.2.2.2 (06-01-2006)**
  - 4.26.9.7.7.1 Examination 1. For records required of all financial institutions, refer to IRM Techniques 4.26.5.
  - 4.26.9.8 2. Copies of all filed CTRCs, must be retained by the casino for five Travelers years from the date of the report. (31 CFR 103.27(a)(3))
  - 4.26.9.8.1 3. Copies of all filed SARCs and the original or record of any Checks supporting documentation shall be maintained for five years Overview from the date of filing the SARC. (31 CFR 103.18(d))
  - 4.26.9.8.1 Nationwide

- Travelers Checks 4. All records created from the AML Program Requirements must be retained by casinos for five years.
- 4.26.9.8.1.1 Private Travelers Checks 5. For additional records to be made and retained by casinos, refer to 31 CFR 103.33(f) and (g) (which generally applies to wire transfers in amounts of \$3,000 or more by all nonbank financial institutions), and 31 CFR 103.36 (which applies to casinos).
- 4.26.9.8.2 Law
  - 4.26.9.8.2.1 **4.26.9.2.2.3 (06-01-2006)**  
Reporting Requirements
  - 4.26.9.8.2.2 All casinos must establish and implement a written, risk-based AML Program reasonably designed to prevent the business from being used to facilitate money laundering and the financing of terrorism.
  - 4.26.9.8.2.3 Recordkeeping Requirements 2. At a minimum, the program shall:
    - 4.26.9.8.2.4 AML Program Requirements a. Incorporate policies, procedures, and internal controls reasonably designed to assure compliance with the BSA and its implementing regulations;
    - 4.26.9.8.3 Records Commonly Found b. Designate a compliance officer;
    - 4.26.9.8.4 Interview c. Provide for education or training of appropriate personnel; and,
    - 4.26.9.8.5 Review of the Records d. Provide for independent review to monitor and maintain the adequacy of the program (31 CFR 103.120(d), 31 CFR 103.64).
  - 4.26.9.8.6 **4.26.9.2.3 (06-01-2006)**  
**Records Commonly Found**
  - 4.26.9.8.7 Travelers Check Business Position 1. Casino records that can be used to identify currency transactions will vary depending upon state, tribal, and local laws and regulations, as well as the needs of casino management. Generally, transactions occurring at the gaming tables may be identified through casino Player Rating Systems and/or Multiple Transaction Logs (MTLs), while transactions occurring at the cage may be identified through casino Credit Management Systems and other cage records which may also include MTLs. See *Exhibit 4.26.9-2*.
  - 4.26.9.8.8 Money Laundering Trends
    - 4.26.9.8.8.1 Examination Techniques 2. A Player Rating System is a method used by many casinos to monitor the gaming activity of its customers for purposes of determining the amount of complimentary services and items

- Exhibit 4.26.9-1 Organizational Structure of a Gambling Casino
  - to be extended to individual customers. It is primarily a marketing tool used to identify and reward good customers. A separate player rating card is prepared for each rated customer at the table by the "Rater" (usually a Floor person) assigned to that table. In addition to the customer's name and account number, the date, time, pit and table number, the rater generally records the amount of currency received from the customer for the purchase of chips and cash bets.
- Exhibit 4.26.9-2 Computerized Casino Management System
  - 3. A Credit Management System is a financial accounting system used by many casinos to record and monitor the account-related activity of customers who maintain deposit and/or credit accounts with the casino. Unlike the rating system, which is primarily a marketing tool, the credit management system consists of financial accounting records. Transactional records are prepared by Cage Cashiers and are generally recorded and summarized by cage personnel on Customer Action Cards. Transactional records prepared by the cashiers include the following:
    - a. Deposit slips - Record each separate deposit made into the customer's account (front money or safekeeping) and will usually show whether any portion of the deposit occurred in the form of currency.
    - b. Withdrawal slips - Record each separate withdrawal from the customer's account (front money or safekeeping) and will usually show whether any portion of the withdrawal occurred in the form of currency.
    - c. Payment/Redemption vouchers - Record payments on credit (a.k.a. marker redemptions) and may also be used to record other receipts or disbursements of funds such as reimbursements of customer travel expenses and foreign currency exchanges. The payment voucher will usually show whether any portion of the transaction occurred in the form of currency.
    - d. Markers Issued (a.k.a. Counter Checks) - Record the extension of credit to customers in the form of chips, tokens, or currency.
- Exhibit 4.26.9-3 Letter 3494, Appointment Letter for Casinos
- Exhibit 4.26.9-4 Information Document Request for Casino
- Exhibit 4.26.9-5 Interview for Casino
- Exhibit 4.26.9-6 Analysis of Incomplete CTCRs Filed
- Exhibit 4.26.9-7 Daily Listing of CTCRs Filed
- Exhibit 4.26.9-8 Daily
  - 4. Multiple Transaction Logs (MTLs) (a.k.a. Action Control Logs - ACLs) are often maintained in the Pit, Cage, or Slot areas pursuant to state, tribal, or local laws. MTLs are used to record currency transactions above a given threshold, usually \$2,500 -

- Listing of  
CTRCs  
Actually  
Filed
  - Exhibit  
4.26.9-9  
Daily  
Listing of  
Customers  
Cash-In  
Transactions
  - Exhibit  
4.26.9-10  
Daily  
Listing of  
Customers  
Cash-Out  
Transactions
  - Exhibit  
4.26.9-11  
Daily  
Listing of  
Customers  
with Cash-  
In  
Transactions
  - Exhibit  
4.26.9-12  
Meanings  
of  
Abbreviations
  - Exhibit  
4.26.9-13  
Typical  
Organization  
Chart for a  
Casher
  - Exhibit  
4.26.9-14  
Check  
Casher  
Audit Trail
  - Exhibit  
4.26.9-15
- \$3,000. On these logs, casinos typically record customers' purchases of chips or tokens with currency or wagers in currency. Because BSA regulations do not specifically require the creation of MTLs (although the retention of these records, if made, is required), their use, format, and required information will vary from jurisdiction to jurisdiction.
5. Other cage records and documents which may assist in identifying currency transactions include:
    - a. Cash equivalents and related logs or registers
    - b. Casino checks issued and related logs or registers
    - c. Wire transfer devises and related logs or registers
    - d. Slot jackpot pay out slips
    - e. Forms 1099 issued for prizes, promotions or tournaments without entry fees
    - f. Forms W-2G issued and logs of these forms.
  6. In many larger casinos, these systems may be highly computerized and the records may be computer generated. (Refer to IRM 4.26.9.2.7, Computer Auditing Techniques.) Casino records that are processed by or through a computer must be retained by the casino in machine-readable form. (31 CFR 103.36(c)(1))
  7. Casinos and card clubs typically maintain Surveillance Logs of activities that are unusual, suspicious or potentially criminal.
- 4.26.9.2.3.1 (06-01-2006)**  
**Terminology**
1. Action Card (a.k.a. Bucket) - A record maintained by the cage for deposit and credit customers that is used to record each account transaction in chronological order. Separate cards are maintained for each customer and each type of account.
  2. Buy-in – The amount of funds a player uses to purchase casino chips when commencing play. A buy-in can occur in cash, credit, or as a deposit withdrawal.
  3. Cash Equivalent - All negotiable monetary instruments exclusive of currency (e.g., certified checks, cashier's checks,



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|---|---|
| <p>Information Document Request for a Check Casher</p> <ul style="list-style-type: none"> <li>• Exhibit 4.26.9-16 Interview for a Check Casher</li> <li>• Exhibit 4.26.9-17 Credit Union Audit Trail</li> <li>• Exhibit 4.26.9-18 Information Document Request for a Credit Union</li> <li>• Exhibit 4.26.9-19 Interview for a Credit Union</li> <li>• Exhibit 4.26.9-20 Currency Dealer or Exchanger Audit Trail</li> <li>• Exhibit 4.26.9-21 Information Document Request for a Currency</li> </ul> | <p>travelers checks, money orders, personal checks, business checks (including casino checks), etc.)</p> <ol style="list-style-type: none"> <li>4. Chips (a.k.a. Checks, Tokens) - A gaming instrument issued in various denominations and used as a substitute for currency at table games in a casino.</li> <li>5. Chip Redemption - The exchanging of chips by a customer for cash, casino check, or outgoing wire transfer.</li> <li>6. Front Money (Deposits and Withdrawals) - Money deposited by a customer into his or her account at the casino that can be withdrawn either at the cage or at a gaming table.</li> <li>7. Gaming Day - The normal business day of the casino by which it maintains its books and records for business, accounting, and tax purposes. A casino may have only one gaming day common to all of its divisions.</li> <li>8. Jackpot Payout (a.k.a. Hand Paid Jackpot) - The portion of a jackpot paid manually by a slot employee to a player. It represents the difference between the amount paid directly by the slot machine and the total amount due to the player based on a winning combination.</li> <li>9. Marker (a.k.a. Counter Check) - Credit extended by a casino to a customer in exchange for chips, tokens, or currency.</li> <li>10. Marker Redemption - The redemption or paying off of a previously issued marker by a customer.</li> <li>11. Rated Player - A customer whose gaming activities on the casino floor are tracked through the casino's player ratings system.</li> <li>12. Safekeeping (Deposits/Withdrawals) - Funds in a customer's casino account that can only be deposited in or withdrawn at a cage.</li> <li>13. Token - A gaming instrument issued in various denominations and used as a substitute for currency to play slot machines.</li> </ol> <p><b>4.26.9.2.4 (06-01-2006)</b></p> <p><b>Interview</b></p> <ol style="list-style-type: none"> <li>1. The initial interview should be held at the casino's place of business and should be attended by all IRS personnel who will</li> </ol> |
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- Dealer or Exchanger
    - Exhibit 4.26.9-22 Interview for a Currency Dealer or Exchanger
    - Exhibit 4.26.9-23 Money Order Audit Trail
    - Exhibit 4.26.9-24 Information Document Request for a Money Order Business
    - Exhibit 4.26.9-25 Interview for a Money Order Business
    - Exhibit 4.26.9-26 Money Transmitter Audit trail
    - Exhibit 4.26.9-27 Information Document Request for a Money Transmitter
    - Exhibit 4.26.9-28
- be involved in the examination including the examining agent (s), the CAS, and their respective managers.
2. The appointment letter should request that the following casino personnel attend the meeting:
    - a. Vice President Finance;
    - b. Casino Controller;
    - c. Casino Manager;
    - d. Casino Cage Manager;
    - e. Director of Information Systems (Computers);
    - f. Title 31 Compliance Coordinator (if applicable); and,
    - g. Any others directly involved in Title 31 compliance.
  3. The casino should be advised of the purpose of the examination, and any questions should be answered. Physical arrangements should be made for adequate work space and access to necessary equipment. A principal contact person from the casino should be identified for both the examining agent and the CAS.
  4. The casino should be advised that examining agent(s) will only review information relative to BSA compliance. However, it should also be advised that if in the course of the examination, information relative to possible violations of other laws or regulations is discovered, a referral must be made. This notification should be documented.
  5. The interview should identify any related institutions, branches, entities, or other NBFIs operating within the casino including ownership and relationship of MSBs and ATMs. The BSA examiner should immediately submit the information to the BSA Workload Selection coordinator to be added to the Title 31 database.
  6. Determine the gaming day used by the casino for aggregating reportable currency transactions. Record whether the casino cage and gaming floor are both using the same gaming day cut-off time (including the computerized player rating system) as required by 31 CFR 103.64(b)(4). Request that the casino provide a document at the start of the examination that cites

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| <p>Interview<br/>for a<br/>Money<br/>Transmitter</p> <ul style="list-style-type: none"> <li>• Exhibit<br/>4.26.9-29<br/>Traveler's<br/>Check<br/>Audit Trail</li> <li>• Exhibit<br/>4.26.9-30<br/>Information<br/>Document<br/>Request<br/>for a<br/>Traveler's<br/>Check<br/>Business</li> <li>• Exhibit<br/>4.26.9-31<br/>Interview<br/>for a<br/>Traveler's<br/>Check<br/>Business</li> </ul> | <p>the opening and ending times for the gaming day that are in effect during the period being examined.</p> <p><b>Note:</b></p> <p>For purposes of aggregating reportable currency transactions, a casino must have only one gaming day which is common to all its gambling operating divisions or departments (i.e., cage and floor)</p> <p>.</p> <ol style="list-style-type: none"> <li>7. Ask open-ended questions throughout the interview. Do not ask questions that require only a "yes" or "no" answer.</li> <li>8. For an example of initial interview questions, <i>See Exhibit 4.26.9-5.</i> This is only a guide that should be expanded or contracted as each BSA examination warrants.</li> <li>9. The examination should include several interviews. Each interview should be documented in the case file. Owners/operators, shareholders, directors, floor and cage managers, and employees responsible for preparing currency reports and securing and maintaining records pertaining to the reporting requirements under the BSA should be questioned as to their knowledge and training of the BSA recordkeeping and reporting requirements. Knowledge is one of the elements needed to prove willfulness with respect to a violation of the regulations.</li> </ol> |
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**4.26.9.2.5 (06-01-2006)**

**Systems Analysis**

1. Because casino records will vary depending upon applicable laws and regulations, as well as the needs of casino management, a complete systems analysis should be conducted of the casino accounting system used to record and process records related to customer transactions. This analysis will establish the audit trail and the casino's knowledge of BSA requirements pertaining to reportable transactions. The analysis should include:
  - a. Identifying the flow of information through the system;
  - b. Determining what kinds of original source documents and records are prepared relative to customer transactions, who prepares them, and how they are stored and organized;

- c. Determining what records are prepared by the casino that specifically identify customer currency transactions;
  - d. Determining the kinds of reports prepared by the casino in the ordinary course of its business that may identify and/or summarize recorded, customer transactions, particularly currency transactions; and,
  - e. Determining what kind of records and reports are prepared by the casino that identify customers who may be structuring transactions to evade CTRC reporting requirements, or who are engaging in other unusual or suspicious transactions or patterns of such transactions.
2. If the casino accounting systems are computerized, the Computer Audit Specialist (CAS) should determine:
    - a. What computer files and records are maintained relative to customer transactions and what information is stored in those files and records;
    - b. What computer files and records are prepared that specifically identify customer currency transactions;
    - c. Whether the casino has retained those records in accordance with the BSA recordkeeping and record retention requirements; and,
    - d. What kinds of computer generated reports are prepared by the casino in the ordinary course of its business that may identify and/or summarize recorded customer transactions, particularly currency transactions and potentially suspicious transactions.
  3. Examiners should familiarize themselves with state, tribal, and local laws and regulations related to casinos in their jurisdictions. Particular attention should be placed on casino records, documents, and reports required by those laws and regulations which may assist in detecting currency transactions, suspicious transactions, and establishing the casino's knowledge of those transactions.

#### **4.26.9.2.6 (06-01-2006)**

##### **Manual Examination Techniques**

1. Examination techniques used to conduct BSA examinations of casinos will vary significantly depending upon whether the

casino inputs and processes its customer transaction records by or through a computer system, and has retained those records in machine readable form as required by the BSA.

2. If casino records are computerized and have been retained by the casino, the examiner should use the computer auditing techniques described in IRM 4.26.9.2.7.
3. If computerized records are available for some transactions but not for others, a combination of manual examination techniques and computer auditing techniques should be utilized.
4. The following manual examination techniques should be used when there are no computer records available.

#### **4.26.9.2.6.1 (06-01-2006)**

##### **Review of Currency Transaction Report by Casinos (CTRCs)**

1. The examiner should inspect the casino's retained copies of CTRCs to determine the level of accuracy and completeness of the reports. See *Exhibit 4.26.9-6* for an example CTRC analysis and the key elements that should be included on each CTRC.

##### **Note:**

Examiners should not include missing SSNs on nonresident aliens or missing account numbers on non-account related transactions in the analysis of incomplete CTRCs. Records not requiring a SSN should have a non-US country code, a passport number, or an alien registration number.

2. The examiner should compare the casino's retained copies of CTRCs to the CBRS records to ensure they have been filed.
3. When the casino has filed CTRCs that are missing any of the critical elements required, the examiner should review or test check the casino's supporting documentation to identify those that include one or more single transactions in currency greater than \$10,000.

##### **Note:**

Box 29 on a CTRC is required to be checked by the casino if none of the transactions individually are greater than \$10,000. Conversely, the use of the multiple transaction indicator is different on CTRs filed by other financial institutions such as MSBs and banks.

**4.26.9.2.6.2 (06-01-2006)****Receipt of Currency by the Casino (Cash-in)**

1. When reviewing casino records to determine if a CTRC is required to be filed for a cash-in transaction, all cash-in transactions are to be aggregated together regardless of the type of transaction involved.
2. In jurisdictions where MTLs are required, review the MTLs to identify single and/or aggregated reportable currency transactions.
3. The following items should be considered and reviewed when examining casino transactions where MTLs are not required, or when testing the validity of MTL entries.
  - a. Chips Purchased and Cash Bets - If the casino tracks or monitors certain customer's gaming activities through the use of a player rating system or similar process, review the player ratings reports which may summarize individual customer transactions. These reports will generally identify the total amount of currency received from the customer during a particular gaming day. Such reports may include Daily Player Rating Audit Reports, Trip History Summary Reports, and Player Complementary Reports.

**Note:**

The trip history summary records only summarize the total funds from a customer's multi-day trip and the most recent trips, usually between three and nine trips. Because a trip includes any number of continuous days of gaming activity in which there is not a break in play, the player trip history is only a limited summarized record that typically does not provide all of the information contained on the original rating card, such as the specific amounts of the customer's currency transactions conducted for each gaming day. Therefore, examiners should use the Daily Player Rating Audit Reports which are more useful records for identifying currency transactions for BSA purposes.

- b. Customer Deposits (Front Money and Safekeeping) - Review individual Customer Action Cards or Buckets for deposit account activity. This card will show, in chronological order, the date and amount of each separate deposit and will generally identify the medium used (e.g., cash, chips, check, wire transfer, etc.).

- c. Marker Redemptions - Review individual Customer Action Cards or Buckets for credit account activity. This card will show, in chronological order, the date and amount of each separate marker issued and each marker redeemed and will generally identify the medium used (e.g., cash, chips, check, wire transfer, etc.).
- d. Checks Purchased - Review records of casino checks issued to customers. Such records will usually include check registers or logs (for example, the record of monetary instruments of \$3,000 or more (required by 31 CFR 103.36 (b) (9)), as well as the casino checks themselves, and will generally identify the purpose for which the check was issued.
- e. Wire Transfers Out - Review records of wire transfers out of the casino which were made on behalf of a customer. Such records will include the actual advices, requests, or instructions given by the casino (for example, a record of transmittals of funds in excess of \$3,000 is required by 31 CFR 103.33 (f) and (g)). The transactions may also be recorded in a wire transfer log or register. Potential reportable transactions should be traced back to the original source documentation to determine if currency was received in exchange for the wire transfer.
- f. Exchange of Currency for Currency (including foreign currency) – Many casinos do not maintain records relating to currency exchanges, which includes both the conversion of small bills into large bills and the conversion of foreign currency into U.S. currency and vice versa, that identify the customer conducting the transaction. However, when such records exist they are more commonly found for foreign currency exchanges and typically consist of a tally sheet that describes the exchange that occurred between a casino cage cashier and a customer. Whenever any such records exist, examiners should review them to identify currency transactions conducted by customers. Note that a currency exchange is both a cash-in and a cash-out transaction at the same time.

#### **4.26.9.2.6.3 (06-01-2006)**

##### **Payment of Currency by the Casino (Cash-out)**

1. When reviewing casino records to determine if a CTRC is required to be filed for a cash-out transaction, all cash-out

transactions are to be aggregated together regardless of the type of transaction involved.

2. In jurisdictions where Multiple Transaction Logs (MTLs) are required, review the MTLs to identify single and/or aggregated reportable currency transactions.
3. The following items should be considered and reviewed when examining casino transactions where MTLs are not required, or when testing the validity of MTL entries.
  - a. Chip Redemptions - Most casinos do not prepare or maintain records of customer chip redemptions. However, if records are prepared, examiners should review those records to determine if a report is required.
  - b. Customer Withdrawals (Front Money and Safekeeping) - Review individual Customer Action Cards or Buckets for deposit account activity. This card will show, in chronological order, the date and amount of each separate withdrawal and will generally identify the form of the payment (e.g., cash, check, wire transfer, etc.). When the form of payment is not recorded, examiners should review casino checks issued and wire transfers to determine if payment was made in a form other than currency.
  - c. Markers Issued (Credit advance in the form of cash) - Review individual Customer Action Cards or Buckets for credit account activity. This card will show, in chronological order, the date and amount of each separate marker issued and will generally identify the form of the funds advanced (e.g., cash, chips, etc.).
  - d. Checks Cashed - Review records of cash equivalents received by the casino from its customers. Such records may include check registers or logs, the record of monetary instruments of \$3,000 or more, as well as copies of the cash equivalents themselves. Examiners should test check large cash equivalents to determine whether they were cashed or used for some other purpose (e.g., placed on deposit, used to redeem markers, etc.).
  - e. Wire Transfers In - Review records of wire transfers into the casino, which were made on behalf of a customer. Such records will include the actual advices, requests, or instructions received by the casino (for example, a record of transmittals of funds in excess of \$3,000). The transactions



may also be recorded in a wire transfer log or register. Potential reportable transactions should be traced back to original source documentation to determine if the wire transfer resulted in currency being given to the customer.

- f. Exchange of Currency for Currency (including foreign currency) – Many casinos do not maintain records relating to currency exchanges that identify the customer conducting the transaction. However, when such records exist they are more commonly found for foreign currency exchanges and typically consist of a tally sheet that describes the exchange that occurred between a casino cage cashier and a customer. Whenever any such records exist, examiners should review them to identify currency transactions conducted by customers. Note that a currency exchange is both a cash-in and a cash-out transaction at the same time.
- g. Paid Outs - A Paid Out is a cash payment made by the casino to a customer that generally represents a cash complimentary or reimbursement of the customers travel, entertainment, and related expenses. Vouchers are usually prepared for the paid out and entered into a Cage Disbursements log. Examiners should review such records to determine if a report is required.
- h. Slot Machine Jackpots Paid - Review the casino's retained copies of Form W-2G, Certain Gambling Winnings, to identify slot machine jackpot payments that total over \$10,000 during a gaming day. Review casino checks issued to customers to determine the amount of slot jackpots that were paid by way of check. If no checks were issued, determine whether any portion of the slot jackpot win was paid in tokens. Any amount remaining should have been paid in currency. A casino files Form W-2G to report payments made to customers for slot jackpot wins of \$1,200 or more. The total of each customer's slot jackpot winnings should be added together with any other type of cash-out transaction to determine if \$10,000 or more in currency was paid out.
- i. Keno Wins Paid – Review the casino's retained copies of Form W-2G to identify keno win payments that total over \$10,000 during a gaming day. A casino files Form W-2G to report payments made to customers for keno wins of \$1,500 or more (the latter reduced by the amount of the wager).

Review casino checks issued to customers to determine the amount of keno winnings that were paid by way of check. Any amount remaining should have been paid in currency. The total of each customer's keno wins should be added together with any other type of cash-out transaction to determine if \$10,000 or more in currency was paid out.

- j. Forms 1099 issued for prizes and awards -- Review the checks and the MIL to determine how the amount was paid. If paid by check, compare to the MIL to determine if the casino cashed the check for the customer.

#### **4.26.9.2.6.4 (06-01-2006)**

##### **Single vs. Multiple Transactions**

1. In the case of all reporting violations, the examiner must determine whether the total transaction amount includes one or more single transactions in currency greater than \$10,000 or whether the amount is comprised exclusively of multiple transactions of less than \$10,000 where the casino had knowledge that the aggregated amount totaled to more than \$10,000.
2. A single transaction is one that involves a physical transfer of currency between the casino and a customer in one event, even though the currency may be intended for more than one purpose and may appear in the casino's records as more than one transaction.
  - a. Example #1 - A customer redeems three markers of \$5,000 each by making one payment, at one time, of \$15,000 at the cage. This represents a single transaction even though it may appear in the casino's records as three separate transactions.
  - b. Example #2 - A customer redeems a marker of \$5,000 and makes a deposit of \$10,000, at the same time, using \$15,000 in currency. This represents a single transaction even though the funds are intended for separate purposes and result in two separate records.
3. Multiple transactions consist of discrete single currency transactions between the casino and a customer, which occur at various times during a gaming day, but when aggregated exceed the \$10,000 reporting threshold. It is necessary that the

casino had actual knowledge of the aggregate total for the transaction to be considered reportable.

- a. Example #1- A customer purchases chips through a series of buy-ins which a casino employee records on a single casino record, such as a player rating card or a pit Multiple Transaction Log (MTL), that shows a running balance of the currency that totals in excess of \$10,000. While each buy-in is a separate transaction, the records show a running balance, which may indicate actual knowledge on the part of a casino employee.
- b. Example #2- A customer redeems chips at different times at the casino cage and the redemptions are recorded on a single MTL that shows a running balance of the currency that totals in excess of \$10,000. While each buy-in is a separate transaction, the records show a running balance, which may indicate actual knowledge on the part of a casino.

#### **4.26.9.2.6.5 (06-01-2006)**

##### **Review of Recordkeeping**

1. For each deposit of funds, extension of credit, or account opened by the casino, the BSA requires that the casino obtain the customer's name, permanent address and SSN. (31 CFR 103.36(a)) The name and address must be verified and recorded in the manner described in 31 CFR 103.28.
2. If the casino is unable to obtain the SSN, the casino is not deemed to be in violation of this recordkeeping requirement if:
  - a. A reasonable effort was made to secure the number and
  - b. It maintains a list containing the names and permanent address of those customers without SSNs and makes the list available to the Secretary upon request. (31 CFR 103.36(a))
3. Examiners should determine whether the casino's procedures for opening deposit and credit accounts include requirements for securing the customer's name, permanent address, and social security number and verifying the name and address. Additionally, customer deposit and credit accounts should be reviewed or test checked to determine if the required information has been obtained.

4. Examiners should determine whether the casino's retention policies call for it to retain all the records described in 31 CFR 103.36(b) and if the required records are being retained. If required records are not being retained or are being destroyed prior to the BSA's five year retention period, document in the workpapers, and then cite in the referral report the relevant facts (e.g., time frames) and circumstances. Examples may include, but are not limited to:
  - a. Failure to maintain the \$3,000 monetary instrument log;
  - b. Destruction of player rating records reflecting currency transactions;
  - c. Destruction of pit worksheets reflecting currency transactions; and,
  - d. Purging of computerized daily customer trip detail records pertaining to table game transactions.
  
5. Examiners should determine whether the casino procedures with respect to the requirement in 31 CFR 103.36(b)(9) to maintain a list of monetary instruments having a face value of \$3,000 or more meet the requirements for recording transaction information related to each instrument cashed or disbursed. The information required is: the time, date, amount; customer name, and permanent address; the type of instrument; the name of the drawee or issuer of the instrument; all reference numbers such as casino account number, personal check number; and the employee name or business license number. Also, the procedures should include entering transactions on the list in the order in which they occur (31 CFR 103.36(b)(9)). The list should be reviewed or tested to determine if the required information has been obtained. Also, examiners can compare the recorded log information against the casino's computerized records of customer account transactions to identify whether large transactions recorded in the computer as potential "cash" transactions have been accounted for instead as check transactions. In addition, log entries can help identify a customer who may be structuring transactions to evade CTRC reporting through currency purchases of multiple checks in amounts of \$3,000 to \$10,000 at different times during a gaming day. Lastly, the instrument list can be used in conjunction with each day's player rating records to determine if chips that were redeemed for a casino check, in excess of \$5,000, came from transactions involving minimal gaming.

6. Some casinos may have contracts with companies that provide money transfer services to act as their agents for money transfers conducted on casino properties. If the casino wires, or otherwise transfers funds for its customers (or receives wired funds or other such fund transfers on behalf of its customers), and the amount of the transfer is \$3,000 or more, the casino is required to maintain certain records of the funds transfer. 31 CFR 103.33(f) and (g). Examiners should determine whether the casino's procedures for recording funds transfers in amounts of \$3,000 or more include requirements for verifying customer identification, and for recording customer and transaction information for each money transfer sold or redeemed. The records should be reviewed or tested to determine if the required information has been obtained. Also, examiners can review the recorded information to help identify customers who may be structuring transactions to evade BSA reporting and recordkeeping requirements through currency purchases of multiple money transfers or receipt of multiple transfers in a gaming day. In addition, the funds transfer records can be used in conjunction with each day's player rating records to determine if chips that were redeemed for an outgoing funds transfer, in excess of \$5,000, came from transactions involving minimal gaming.

#### **4.26.9.2.6.6 (06-01-2006)**

##### **Special Issues**

1. Examiners should review branch office transactions to ensure that the casino has filed all required CTCs.
2. The BSA applies only to casino transactions, therefore, examiners should be alert to unusual transfers of currency between the casino cage and the hotel and other outlets of the casino complex. These outlets may routinely use the cage as a "bank" for depositing and withdrawing excess currency. An unusual transfer may indicate an attempt to circumvent the BSA reporting requirements. This is particularly important for cash-out transactions because the other outlets of the casino complex, which are subject to IRC Section 6050I reporting requirements, are only required to report cash-in transactions over \$10,000.
3. The BSA applies to all casino currency transactions, whether or not the transactions are related to the gaming activities being offered by the casino. Therefore, examiners should be alert to

currency transactions between the casino and its vendors that may occur at the casino cage. Examples include the following:

- a. Entertainment groups, who are usually paid with a casino check, may immediately cash the check at the casino cage to disburse the currency to the individual members.
  - b. Outside businesses, which are not related to the casino, may maintain booths in the casino complex for purposes of advancing currency to individuals by cashing checks, using credit cards, etc. These businesses often use the casino cage as their "bank" for depositing and withdrawing the currency needed to operate the booth.
4. Surveillance logs are a chronological log of activities that are unusual, suspicious or potentially criminal in nature that occur in a casino or card club. Surveillance logs typically contain the date and time each surveillance commenced; the name and license number of each employee who initiates, performs, or supervises the surveillance; the reason for surveillance including the name, if known, alias, or description of each individual being monitored, and a brief description of the activity in which the individual being monitored is engaging; the times at which each video or audio recording is commenced and terminated; the time at which each activity which is unusual, suspicious or potentially criminal in nature is observed along with a notation of the reading on the control meter, counter, or device in the electronic surveillance system that identifies the point on the recording device (e.g., audio or video tape, CD-ROM disc, DVD disc, etc.) at which such activity was recorded; the time surveillance was terminated; and summary of the results of the surveillance.

#### **4.26.9.2.7 (06-01-2006)**

##### **Computer Auditing Techniques**

1. If casino records are computerized and have been retained by the casino, examiners should use the techniques described in this subsection to identify potential reportable currency transactions. As previously stated, if computerized records are available for some transactions but not for others, a combination of these computer auditing techniques and the manual examination techniques described in IRM 4.26.9.2.6 should be utilized.

2. The CAS should develop application programs to identify reportable currency transactions using the casinos retained machine-readable files and records. The computer auditing techniques and sample computer generated reports included in this section are to be used as a guide and are not intended to limit the CAS' ability to customize applications to the casino records being examined. However, computer generated reports should provide the basic information described in the following sections.
3. The CAS should secure machine-readable records of all CTRCs filed by the casino during the examination period from the DCC. The records should be used to produce reports listing all CTRCs filed by the casino in chronological date order and also in alphabetical order by customer name. In addition to the date, customer name, amount, and type of transaction, the report should state whether any of the key items of identifying information was missing from the CTRC. See *Exhibit 4.26.9-7*. See *Exhibit 4.26.9-8*. and See *Exhibit 4.26.9-12*. These reports will be used in conjunction with the other reports generated by the CAS to eliminate correctly filed CTRCs and to identify potential reporting violations.

#### **4.26.9.2.7.1 (06-01-2006)**

##### **Review of Currency Transaction Report by Casinos (CTRCs)**

1. Using the machine-readable records of filed CTRCs, provided by the DCC, the CAS should analyze the records to determine both the number and percentage of filed CTRCs, which are missing key items of required information. See *Exhibit 4.26.9-9*.
2. The CAS should not include missing SSNs of nonresident aliens or missing account numbers on non-account related transactions in the analysis of incomplete CTRCs.
3. The CAS should not include customer PO Box addresses listed on CTRCs in the analysis of incomplete CTRCs. Starting with the July 1997 revision of the CTRC form, casinos and card clubs are permitted to use a PO Box as the permanent address if the customer has no other street address.
4. The CAS should not include CTRCs filed within 30 calendar days from the date of transaction unless the signature date is more than 15 days past the date of transaction. Although the BSA regulations require filing within 15 days of the date of the transaction, the CAS should take into account the time it might

take the Post Office to deliver the mail and the fact that DCC batch processes CTRCs on a weekly basis. Therefore, a CAS should be focusing on CTRCs filed with DCC that are over 30 calendar days after the date of transaction. For any CTRCs that were filed more than 30 days after the date of transaction, determine whether any were amending previously filed CTRCs with a higher amount of transaction occurring in the same directional flow (i.e., both CTRCs are for cash-ins or both are for cash-outs), with a data element (e.g., a SSN) that was previously missing, etc. If a casino was amending previously filed CTRCs, the CAS also should not include these CTRCs as untimely filed.

#### **4.26.9.2.7.2 (06-01-2006)**

##### **Review of Suspicious Activity Report by Casinos**

1. The Examiner should inspect the casino's retained copies of SARCs to determine the level of accuracy and completeness of the reports. Determine if all the required fields are filled out as fully as possible and accurately, including the correct spelling of proper names, the specific type(s) of suspicious activity, and the completion of the "narrative" portion of the form. Identify narratives that do not explain why the activity is suspicious or identify all the activity that occurred.
2. The examiner should compare the casino's retained copies of SARCs to the CBRS records to ensure they have been filed.
3. When the casino has filed SARCs that are missing any of the critical elements required, the examiner should review or test check the casino's supporting documentation or records to determine if the casino had information that would have allowed it to provide more complete SARCs.
4. The examiner should review prepared but not filed SARCs if the casino has a policy for additional analysis and review prior to filing. The examiner should review documentation that supports the conclusion that the transactions were not suspicious but were legitimate.

#### **4.26.9.2.7.3 (06-01-2006)**

##### **Receipt of Currency by the Casino (Cash-in)**

1. Using the casino's machine-readable records of customer account transactions, the CAS should produce a report that will list, in chronological order and in summary form, all of the potential reportable currency transactions related to currency



received by the casino from each of its customers during the review period. The report should identify the aggregated total of all currency received from the customer without regard to where in the casino the transaction occurred or the type of transaction that was conducted.

2. For each potential reportable transaction listed, the report should identify the gaming date of the transaction, the name and account number of the customer, and the total amount of currency received by the casino. The report should also identify the types of transactions being conducted and provide information as to the number of single transactions included within each category. *See Exhibit 4.26.9-9 and See Exhibit 4.26.9-12.*
3. When aggregating cash-in transactions, the CAS should include as many of the types of cash-in transactions described in IRM 4.26.9.2.6.2 as are processed through the computer, and for which there are common customer identifying fields. Generally, player rating records and transactions related to deposit and credit accounts are recorded using the same account number. This report can be produced by sorting these transactions by account number within a gaming day, aggregating the total currency received as recorded in the account, and then printing out the accounts with aggregated total cash-in greater than \$10,000.
4. Before aggregating cash-in slot machine transactions, the CAS should determine if the casino's slot data system separates the dollar amount of paper money received from the dollar value of winning slot paper tickets (which both can be put through a slot machine bill validator), as well as separates the paper money from slot tokens and coins dropped into such machines. Since slot data systems track customer gambling activities at the slot machines through the use of magnetic "slot club membership cards" which are inserted into a receptacle in such machines, the system's software may aggregate the paper money by customer account number. If the system is able to provide such information, the paper money becomes an identifiable customer cash-in transaction. In this situation, the CAS should include the slot data system's tally of paper money by customer number with other types of cash-in transactions described in IRM 4.26.9.2.6.2.

5. Examiners should compare this report to the report of CTCRs actually filed to identify potential failures to file as well as failures to report the correct amount of currency on filed CTCRs.

#### **4.26.9.2.7.4 (06-01-2006)**

##### **Payment of Currency by the Casino (Cash-out)**

1. Using the casino's machine-readable records of customer account transactions, the CAS should produce a report that will list, in chronological order and in summary form, all of the potential reportable currency transactions related to currency payments by the casino to each of its customers during the review period. The report should identify the aggregated total of all currency payments to the customer without regard to where in the casino the transaction occurred or the type of transaction that was conducted.
2. For each potential reportable transaction listed, the report should identify the gaming date of the transaction, the name and account number of the customer, and the total amount of currency paid by the casino. The report should also identify the types of transactions being conducted and provide information as to the number of single transactions included within each category. *See Exhibit 4.26.9-10 and See Exhibit 4.26.9-12.*
3. When aggregating cash-out transactions, the CAS should include as many of the types of cash-out transactions described in IRM 4.26.9.2.6.3 as are processed through the computer, and for which there are common customer identifying fields. This report can be produced by sorting deposit and credit account withdrawals by account number within a gaming day, aggregating the total currency payments recorded in the account, and then printing out the accounts with aggregated total cash-out greater than \$10,000.
4. Examiners should compare this report to the report of CTCRs actually filed to identify potential failures to file as well as failures to report the correct amount of currency on filed CTCRs.

#### **4.26.9.2.7.5 (06-01-2006)**

##### **Detail Listings of Transactions**

1. For all potential reporting violations identified, the CAS should prepare a report listing every transaction conducted by the customer during that gaming day. The report, which will be used to document the violations and to provide necessary audit

trail information back to the casino's original source documentation, should only be prepared for those transactions where potential violations exist. The report should list, in chronological order and in detail form, all of the customer's individual account transactions, whether or not conducted in currency.

2. The report should be prepared for all potential reporting violations including failures to file CTCRs, filing of CTCRs with incorrect amounts and filings of incomplete CTCRs on single transactions. Separate reports may be prepared for cash-in, cash-out and incorrect CTCR violations, or a single report may be prepared that includes all types of reporting violations.
3. In addition to listing every account related transaction conducted by the customer that day, the report should include:
  - a. The customer's name;
  - b. The customer's complete address;
  - c. The customer's SSN;
  - d. The customer's account number; and,
  - e. Information relating to documents used to verify the customer's identity (e.g., drivers license number, passport number, etc.) to the degree that such identifying information is recorded in the system.
4. For each account related transaction listed, the report should include all information needed to document the nature of the transaction, establish knowledge on the part of an employee, and locate the original source documentation. Such information will generally include:
  - a. The time and location of the transaction;
  - b. Document numbers;
  - c. The identities of the casino employees who conducted and approved the transaction;
  - d. The type and amount of the transaction; and,
  - e. The medium used to conduct the transaction (e.g., cash, chips, check, etc.). See *Exhibit 4.26.9-11.* and See *Exhibit 4.26.9-12.*

#### **4.26.9.2.7.6 (06-01-2006)**

##### **Review of Recordkeeping**

1. The CAS should analyze the casino's deposit and credit master files and produce a report listing all customer accounts for which the casino does not have on record the customer's name, permanent address, and SSN.
2. When identifying the number of deposit and credit accounts that are missing both an SSN and a permanent address, the CAS should only include accounts that were opened, or in which there was activity, during the compliance examination period.
3. Based on a test conducted on the \$3,000 monetary instrument log, examiners should produce a report listing any entries for which the casino did not obtain all the required information.
4. Based on a test conducted on the \$3,000 record for funds transfers received or sent by, through, or to a casino on behalf of a customer, examiners should produce a report listing any record for which the casino did not obtain all the required information.

#### **4.26.9.2.7.7 (06-01-2006)**

##### **Additional Analysis**

1. Depending upon the results of the cash-in and cash-out analysis, examiners may wish to expand the scope of the examination to include additional testing of transactions, particularly when the casino's compliance program is totally dependent on data entered into the computer.
2. Examiners may want to include testing of transactions that have been recorded in the computer as having occurred in a form other than currency. If CTRCs are prepared from computer records of transactions, casino employees may attempt to conceal currency transactions by recording them in the system as non-currency transactions. The purpose of these analyses would be to ensure that transactions have not been incorrectly entered into the computer, whether by intent or accident, thereby circumventing the casino's compliance programs. Such analyses may include the following:
  - a. Cash Equivalent Analysis - Using the casino's machine-readable records of customer account transactions, the CAS

can produce a report, similar to the cash-in report, that will list all of the potential reportable currency transactions that would result from a combining of currency with cash equivalents. By matching the transactions to the monetary instrument log required by 31 CFR 103.36(b)(9)(i), or the actual equivalents themselves, misrecorded currency transactions can be identified.

- b. Cage Withdrawals Analysis - Using the casino's machine-readable records of customer account transactions, the CAS can produce a report, similar to the cash-out report, that will list all of the potential reportable currency transactions that would result from a combining of currency with cage checks. By matching the transactions to the cage check register, or the actual checks themselves, misrecorded currency transactions can be identified.

#### **4.26.9.2.8 (06-01-2006)**

##### **Evidence**

1. Examiners should obtain supporting documentation for each potential reporting, recordkeeping, and compliance program violation identified.
2. In the case of failures to file required CTRCs, the supporting documentation may consist of copies of casino documents, prepared at the time of the transaction, that identify the type and amount of the transaction, the character of the transaction and the identity of the persons conducting the transaction. Such documents may include, but are not limited to, player rating cards, deposit and withdrawal slips, payment and redemption vouchers, customer action cards (a.k.a. buckets), computer generated reports and printouts of the preceding documents, Multiple Transaction Logs (MTLs), Form W-2Gs, computerized W-2G records, etc. The documentation must support each finding that a reportable currency transaction has occurred, but was not filed with the IRS.
3. In the case of incomplete CTRCs, supporting documentation should consist of a duplicate of the casino's retained copy of the CTRC.
4. In addition, examiners should obtain supporting documentation establishing that the casino had knowledge that the transaction occurred in an amount greater than \$10,000 and in the form of currency.

- a. Single transactions - In the case of a single transaction, there is prima facie evidence of the casino's knowledge because one employee conducted the transaction with the customer.
  - b. Multiple transactions - In the case of multiple transactions, knowledge must be established through casino reports and procedures.
5. If a report is prepared, manually or by computer, that aggregates and summarizes multiple currency transactions at the end of the gaming day, the casino has knowledge of any reportable transactions identified in the report, even if the report is not specifically used for BSA reporting purposes.
  6. If the casino has procedures in place to aggregate multiple currency transactions, the casino has knowledge of any reportable transactions that are identifiable through those procedures, whether or not the procedures are actually followed.
  7. If it cannot be shown that the casino's employees had knowledge of any potential reporting or recordkeeping violations, the potential violations should be documented to support identified deficiencies in the casino's compliance program.
  8. In the case of failures to file required Suspicious Activity Report by Casinos and Card Clubs (SARCs), the supporting documentation may consist of copies of casino documents, prepared at the time of the transaction, that identify the type and amount of the transaction, the character of the transaction and the identity of the person(s) conducting the transaction. Such documents may include, but are not limited to, credit slips/redemption vouchers, deposit/withdrawal slips, player rating records, computer generated reports and printouts of the preceding documents, canceled checks, credit bureau reports, identification credentials, multiple transaction logs, \$3,000 monetary instrument list, money transfer records, slot club records, spreadsheets, photographs, surveillance audio and/or video recording media, surveillance logs, Forms W-2G, computerized W-2Gs, etc. The documentation must support each finding that a reportable suspicious transaction has occurred, but was not filed with the IRS.

9. In addition, for failures to file SARCs, examiners should obtain supporting documentation establishing that the casino knew, suspected, or had reason to suspect that the transaction:
  - a. Involved funds derived from illegal activity, or was intended or conducted in order to hide or disguise funds or assets derived from illegal activity;
  - b. Designed to evade BSA requirements, whether through structuring or other means;
  - c. Appeared to serve no business or apparent lawful purpose, and the reporting business knew of no reasonable explanation for the transaction after examining all available facts; or,
  - d. Involved use of the reporting business to facilitate criminal activity, and met reporting threshold of \$5,000 or more (in the single event or when aggregated).
10. In the case of incomplete SARCs, supporting documentation should consist of a duplicate of the casino's retained copy of the SARC showing the failure to include all available and relevant information about the transaction found in the casino's records described in subparagraph (8) above.
11. In the case of incomplete records, supporting documentation should consist of a duplicate of the casino's retained copy of the records (e.g., credit slips/redemption vouchers, deposit/withdrawal slips, and \$3,000 monetary instrument list).
12. In the case of the failure to establish or implement a compliance program, the examination workpapers should contain the examiner's findings with respect to whether the casino failed to develop and/or maintain programs to detect and report large currency transactions or suspicious activities or keep required records. Also, the workpapers should contain the examiner's findings with respect to any systemic breakdown of internal controls to assure compliance that was observed. In addition, the workpapers should contain the examiner's findings with respect to whether the appropriate casino officials were aware of compliance problems or deficiencies, but did not take corrective action.
13. Examiners should also obtain supporting documentation that may show the casino employee's knowledge of the BSA reporting and recordkeeping requirements and the duty to file.

Such documentation may include, but is not limited to, internal memoranda, minutes of meetings, training materials, notification letter from the IRS, prior compliance reviews, etc.

14. Since BSA penalties are assessed by FinCEN, which does not have any field examiners, the examiner must thoroughly document all facts on the issue of intent. After the examiner secures the necessary information and documents the apparent violations, the examiner should follow the procedures detailed in IRM 4.26.8.

#### **4.26.9.2.9 (06-01-2006)**

##### **Casino's Position**

1. After documenting the potential violations, the examiner should provide a list of the violations to the casino and solicit a written explanation for each of the violations identified. The list should include:
  - a. Gaming date of the transaction(s);
  - b. Customer name;
  - c. Account number (if any);
  - d. Amount of the currency transaction(s); and,
  - e. Description of the transaction(s).
2. The examiner should advise the casino of any recordkeeping deficiencies as well as any deficiencies in their policies, procedures, internal controls, and compliance programs that might result in noncompliance with the BSA.
3. Any additional documents or information, provided by the casino in response, should be reviewed and a determination made as to whether any items should be removed from the list of violations.
4. When the casino contends that a CTRC was filed and provides its retained copy as evidence, the examiner should query the CBRS database and conduct an exhaustive search before concluding that a CTRC was not received. In conducting the search, the examiner should query all customer numerical identification on the CTRC such as account number (if available), SSN, and identification credential number.



#### **4.26.9.2.10 (06-01-2006)**

##### **Money Laundering Trends**

1. Examiners should be alert to situations where casinos or their customers may structure transactions in amounts of \$10,000 or less to circumvent the reporting requirements of the BSA, particularly if the casino does not have a system of aggregation in place.
2. Examples of how casino employees may structure transactions or advise customers how to avoid a CTRC filing include the following:
  - a. Employees may fragment larger currency transactions into amounts of \$10,000 or less, when preparing source documentation.
  - b. Employees may advise customers to limit their cash activity to amounts of \$10,000 or less per transaction.
  - c. Employees at the gaming tables may advise customers, who are buying chips with cash, that they are approaching the reporting threshold thereby suggesting or implying that they should move to another table. This action could be viewed as potentially assisting in structuring transactions.
3. Examples of how customers may structure transactions, with or without the knowledge of the casino, to avoid a CTRC filing include the following:
  - a. A customer may move from table to table limiting their cash buy-ins to amounts of less than \$10,000 per table.
  - b. A customer may conduct currency transactions at the casino cage in increments of \$10,000 or less. They may conduct the transactions at different windows or at different times of the day using different cashiers.
  - c. A customer may maintain more than one account with the casino, sometimes using an alias, and limit their currency transactions to \$10,000 or less per account.
  - d. A customer may fragment his or her transactions into amounts of \$10,000 or less when redeeming or exchanging chips for cash at the casino cage and may use others as agents to conduct the transactions.

- e. A customer may find out what time of day the casino's business or gaming day is concluded and structure currency transactions around the cut-off time to avoid the filing of a CTRC.
  - f. A customer could purchase a large amount of chips with currency (in amounts just below the reporting threshold) at a table, engage in minimal gaming and then go to the cage and redeem the chips for a casino check.
  - g. A customer could make a large deposit using numerous small denomination bills, engage in minimal gaming and then withdraw the funds in large denomination bills, a casino check or a wire transfer.
  - h. A customer could insert currency into a slot machine bill validator, accumulate credits with minimal or no gaming activity and then cash out the credits for large denomination bills or a casino check.
  - i. A customer may furnish an identification document that is false or altered (e.g., address changed, photograph substituted, etc.) in connection with the completion of a CTRC, or the opening of a deposit, credit or check cashing account.
  - j. A customer may draw large casino markers to purchase chips, engage in minimal or no gaming activity, and then pay off the markers in currency and subsequently redeem the chips for a casino check.
4. When evidence of a money laundering scheme is uncovered, a referral should be made on Form 5104. (Refer to IRM 4.26.8.)

**4.26.9.2.10.1 (06-01-2006)**

**Examination Techniques**

- 1. In addition to the examination techniques outlined in this section, the following techniques can be useful in uncovering money laundering schemes:
  - a. When reviewing customer currency transactions, if an examiner identifies transactions at or near the reporting threshold, the examiner should review all other activity by that customer for that day (and prior and subsequent days) to determine if the customer was attempting to structure transactions and whether a CTRC was required.

2. Examiners should be alert to customers who may be using the casino to facilitate structuring at other financial institutions. Examples include:
  - a. Depositing multiple bank checks of \$10,000 drawn on various banks or on consecutive days at the same bank.
  - b. Depositing or paying off markers with multiple instruments (e.g., cashier's checks, money orders, traveler's checks, or foreign drafts) that appear to have been purchased in a structured manner or were issued by several different financial institutions, and none of the instruments is greater than \$3,000.
  - c. Issuing casino checks, each less than \$3,000, made out to third parties or checks without a specified payee.
  - d. Withdrawing a large amount of funds from a deposit account and requesting that multiple casino checks be issued each of which is less than \$3,000.
  - e. Redeeming chips or withdrawing large amounts from a deposit account and requesting multiple casino checks of \$10,000 or less.
3. When reviewing computerized player-rating records, the examiner should be alert for patterns in which a customer purchases large amounts of chips with currency, engages in minimal gaming and then leaves the table.

#### **4.26.9.3 (06-01-2006)**

##### **Check Cashier Overview**

1. A check cashier is any individual or financial institution that provides a check cashing service regardless of whether or not check cashing is the primary business.
2. Check cashers are used by individuals who may not have a bank account or want to cash checks without the delays and restrictions imposed by a conventional bank. Check cashers can cash checks immediately without waiting for funds to be collected as banks often require. The degree of risk involved is significant, and the check cashier must take measures to reduce the risk in cashing checks.

3. In addition to cashing checks, check cashers may provide additional services such as:
  - a. Issuing or selling money orders, (refer to IRM 4.26.9.6 )
  - b. Processing motor vehicle and title registration forms,
  - c. Accepting utility bill payments,
  - d. Selling public transportation tokens,
  - e. Transmitting funds, (Refer to IRM 4.26.9.7)
  - f. Providing cash advances on VISA or Master Charge,
  - g. Offering "Payday loans,"
  - h. Selling lottery tickets,
  - i. Faxing services, and
  - j. Exchanging currency.
4. Businesses which may conduct check cashing services as a secondary part of their business operations include (list is not all inclusive):
  - a. Truck stops
  - b. Bars, taverns, or liquor stores
  - c. Wire services
  - d. Supermarkets and convenience stores.
5. The location of the check casher may be a key element in identifying the type of transactions conducted. Some examples are:
  - a. Check cashers located in economically depressed areas usually cash checks for state aid, Social Security, unemployment, disability and life insurance, federal and state tax refunds, and support payments for dependent children. Money orders sold, if applicable, are for basic living expenses, such as rent, car loans, insurance, etc.
  - b. Check cashers located in business and financial districts usually cash checks for payroll, professional fees, businesses, escrow checks, legal fees, insurance

settlements, wire transfer drafts, travelers checks, and other money orders or cashier checks. Money orders sold, if applicable, in business and financial districts are frequently in larger denominations. They also sell money orders to "cash" businesses, which do not maintain a security service for transportation of currency. These businesses will purchase a money order to take to their bank instead of cash. Check cashers refer to this type of money order as a "safety check" .

- c. Check cashers, located in middle class areas, tend to be fewer and to have larger but fewer transactions. The money orders sold, if applicable, are more frequently sold in "blank" , meaning the remitter is not identified. Many large transactions are conducted with well-known patrons.
6. Check cashers are one of the five distinctive types of financial services providers known as "money services businesses" or MSBs. Refer to IRM 4.26.5 for a discussion on MSBs.

#### **4.26.9.3.1 (06-01-2006)**

##### **Organization**

1. Check cashing businesses can range from large sophisticated chains with interstate franchised facilities to small one owner store front operations.
2. The organization of a check casher can vary. There is no uniform management structure. However, check cashing chains and franchises are usually structured into several organizational levels to minimize the risks. Each level is authorized to approve certain size transactions. The number of levels may vary depending on the size of the check cashed and the number of branches. A typical structure has a minimum of three levels for approving large currency transactions. See *Exhibit 4.26.9-13*.
  - a. Director/Manager — Oversees the daily operation of the check casher. Normally the manager approves the largest currency transactions and is responsible for maintaining the internal control and records of the operations.
  - b. Head Cashier/Teller Supervisor — Reviews all teller reconciliations. Usually the supervisor will approve medium size transactions (between \$3,000 and \$5,000) and often

receives shipments of currency to and from the correspondent bank.

- c. Teller — Responsible for conducting all transactions including reconciling the total currency transactions to the teller's beginning and ending cash balances. The teller usually will have the lowest authorization for conducting currency transactions. The teller is the front line employee of the check cashing institution who must secure identification from individuals conducting currency transactions.
  - d. AML/BSA Compliance Officer — Responsible for implementing and monitoring the operation and internal controls of the program. In a small business with only a few employees, this person may execute all the tasks himself. In a large, multi-state business, this person may have responsibility for overseeing the system and program.
3. Many check cashers belong to the Financial Service Centers of America (FiSCA, formerly NaCCA - web site address: [www.fisca.org](http://www.fisca.org)), and/or to state or local associations. FiSCA members receive a BSA compliance manual as part of their membership.

#### **4.26.9.3.2 (06-01-2006)**

##### **Law**

1. A person engaged in the business of a check casher (other than a person who does not cash checks in an amount greater than \$1,000 in currency or monetary or other instruments for any person on any day in one or more transactions) is engaged in one type of Money Services Business (MSB) for BSA purposes. 31 CFR 103.11(uu)(2). To the extent that a check casher also redeems either money orders or traveler's checks for currency or other monetary or negotiable instruments, the check casher may also be engaged in another type of MSB: that of a redeemer of money orders or traveler's checks. (Refer to IRM 4.26.9.6, Money Order Overview and IRM 4.26.9.8, Traveler's Checks Overview.) Redemptions of money orders or traveler's checks are not check cashing transactions.

#### **4.26.9.3.2.1 (06-01-2006)**

##### **Reporting Requirements**

1. A CTR, FinCEN Form 104, must be filed for all single currency transactions of more than \$10,000 in one business day (31 CFR 103.22(b)(1)).
2. Multiple currency transactions must be aggregated, and a CTR is required, if the business has knowledge that the multiple transactions are by or on behalf of any person and result in either cash in or cash out totaling more than \$10,000 in one business day.
3. The CTR must be filed within 15 calendar days following the day the reportable transaction occurs (31 CFR 103.27(a)(1)).
4. Although Check Cashers are not required to file TDF 90-22.56, Suspicious Activity Report by Money Services Business (SAR-MSB), they may elect to voluntarily file SAR-MSBs if they suspect or have reason to suspect suspicious activities have occurred (31 CFR 103.20).
5. Check Cashers are subject to the suspicious activity rules to the extent they redeem either money orders or traveler's checks for currency or other monetary or negotiable instruments and hence qualify as redeemers of money orders or traveler's checks, or to the extent that check cashers also offer money transmission, money orders, or traveler's check products, which are subject to SAR reporting.
6. MSBs generally are required to file SAR-MSBs to report suspicious transactions of at least \$2,000 in funds or other assets conducted or attempted by, at or through an MSB (31 CFR 103.20(a)(2)).
7. A check casher is prohibited from notifying any person involved in the suspicious transaction that a SAR has been filed (31 CFR 103.20(d)).
8. The financial institution may be required to file additional reports, such as FinCEN Form 105 (CMIR) or Treasury Department Form TD F 90-22.1 (FBAR.) Refer to IRM 4.26.5 for BSA reporting requirements.

#### **4.26.9.3.2.2 (06-01-2006)**

##### **Registration Requirements**

1. A check casher is required to register on FinCEN Form 107, (formerly TD F 90-22.55), Registration of Money Services Business, and biannually renew their registration if they are not

acting in an agent capacity and are not a branch location (31 CFR 103.41).

2. Certain events require re-registration which is different from a renewal registration (31 CFR 103.41(b)(4)).

#### **4.26.9.3.2.3 (06-01-2006)**

##### **Recordkeeping Requirements**

1. For records required of all financial institutions, refer to IRM 4.26.5.
2. Copies of all filed CTRs must be retained by the financial institution for five years from the date of the report (31 CFR 103.27(a)(3)).
3. Copies of all filed SAR-MSBs and the original or record of any supporting documentation shall be maintained for five years from the date of filing the SAR (31 CFR 103.20(c)).
4. All records created from the AML Program Requirements must be retained for five years.
5. Check cashers are not required to maintain any additional records under BSA regulations. They may be required to maintain additional records if providing other money services, in addition to check cashing, regulated by the BSA.
6. Copy of registration, if applicable, must be retained for five years.
7. Current annual agent list and agent list(s) for the past five years (back to January 2002) must be maintained, if applicable. (31 CFR 103.41(d))

#### **4.26.9.3.2.4 (06-01-2006)**

##### **AML Program Requirements**

1. All money services businesses must establish and implement a written, risk based AML Program reasonably designed to prevent the business from being used to facilitate money laundering and the financing of terrorism.
2. At a minimum, the program shall:



- a. Incorporate policies, procedures, and internal controls reasonably designed to assure compliance with the BSA and its implementing regulations;
- b. Designate a compliance officer;
- c. Provide for education or training of appropriate personnel; and,
- d. Provide for independent review to monitor and maintain the adequacy of the program (31 CFR 103.125).

#### **4.26.9.3.3 (06-01-2006)**

##### **Records Commonly Found**

1. A check casher's records, when the check casher is a chain or franchise include:
  - a. Daily Cash Reconciliation: a record summarizing the total currency transactions during the day which reconciles to the beginning and ending cash on hand;
  - b. Teller Reconciliation: a record detailing individual teller transactions, for both currency and monetary transactions. It reconciles beginning and ending cash on hand and is used to prepare the daily cash reconciliation;
  - c. Daily Bank Reconciliation: reconciles the daily cash transactions to various bank account balances;
  - d. Income Statement: a record of fees received from money order sales, wire transfers, and checks cashed;
  - e. Canceled money orders or cashiers check;
  - f. Bank Statements;
  - g. Signature Cards;
  - h. Transaction Account detailing an individual's record of checks cashed; and,
  - i. Microfilm or photocopies of checks cashed.
2. Records may be stored on microfilm and other medium.
  - a. The check casher may retain microfilm, a copy, or a reproduction in lieu of the original document. The microfilm

of checks cashed is often maintained instead of a check register.

- b. Offsite microfilm records are often maintained by an outside contractor. The examiner should ask the check casher to provide a written release to access the records.
3. If the records are maintained off site, the check casher must make the records accessible within a reasonable period of time, taking into consideration the nature of the records, and the amount of time expired since each record was made.
4. Use of a CAS should be considered if records are voluminous.
5. An example of a BSA compliance audit trail is shown in Exhibit 4.26.9-14.

#### **4.26.9.3.4 (06-01-2006)**

##### **Interview**

1. The BSA examination should include several interviews. Each interview should be documented in the case file.  
Owners/operators, shareholders, directors, managers, tellers, and employees responsible for preparing currency reports, and securing and maintaining records pertaining to the reporting requirements under the BSA should be questioned as to their knowledge and training of the BSA recordkeeping and reporting requirements. Knowledge is one of the elements needed to prove intent for any apparent violation of the regulations.
2. Tellers handling currency transactions should be interviewed. The examiner should ascertain:
  - a. The types of records maintained by the tellers
  - b. The tellers' knowledge of currency transaction reporting requirements
  - c. Their limit for cashing checks without approval and the procedures for cashing large checks
  - d. The procedures and records maintained for large money orders or cashiers checks sold
  - e. Their procedures for preparing CTRs.

3. Responsible officers and supervisory personnel, who approve large currency transactions and/or are responsible for filing CTRs, should be interviewed. Examples may include the head cashier, the manager, the compliance officer, or the owner/operator.
4. The examiner should document the responsibilities and duties of the officers, and secure the officers' identifying information including SSN.
5. During the interview of selected employees, the examiner should determine if the check casher maintains an internal compliance program and whether the program is written. If it is written, a copy of the procedures should be secured. The individual responsible for the internal compliance program must be interviewed.
6. The interview should document sufficient information to describe the operations of the check casher including:
  - a. Internal Control
  - b. Internal Audits
  - c. Chart of Accounts
  - d. Currency Controls
  - e. On-Site Records
  - f. Offsite Records on medium other than hard copy
  - g. Training
7. The interview should identify any related institutions, branches, entities, or lists of other related check cashing facilities. The BSA examiner should submit the information to the BSA Workload Selection coordinator to be added to the Title 31 database.
8. Ask specific questions relating to the business, area and services offered. The examiner must consider all financial services or products offered by the business, such as money remittance, check cashing and sales of money orders.
9. Ask the owners or management of the financial institution if they have knowledge of structuring, or if any suspicious

transactions have occurred. This question must also be asked while interviewing employees who have customer contact.

10. Ask open-ended questions throughout the interview. Do not ask questions that require only a "yes" or "no" answer.
11. For an example of initial interview questions, refer to Exhibit 4.26.9-14. This is only a guide that should be expanded or contracted as each BSA examination warrants.

#### **4.26.9.3.5 (06-01-2006)**

##### **Review of the Records**

1. Any records the check casher maintains for his own business that are relevant to the BSA examination can be requested and reviewed. The BSA examiner will determine whether the check casher maintains adequate records to ascertain if multiple transactions or structuring are taking place. Major recordkeeping inadequacies must be documented in a Letter 1112 or Form 5104.
2. BSA examiners should review the records to familiarize themselves with the check casher's business transactions. The examiner will determine the scope of the records review based on the initial interview. When determining the scope of the examination, the examiner should consider that check cashers who are part of a chain or franchise have internal controls for the handling, recording, and summarizing of cash transactions.
3. The examiner should consider the following steps when reviewing the check casher's records:
  - a. Become familiar with the components of the summary records including both the daily cash reconciliation and teller reconciliations,
  - b. Trace the teller reconciliation totals to the teller summary,
  - c. Trace the teller summary totals to the daily cash reconciliation,
  - d. Trace the daily cash reconciliation totals to the vault reconciliation, bank reconciliation, and bank statements,
  - e. Trace deposit slips to the teller summary totals and the correspondent bank records. Determine if the total amount of checks deposited agree with amount of checks cashed.

The check casher's transactions for "cash in" and "cash out" are frequently netted against each other before being deposited into the correspondent bank. Therefore, the items of deposit often reflect the netted transactions for the day. Monetary instruments are deposited, and currency is returned to the check casher's vault.

- f. The above records should allow the examiner to determine specific dates when money orders were sold (if applicable) or checks were cashed that require a CTR.
  - g. Verify that summary documents accurately record information from source documents for the selected period.
  - h. Inspect filed copies of CTRs for accuracy and completeness of information and verify they were timely filed. A copy of each CTR filed must be retained by the financial institution for a period of five years from the date of the report (31 CFR 103.27(a)(3)).
  - i. Determine if all the required information for purchases of money orders involving currency in amounts of \$3,000 to \$10,000, inclusive, is maintained, if applicable.
  - j. Test check signature cards.
4. Analyze the bank reconciliations, the cash on hand records, and the teller reconciliations to identify large transactions. The examiner should look for decreases in the amount of ending cash on hand or amounts withdrawn from the correspondent bank. Large decreases or withdrawals of cash could indicate large checks were cashed. The examiner should note the dates when amounts could exceed \$10,000 or transactions appear to be structured to avoid the \$10,000 threshold.
  5. Review the check register or the microfilm or photocopies of cashed checks for transactions over \$10,000 that may indicate money laundering and/or structuring. The examiner may elect to select a dollar cutoff for inspecting cashed checks. Because of the dollar amounts involved, the majority of checks cashed by a typical check casher may not be relevant to the BSA examination. These generally include social security checks, welfare checks, payroll checks, etc.
  6. If a database is used to input the data from selected cashed checks for sorting purposes.

7. If a determination is made that records are inadequate, destroyed, or not maintained, the examiner should:
  - a. Expand the scope of the BSA examination;
  - b. Document all problem areas and findings in the workpapers; and,
  - c. Consider issuing a summons to a third party recordkeeper for missing or incomplete information. If the third party recordkeeper is a bank, sample periods should be selected carefully based on existing records. (Refer to IRM 4.26.8 for summons procedures.)
8. If the examiner determines a CTR should have been filed or the required recordkeeping or reporting requirements are not met, the transaction should be traced to the internal compliance program. The examiner should:
  - a. Determine the reason the internal procedures failed, and
  - b. Verify that adequate identification was required by the check casher by inspecting the appropriate signature card or similar record.
9. Review any SARs filed by the NBF.
10. Review relevant audit reports or reviews that address BSA policies, procedures, or operations for BSA relevant issues.
11. Prepare a Letter 1112 or a Form 5104 referral for all failures to file FinCEN Form 104, CTR, and any recordkeeping violations. Prepare in accordance with the examination guidelines . (Refer to IRM 4.26.8 for Letter 1112 and referral procedures.)
12. Only the apparent violations, which have actually been detected during the time period of the BSA examination, are considered for inclusion on a Letter 1112 or Form 5104 referral. At no time, should the examiner include any apparent violations that have possibly occurred in time periods outside the scope of the current BSA examination without expanding the scope.
13. Follow procedures in IRM 4.26.6 to conclude the BSA examination.
14. Consider preparing Form(s) 5346, Examination Information Report, when information is obtained during the BSA

examination that indicates a possible income tax violation warranting referral. (Refer to IRM 4.26.6.)

15. Review filed registrations (if applicable) for accuracy and completeness.
16. Determine whether the check casher is required to register.
17. Review agent list (if applicable) for all required elements.
18. Forward a copy of the agent list to the BSA Workload Selection coordinator in a separate shipment from the case file.
19. Review agent contracts for terms for acceptance and termination of an agent.
20. Identify all persons rejected or terminated as an agent and forward list to the BSA Workload Selection coordinator in a separate shipment from the case file.

#### **4.26.9.3.6 (06-01-2006)**

##### **Evidence**

1. The examiner must obtain supporting documentation for each type of the following violations:
  - a. Reporting – The date of the transaction, the amount, the individuals involved and a detailed statement regarding the violation, including copies of source documents such as cash in/out slips, control registers, and teller cash proofs which support the violation.
  - b. Recordkeeping – The details of the specific records which were not maintained or were inadequate, including management’s response to the violations.
2. The financial institution's knowledge of the BSA requirements must be determined before deciding whether violations should be formally referred to Treasury.
  - a. The key officers and employees should be interviewed again to document the check casher’s response to any apparent violations.
  - b. The existence of an internal compliance program may indicate knowledge. For example, if knowledge of the reporting and recordkeeping requirements is limited to

upper management and the tellers are not similarly educated, the check casher may be at least negligent (for not properly instructing the tellers). The tellers need to know what their BSA obligations are. The tellers are the initial contact point where the information is obtained.

3. Other factors indicating the money services business' knowledge of the BSA registration, reporting, recordkeeping, and compliance program requirements are:
  - a. Prior BSA violations and BSA compliance related contacts with the IRS
  - b. Training programs offered by the money services business
  - c. The MSBs formal BSA compliance procedures
  - d. Active involvement of management in oversight and internal control activities
4. In situations where knowledge can not be established within the scope of selected records, the examiner should expand the period to include recent transactions that occurred after knowledge can be clearly documented. For example, the examiner selected records for January, February, and March. The inspection of these records disclosed currency transactions that appear to be structured and which should have been reported. The check casher denied knowledge of the structuring regulations during the initial interview. In April, the examiner informed the check casher about the suspicious transactions and of the structuring regulations. The examiner later expanded the examination period to include May and June transactions. The examiner found violations in May and June. The check casher's knowledge was documented during the notification of the structuring violations and took no action to prevent the recurrence of violations. The check casher's intent not to comply should be documented.
5. Because willfulness is a state of mind, generally only circumstantial evidence of willfulness will be available. A willful violation is the intentional violation of a known legal duty.
6. Since BSA penalties are assessed by FinCEN, which does not have any field examiners, the examiner must thoroughly document all facts on the issue of intent. After the examiner secures the necessary information and documents the apparent



violations, the examiner should follow the procedures detailed in IRM 4.26.8.

#### **4.26.9.3.7 (06-01-2006)**

##### **Check Cashier's Position**

1. After documenting the potential violations, the examiner should provide a list of the violations to the money services business and solicit a written explanation for each of the violations identified. The list should include:
  - a. Date of the transaction;
  - b. Customer name;
  - c. Account number (if any);
  - d. Check number (if any);
  - e. Amount of the currency transaction(s); and,
  - f. Description of the transaction(s).
2. The examiner should advise the money services business of any recordkeeping deficiencies as well as any deficiencies in their policies, procedures, internal controls, and compliance programs that might result in noncompliance with the BSA.
3. Any additional documents or information, provided by the money services business in response, should be reviewed and a determination should be made as to whether any items should be removed from the list of violations.
4. When the money services business contends that a CTR was filed, and provides its retained copy as evidence, the examiner should query the CBRS database and conduct an exhaustive search before concluding that a CTR was not received. In conducting the search, the examiner should query all customer numerical identification on the CTR such as account number (if applicable), SSN and identification credential number.

#### **4.26.9.3.8 (06-01-2006)**

##### **Money Laundering Trends**

1. The financial institution and/or the customer can be involved in potential money laundering schemes. The examiner must focus

on both the financial institution and the transactor(s) during the BSA compliance examination.

2. Money laundering techniques which could be used by the financial institution include:
  - a. Failing to maintain complete records
  - b. Failing to record specific transactions
  - c. Failing to obtain the required information to comply with the recordkeeping requirements
  - d. Failing to file CTRs on reportable transactions
  - e. Filing incomplete CTRs or SARs
  - f. Structuring a transaction by breaking one transaction into several to circumvent the reporting requirements
  - g. Issuing money orders, drafts or IOU's to keep transactions under the \$10,000 reporting requirement
  - h. Receiving currency from an outside source in exchange for checks received from the check casher's customers.
3. Money laundering techniques which could be used by the customer/transactor include:
  - a. Using multiple locations to conduct transactions
  - b. Using several individuals at one or more locations to conduct a transaction
  - c. Using aliases when conducting transactions
  - d. Conducting numerous transactions at the same location at different times during one day
  - e. Requesting money orders, drafts or IOU's when cashing checks to circumvent a reporting requirement
  - f. Check cashing conducted by the same customer in which the payee name varies
4. When evidence of a money laundering scheme is uncovered, a referral should be made on Form 5104. (Refer to IRM 4.26.8 for referral procedures.)

#### **4.26.9.3.8.1 (06-01-2006)**

##### **Examination Techniques**

1. The following techniques can be useful in uncovering money laundering schemes:
  - a. Review all bank statements to ensure the check casher is withdrawing sufficient currency to meet the requirements of any checks cashed. If not sufficient, then sources of cash should be investigated in greater depth.
  - b. Review records for any indications of false recordkeeping entries, i.e. IOU's, backdating or post dating transactions, or multiple transactions during one day in which the books and records indicate different posting days.
  - c. Determine if the business has paid out funds for cashed checks in excess of what it has withdrawn from its bank. This might indicate that the business is laundering funds for someone else by exchanging their cash for checks. Compare the cash withdrawn for a period to the amount of checks deposited. The amounts should be close in value unless the business has significant sales of other products or services. Also, compare fees actually earned from cashing checks for a period to the fees that should have been earned from the amount of checks deposited.
  - d. Review all financial services offered to see if the financial institution and/or customers are structuring transactions by using a variety of financial services.

#### **4.26.9.4 (06-01-2006)**

##### **Credit Unions Overview**

1. Credit unions are financial cooperatives which are owned by their respective members. The members must share a common characteristic such as belonging to the same organization, work for a common employer, or live within a specific geographic area.
2. The primary function of a credit union is to provide savings accounts and make low interest loans to its members. Larger credit unions provide other financial services for their members including:
  - a. Share draft/demand deposit accounts

- b. Share certificate/money market accounts
  - c. Check cashing services
  - d. Sales of traveler's checks
  - e. Sales of money orders
  - f. Sales of cashier's checks or credit union drafts
  - g. Wire transfer services
  - h. Credit card services
3. The members' transactions with the credit union include share deposits, share drafts and share loans.
  4. Most credit unions are not members of the Federal Reserve System. Therefore, they require commercial bank accounts to conduct transactions within the Federal Reserve System such as clearing share drafts written on member accounts and currency withdrawals and deposits.
  5. Credit unions operate under a charter issued by either the Federal Government or the State where they are located. The National Credit Union Shares Insurance Fund (NCUSIF), which is administered by the National Credit Union Administration (NCUA), provides federal share insurance for all of the nations federally chartered and most state chartered credit unions. Federal insurance can be obtained by those institutions that are state chartered. Several states require state chartered credit unions to maintain federal share insurance.
  6. The NCUA, an independent federal agency, is responsible for the examination and supervision of federally chartered credit unions.
  7. There are three types of credit unions:
    - a. Federally Chartered, Federally Insured - The NCUA is the primary regulator for these financial institutions and examines these annually for safety and soundness.
    - b. State Chartered, Federally Insured - The NCUA has jurisdiction over these financial institutions, but a state regulator agency is typically the primary regulator.

- c. State Chartered, Non-Federally Insured - The NCUA has no jurisdiction over these financial institutions and state agencies are the primary regulators.
8. There are gaps in the responsibility for examining credit unions for BSA compliance. The NCUA has no authority over state chartered, non-federally insured credit unions and only partial responsibility for state chartered, federally insured credit unions. IRS examination has the responsibility for conducting BSA examinations of state chartered, non-federally insured credit unions.
9. The Federal Credit Union Act, promulgated by Congress on June 26, 1934, requires the NCUA to adopt regulations requiring federally insured credit unions to establish and maintain procedures designed to assure and monitor compliance with the requirements of Subchapter II of Chapter 53 of Title 31, United States Code (the BSA reporting and recordkeeping requirements).
10. Every state except Delaware, South Dakota, Wyoming, and the District of Columbia has enabling legislation, which allow states to charter credit unions.
11. The NCUA examines federally chartered and federally insured credit unions for compliance with the BSA reporting and recordkeeping requirements.
12. The Credit Union National Association (CUNA) is a national trade association for credit unions and provides various services to member institutions.

#### **4.26.9.4.1 (06-01-2006)**

##### **Organization**

1. The operating parameters and limitations of a credit union are defined by its charter and bylaws. Strategic planning and direction of operations is performed by a Board of Directors and various committees. The Board and committee members are directly elected by the shareholders/members of the credit union.
2. A supervisory committee oversees operations. The committee usually reviews books and records at least every 6 months and makes a complete verification of records at least every two

years. The committee's task may include testing of internal control procedures for BSA compliance.

3. Since the members directly elect the Board and oversight committees, failures associated with privately owned institutions may not occur. However, the examiner should be alert to failures on the part of the officers and employees.
4. Operations Personnel:
  - a. BSA Compliance Officer - Is designated by the Board to implement BSA control procedures. The compliance officer performs oversight review of the books and records to insure compliance with the BSA. BSA training for personnel, if any, is normally conducted by this function.
  - b. Manager/Branch Manager - Oversees the day to day operations of the credit union and is responsible for BSA compliance.
  - c. Cash Control/Head Teller - Monitors currency in and out of the cash control system and currency transfers between tellers. This individual monitors all currency received and currency shipped by the credit union. This teller's approval is usually required on all large dollar transactions conducted with members. Credit unions may require that all large dollar transactions be conducted by this teller.
  - d. Teller - Conducts transactions with and provides services to members. Tellers are usually responsible for initiating the BSA reporting and recordkeeping requirements such as verifying the customer's identification and soliciting required information.

#### **4.26.9.4.2 (06-01-2006)**

##### **Law**

1. Credit unions are defined as banks or depository institutions per 31 CFR 103.11(c)(6).
2. Credit unions are allowed to exempt, from the CTR reporting requirements, certain transactions between themselves and customers which meet the qualifications of an exempt person as defined in 31 CFR 103.22(d) effective October 21, 1998.

3. Federally insured credit unions (federally chartered and state chartered) are required to implement and maintain an anti-money laundering program (31 CFR 103.120 and 12 CFR 748.2).
4. Although 31 CFR 103.121(b)(1) requires credit unions, including non-federally insured credit unions, to implement written Customer Identification Programs, non-federally insured credit unions have been temporarily exempted from the requirement to establish anti-money laundering programs (31 CFR 103.170(b)(2)).
5. All credit unions (federally chartered or state chartered and federally insured or privately insured) are required to implement a written Customer Identification Program (31 CFR 103.121).

#### **4.26.9.4.2.1 (06-01-2006)**

##### **Reporting Requirements**

1. A CTR (FinCEN Form 104) must be filed for all currency transactions of more than \$10,000 in one business day (31 CFR 103.22(b)(1)).
2. Multiple currency transactions must be aggregated, and a CTR is required, if the business has knowledge that the multiple transactions are by or on behalf of any one person and result in either cash in or cash out totaling more than \$10,000 in one business day. Deposits made at night or over a weekend or holiday shall be treated as if received on the next business day following the deposit (31 CFR 103.22(c)(2)).
3. The CTR must be filed within 15 calendar days following the day the reportable transaction occurs (31 CFR 103.27(a)(1)).
4. FinCEN Form 105 (CMIR) must be filed by any person who transports, mails or ships or has someone else transport, mail or ship currency or monetary instruments in excess of \$10,000 into or out of the country or who receives such items into the United States from abroad (31 CFR 103.23).
5. A CMIR must be filed with the U.S. Customs Service at the time of entry into the United States or at the time of departure, mailing or shipping from the United States (31 CFR 103.27(b)(1)).

6. Any person receiving currency or monetary instruments in excess of \$10,000 from outside the United States is required to file a CMIR within 15 days (31 CFR 103.27(b)(2)).
7. Treasury Department Form TD F 90-22.1 (FBAR) must be filed for any financial interest in or signature or other authority over a bank, securities, or other financial account which exceeds \$10,000 at any time during the calendar year (31 CFR 103.24).
8. The FBAR must be filed by June 30th of the succeeding year (31 CFR 103.27(c)).
9. Treasury Department Form TD F 90-22.47 (SAR) is required to be made by banks or other depository institutions if they suspect or have reason to suspect suspicious activities have occurred (31 CFR 103.18).
10. This report applies to suspicious transactions of at least \$5,000 in funds or other assets conducted or attempted by, at or through banks or other depository institutions (31 CFR 103.18 (a)(2)).
11. Generally, a bank is required to file the SAR with FinCEN, through DCC, no later than 30 calendar days after the date of detection, or 60 calendar days after the date of detection but, if no suspect was identified on the date of detection, the bank may delay filing the SAR for an additional 30 calendar days to identify the suspect. (31 CFR 103.18(b)(3)).
12. A bank or other financial institution is prohibited from notifying any person involved in the transaction that the transaction has been reported. (31 CFR 103.18(e))
13. FinCEN Form 110(Formerly TD F 90-22-53), Designation of Exempt Person, must be filed on each person being designated as exempt by the close of the 30-day period beginning after the day of the first reportable transaction in currency with that person sought to be exempted (31 CFR 103.22(d)(3)).

#### **4.26.9.4.2.2 (06-01-2006)**

##### **Recordkeeping Requirements**

1. For records required of all financial institutions, refer to IRM 4.26.5.



2. Copies of all filed CTRs must be retained by the financial institution for five years from the date of the report (31 CFR 103.27(a)(3)).
3. Copies of all filed SARs and the original or record of any supporting documentation shall be maintained by the financial institution for five years from the date of filing the SAR (31 CFR 103.18(d)).
4. For additional records to be made and retained by credit unions, refer to 31 CFR 103.34.
5. For records required to be maintained for exempt customers, including FinCEN Form 110(Formerly TD F90-22.53), refer to 31 CFR 103.22(d).
6. For records required to be maintained for the issuance or sale of credit union checks, cashier's checks, money orders or traveler's checks which involve currency in amounts of \$3,000 to \$10,000, inclusive, refer to 31 CFR 103.29.
7. For records required to be maintained for funds transfers (wires) of \$3,000 or more, refer to 31 CFR 103.33.
8. For records required to be maintained by persons having a financial interest in or signature or other authority in foreign financial accounts, refer to 31 CFR 103.32.
9. Records must be retained by the financial institution for five years (31 CFR 103.38(d)).

#### **4.26.9.4.2.3 (06-01-2006)**

##### **AML Program Requirements**

1. All federally insured credit unions must establish and implement a written, risk-based AML Program reasonably designed to prevent the business from being used to facilitate money laundering and the financing of terrorism.. Non-federally insured credit unions have been temporarily exempted from the requirement to establish anti-money laundering programs (31 CFR 103.170(b)(2)).

#### **4.26.9.4.3 (06-01-2006)**

##### **Records Commonly Found**

1. Credit unions vary significantly in size and the types of services offered. Therefore, the nature of the credit union's books and records vary.
2. Smaller institutions, whose services are limited to share deposit and share loan accounts may not conduct any currency transactions. These institutions often have very simple handwritten transaction records and manual bookkeeping systems.
3. Larger institutions may have several branches and offer extensive financial services. These institutions usually have on line data processing systems, detailed currency control policies, and sophisticated internal control procedures.
4. In addition to the required records listed in 4.26.9.4.2.2, records commonly found at credit unions include:
  - a. Daily teller drawer and vault reconciliations,
  - b. Customer deposit, withdrawal and payment vouchers,
  - c. Summary reports of outstanding loans, certificates of deposit etc.,
  - d. Cashier's check, money order, traveler's check and other negotiable instrument logs, and
  - e. Credit union bank statements, deposit slips and canceled checks.
5. Additional records may include:
  - a. A journal and cash record/daily transactions report which is a permanent record of daily transactions. All member transactions conducted during the day are individually posted to this journal. It may be summarized on a daily basis, depending on the accounting system.
  - b. A large currency transaction report or suspicious transaction report which lists all cash transactions over a management defined dollar limit. Supervisory personnel review this report to ensure all required CTRs are prepared each day.
6. An example of a BSA examination audit trail is shown in Exhibit 4.26.9-17.

#### **4.26.9.4.3.1 (06-01-2006)**

##### **Terminology**

1. Cash Control System - A centralized recordkeeping and control system to monitor cash transfers within the credit union and cash sent to and received from correspondent banks.
2. Cash Received Voucher/Cash Payment Voucher - Individual receipts for transactions conducted with members that reflect activities conducted with both currency and negotiable instruments, such as checks.
3. Cash In/Out Slips - Individual documents prepared by the teller to reflect currency taken in and paid out.
4. Exempt Customer - A credit union member who meets the requirements of 31 CFR 103.22(d) to be excluded from the CTR reporting requirement.
5. Share - Ownership interest in a credit union. A typical par value is \$5.
6. Share Draft Account - This is similar to a checking account with a bank. The member may write drafts (checks) to 3rd parties.
7. Share Savings Account - The member's savings account with the credit union. The interest earned on the savings account is called a dividend.

#### **4.26.9.4.3.2 (06-01-2006)**

##### **Cash Control System**

1. Operating cash is ordered and received from a correspondent bank. Source documents which support this transaction include credit union checks made to cash, bank account debit memos, and currency order sheets.
2. When the cash is received, the cash control teller makes an entry in the credit union's cash control system. The appropriate debit and credit is recorded in the cash in bank and cash on hand account.
3. Cash is then disbursed to each teller for conducting daily transactions. An entry is made in the cash control system to record the amount of cash issued.

4. Each teller maintains an individual teller cash control sheet to record daily transactions. The teller cash control sheet details the amount of cash received by denomination. The teller also records additional internal cash transfers that occur during the day.
5. Tellers conduct cash in transactions for share deposits, sales of money orders, traveler's checks and cashier's checks and loan payments. All deposits and sales are not conducted with cash. Members may deposit checks into share accounts and may use share drafts or share savings withdrawals to purchase negotiable instruments.
6. Tellers conduct cash out transactions for share withdrawals and check cashing. Share withdrawals may be paid by cash or a credit union share draft.
7. When cash is used during a teller transaction, a document for cash in/out should be prepared. This could include a cash in slip or computer coding for cash transactions on a cash received/payment voucher.
8. At the end of the day, tellers reconcile their cash control sheets to their ending cash balance and source records. The control sheet, source records and currency are turned into the cash control teller.
9. The cash control teller then enters all ending currency balances into the cash control system log. The ending cash on hand is then reconciled to the daily activities. A cash control system reconciliation proof/report is prepared to account for the financial institution's total cash on hand.
10. If cash on hand exceeds the operating requirements of the credit union, the excess funds are deposited into the bank. If the currency amount is less than the required amount, a currency request is prepared and sent to the bank. At this point, the daily currency cycle has ended.

#### **4.26.9.4.4 (06-01-2006)**

##### **Interview**

1. An interview should be conducted at the credit union's main location, with a credit union officer, BSA compliance officer and/or other key personnel who have knowledge of the credit union's operations, policies and internal control procedures.

Determine who is responsible for compliance with the BSA recordkeeping and reporting requirements.

2. Document the credit union's background history, the number of branches operated and affiliated organizations.
3. Identify the BSA compliance officer and all other personnel who are responsible for conducting, recording and reporting of BSA transactions and evaluate their understanding of the BSA recordkeeping and reporting requirements. It is important to determine the extent of the interviewee's knowledge of the BSA requirements should any violations be noted during the examination. These individuals should be identified by name, title and specific responsibilities.
4. Tellers handling currency transactions should be interviewed. The examiner should ascertain:
  - a. The types of records maintained by the tellers;
  - b. Their knowledge of currency transaction reporting requirements;
  - c. Their dollar limit for cashing checks without approval and the procedures for cashing large checks; and
  - d. Their procedures for preparing CTRs.
5. Responsible officers and supervisory personnel, who approve large currency transactions and/or are responsible for filing CTRs, should be interviewed. These individuals may include the BSA compliance officer, manager and/or head teller. The examiner should ascertain:
  - a. The procedures for recording currency transactions and the filing of CTRs, CMIRs, FBARs and SARs, and
  - b. Their knowledge of structuring or if any suspicious transactions have occurred.

**Note:**

This question also must be asked while interviewing employees who have customer contact

6. Each interview should be documented in the case file.

7. Interview the AML compliance officer, as well as compliance program employees. Determine level of familiarity with internal compliance programs and internal controls.
8. Ask specific questions to determine the financial services offered by the credit union. The examiner must consider all financial services or products offered by the credit union such as money remittance, check cashing, and sales of money orders and/or traveler's checks.
9. Ask open-ended questions throughout the interview. Do not ask questions that require only a yes or no answer.
10. For examples of possible initial interview questions, See *Exhibit 4.26.9-19*. This is only a guide that should be expanded or contracted as each BSA examination warrants.

#### **4.26.9.4.5 (06-01-2006)**

##### **Review of the Records**

1. Any records the credit union maintains that are relevant to the BSA examination can be requested and reviewed. The examiner will determine if the credit union is maintaining adequate records and must document any recordkeeping violations.
2. Ask to see the credit union's policy and procedures manual regarding the BSA identification, recordkeeping, reporting and exemption requirements. The examiner should determine if the institution's BSA information is correct and its procedures are adequate.
3. Review in house training programs and inspect retained training records. The examiner should inspect records of external training such as certificates of course completion. Most individual state credit union leagues and trade associations offer BSA training courses for all levels of personnel, and provide documentation of attendance.
4. Identify dates during which large currency transactions occurred. The examiner should review currency received from or shipped to the correspondent bank using:
  - a. Bank statements and reconciliations, deposit tickets and source documents for currency withdrawals such as debit memoranda;

- b. Cash on hand ledger account or other summary currency reports; and,
  - c. Cash control system records which reflect daily cash reconciliations, change fund ledger account, bank statements or other activity summary records to determine dates during which large transactions may have occurred.
5. Review relevant audit reports or reviews that address BSA policies, procedures or operations for BSA-relevant issues.
6. Inspect the tellers' cash control proofs and supporting cash in/out documents to identify specific large currency transactions. Based on the information obtained from the preplan, interviews, and review of written records, select a sample of transactions consisting of amounts ranging from a minimum of \$3,000 to greater than \$10,000.
7. Trace the sampled transactions through the internal control system to CTR filings for amounts greater than \$10,000. If there is a transaction over \$10,000 and no CTR was filed, check to see if the customer has been designated as an exempt person before determining if an apparent reporting violation has occurred.
8. Review the credit union's retained copies of CTRs for accuracy and completeness.
9. Compare the credit union's retained copies of CTRs to the CBRS record to insure they have been filed.
10. Review Forms 90-22.1 (FBAR) if the credit union maintains foreign bank accounts or has signature authority or financial interests in foreign countries.
11. Review FinCEN Form 105(CMIR) if the credit union is involved with the transportation of currency into or out of the U.S.
12. Review the credit union's records maintained for the sale of bank checks or drafts, cashier's checks, money orders, and/or traveler's checks for amounts involving currency in amounts of \$3,000 to \$10,000, inclusive. Ensure all required information has been obtained pursuant to the recordkeeping requirements of 31 CFR 103.29.
13. Review the credit union's records to determine if all the required information on money transmittals (such as wire

transfers) of \$3,000 or more has been obtained and retained pursuant to the recordkeeping requirements of 31 CFR 103.33.

14. Evaluate the credit union's recordkeeping procedures relating to customer account activities and certificates of deposits pursuant to the recordkeeping requirements of 31 CFR 103.34.
15. Review the SAR file to determine if there are recurring patterns of activity by the same or related members of the credit union. If patterns are noted, question the appropriate personnel as to the actions taken with regard to the transactions. A detailed analysis of suspicious transactions may be warranted to determine if the individuals are utilizing the credit union for structuring activities. Contact the BSA Workload Selection coordinator to determine whether a referral is warranted or whether to expand the review of the SAR file.
16. If weak internal controls were noted or lack of management oversight was determined, the examiner should consider expanding the scope of the BSA examination. The examiner should also consider expanding the scope to other branches/offices, if applicable.
17. If potential reporting and recordkeeping violations are noted, the examiner should discuss the violations with the BSA group manager prior to expanding the scope. Depending on the frequency and nature of the violations, the examiner may not need to expand the scope, i.e. minor recordkeeping violations. The manager will decide whether or not to refer the violation to the Financial Crimes Enforcement Network for possible enforcement action.
18. Other considerations for expanding a BSA examination include prior violations, management cooperation and the filing history recorded on CBRS.
19. When expanding the BSA examination, the examiner should consider performing the following:
  - a. Review the credit union's bank statements for activities conducted on the dates selected. Inspect deposit tickets for currency and currency withdrawal source documents such as debit memos and checks.
  - b. Trace currency withdrawals and deposits from the bank deposit slips and currency withdrawal source documents to the cash control system reconciliation reports.



- c. Reconcile the individual teller cash control sheets to the cash control system reconciliation report totals. Reconcile the cash control system reconciliation beginning/ending cash on hand balances to prior and subsequent cash on hand balances.
  - d. Review individual teller daily cash control sheets and supporting cash in/cash out slips for currency transactions in excess of \$3,000.
- 20. If the credit union has one teller who conducts all large currency transactions, the examiner should focus on the transactions conducted by that teller.
- 21. Trace transactions for the purchase of money orders, traveler's checks, bank drafts, and cashier's checks involving currency in amounts of \$3,000 to \$10,000, inclusive, to the records required by 31 CFR 103.29.
- 22. Trace all transactions for currency deposited or withdrawn in excess of \$10,000 to the retained copies of CTRs or to the exempt customer list.
- 23. If questionable transactions are identified as being conducted by a customer designated as an exempt person, the examiner may want to review the suitability of the exemption.
- 24. The examiner should be alert to transactions or patterns that may indicate potential structuring activities. If structuring is suspected, the examiner should:
  - a. Review the specific member accounts where unusual patterns of activity have occurred. Statements of account transactions for all accounts held by the member should be inspected.
  - b. Related members accounts should be reviewed for transactions occurring in the same general time period.
- 25. If potential violations are being conducted through the purchase of traveler's checks, money orders, bank drafts, and cashier's checks, the examiner should review the specific control register used for the negotiable instrument sales to determine the extent of the potential violations.

26. When apparent violations have been detected, the examiner should interview management and any other personnel involved. All discussions should be documented in the case file.
27. Follow procedures in IRM 4.26.6 to timely conclude the BSA examination.
28. Consider preparing Form(s) 5346, Examination Information Report, when information is obtained during the BSA examination that indicates a possible income tax violation warranting referral. (Refer to IRM 4.26.6.)

#### **4.26.9.4.5.1 (06-01-2006)**

##### **Review of Exempt Customers**

1. The examiner will ensure that the credit union is properly designating customers as exempt persons by filing a FinCEN Form 110 (Formerly TD F 90-22.53), Designation of Exempt Person, by the close of the 30 day period beginning after the day of the first reportable transaction in currency with that person is sought to be exempted.
2. Verify the credit union's procedures for exempting transactions of certain depositors from the CTR reporting requirement conform to the requirements of 31 CFR 103.22(d).
3. Obtain copies of FinCEN Form 110 (Formerly TD F 90-22.53) filed by the credit union. Customers designated as exempt persons need to meet the specific requirements of 31 CFR 103.22(d)(2).
4. Review those customers designated as exempt persons which are non-listed businesses (as defined in 31 CFR 103.22(d)(vi) since money launderers would most likely try to use this type of business to disguise the source of their funds. Verify the following:
  - a. The credit union has only exempted customers meeting the requirements of an exempt person as defined in 31 CFR 103.22(d)(2). Pay close attention to non-listed businesses to ensure that they are not primarily engaged in ineligible businesses as set forth in 31 CFR 103.22(d)(6)(viii).
  - b. The credit union annually reviews the information supporting each designation of an exempt person and the application to each account of a non-listed business or payroll customer of the monitoring system required to be

maintained to detect suspicious transactions (31 CFR 103.22(d)(4)).

- c. That a biennial renewal for the continuation of treatment as an exempt customer that is a non-listed business or a payroll customer has been made (31 CFR 103.22(d)(5)).
- d. The required documentation has been maintained that shows how the customer was determined to be an exempt person (31 CFR 103.229(d)(6)).
- e. All suspicious transactions have been reported, whether or not the customer has been designated as an exempt person (31 CFR 103.22(d)(9)).

#### **4.26.9.4.5.2 (06-01-2006)**

##### **Review of Customer Identification Program**

1. Verify that the credit union has implemented a written Customer Identification Program (CIP) (31 CFR 103.121(b)(1)).
2. Verify that the CIP has been approved by the Board of Directors.
3. Verify that the written CIP is appropriate for the size and type of business of the credit union, and includes each of the requirements of 31 CFR 103.121(b)(1) specifically:
  - a. General requirements;
  - b. Identity verification procedures;
  - c. Recordkeeping;
  - d. Comparison with government lists; and,
  - e. Customer notice.

#### **4.26.9.4.6 (06-01-2006)**

##### **Evidence**

1. The examiner must obtain adequate supporting documentation for each type of the following violations:
  - a. Reporting - The date of the transaction, the amount, the individuals involved and a detailed statement regarding the violation, including copies of source documents such as

- cash in/out slips, control registers and teller cash proofs which support the violation.
- b. Recordkeeping - The details of the specific records which were not maintained or were determined to be inadequate, including management's response to the violations.
  - c. Exempt Customers - The nature of the violation, the account history, type of business and the frequency of exempt transactions
- .
2. The credit union's knowledge of BSA requirements must be determined before determining whether violations should be formally referred to FinCEN.
    - a. The key officers and employees should be interviewed again to document the credit unions response to any apparent violations.
    - b. The existence of an internal compliance program may indicate knowledge. For example, if knowledge of the reporting and recordkeeping requirements is limited to upper management and the tellers are not similarly educated, the credit union may be at least negligent (for not properly instructing the tellers.) The tellers need to know what their BSA obligations are. The tellers are the initial contact point where the information is obtained. Failure by upper management to ensure that factual information is correctly gathered may indicate the credit union's intent not to comply.
  3. Some factors indicating the financial institution's knowledge of the BSA reporting and recordkeeping requirements and its compliance intentions are:
    - a. Prior BSA violations and BSA related contact with the IRS
    - b. Training programs operated by the credit union
    - c. The MSBs formal BSA compliance procedures
    - d. Active involvement of management in oversight and internal control activities.
  4. In situations where knowledge or intent cannot be established within the scope of selected records, the examiner should

expand the period to include recent transactions that occurred after knowledge can be clearly documented. For example, the examiner selected records from January, February, and March. The inspection of these records discloses currency transactions that appear to be structured and which should have been reported. The credit union denied knowledge of the structuring regulations during the initial interview. In April, the examiner informed the credit union about the suspicious transactions and of the structuring regulations. The examiner later expanded the examination period to include May and June transactions. The examiner found violations in May and June. The credit union's knowledge was documented during the notification of the structuring violations and took no action to prevent the recurrence of violations. The credit union's intent to not comply should be documented.

5. Because willfulness is a state of mind, generally only circumstantial evidence of willfulness will be available. A willful violation is the intentional violation of a known legal duty.
6. Since BSA penalties are assessed by the FinCEN, which does not have any field examiners, the examiner must thoroughly document all facts on the issue of the intent. After the examiner secures the necessary information and documents the apparent violations, the examiner should follow the procedures as detailed in IRM 4.26.8.

#### **4.26.9.4.7 (06-01-2006)**

##### **Credit Union's Position**

1. After documenting the potential violations, the examiner should provide a list of the violations to the credit union and solicit a written explanation for each of the violations identified. The list should include:
  - a. Date of the transaction;
  - b. Customer name;
  - c. Account number (if any);
  - d. Amount of the currency transaction(s); and,
  - e. Description of the transaction(s).
2. The examiner should advise the credit union of any recordkeeping deficiencies as well as any deficiencies in their

policies, procedures, internal controls, and compliance programs that might result in noncompliance with the BSA.

3. Any additional documents or information, provided by the credit union in response, should be reviewed and a determination should be made as to whether any items should be removed from the list of violations.
4. When the credit union contends that a CTR was filed, and provides its retained copy as evidence, the examiner should query the CBRS database and conduct an exhaustive search before concluding that a CTR was not received. In conducting the search, the examiner should query all customer numerical identification on the CTR such as account number (if applicable), SSN, and identification credential number.

#### **4.26.9.4.8 (06-01-2006)**

##### **Money Laundering Trends**

1. The financial institution and/or the customer can be involved in potential money laundering schemes. The examiner must focus on both the financial institution and the transactor(s) during the BSA examination.
2. Money laundering techniques which could be used by the financial institution include:
  - a. Failing to maintain complete records
  - b. Failing to maintain copies of FinCEN Forms 110 and related records
  - c. Failing to record specific transactions
  - d. Failing to obtain the required information to comply with the recordkeeping requirements
  - e. Failing to file CTRs and SARs on reportable transactions
  - f. Filing incomplete CTRs or SARs
  - g. Structuring a transaction by breaking one transaction into several to circumvent the reporting requirements
  - h. Designating an ineligible business as an exempt person
  - i. Failing to maintain a monitoring system to detect suspicious transactions of exempt persons

- j. Failing to conduct annual reviews of information supporting each designation of exempt persons.
3. Money laundering trends which could be used by the customer or transactor include:
    - a. Using several individuals at one or more locations to conduct a transaction
    - b. Making currency deposits into their member's account(s) on consecutive days which are below the reporting threshold
    - c. Splitting currency deposits between one or more members' accounts in which each are below the reporting threshold but when combined would require a CTR
    - d. Check cashing by the same individual or business on a frequent or continuous basis in amounts below the reporting threshold
    - e. Obtaining designation as an exempt person for which they do not qualify
    - f. Using aliases when conducting transactions
    - g. Conducting numerous transactions at the same location at different times during one day
    - h. Splitting currency transactions by purchasing a variety of financial services (i.e., money orders, traveler's checks and/or funds transmittals)
  4. For money laundering trends pertaining to check cashing refer to IRM 4.26.9.3.
  5. For money laundering trends pertaining to money orders refer to IRM 4.26.9.6.
  6. For money laundering trends pertaining to traveler's checks refer to IRM 4.26.9.8.
  7. For money laundering trends pertaining to fund transmittals refer to IRM 4.26.9.7.
  8. When evidence of a money laundering scheme is uncovered, a referral should be made on Form 5104. (Refer to IRM 4.26.8 for referral procedure.)

#### **4.26.9.4.8.1 (06-01-2006)**

##### **Examination Techniques**

1. The following techniques can be useful in uncovering money laundering schemes:
  - a. Identify dates in which large currency transactions have occurred paying particular attention to currency transactions that are just below the CTR reporting threshold.
  - b. Review all financial services offered on these dates to see if customers are structuring transactions by using a variety of financial products,
  - c. Inspect retained copies of CTRs and SARs to determine if there are any recurring patterns of activity by the same or related members of the credit union.
2. The BSA examiner should enter all suspicious transactions recorded for a selected period, into a database. Use of the database isolates patterns of suspicious transactions. If transactions are conducted by a specific member, inspect account statements for all accounts held by that member and any other related members.
3. Review retained copies of FinCEN Forms 110 looking for any unusual requests for exempt status or ineligible businesses, which have been granted exempt status, which could be used as a front for money laundering.
4. For examination techniques pertaining to check cashing refer to IRM 4.26.9.3.
5. For examination techniques pertaining to money orders refer to IRM 4.26.9.6.
6. For examination techniques pertaining to traveler's checks refer to IRM 4.26.9.8.
7. For examination techniques pertaining to fund transmittals refer to IRM 4.26.9.7.

#### **4.26.9.5 (06-01-2006)**

##### **Currency Dealers or Exchangers Overview**



1. Currency dealers or exchangers provide many of the same services as banks and other regulated financial institutions. In addition to currency exchange these services may include:
  - a. Fund transmittals (domestic and foreign)
  - b. Check cashing
  - c. Temporary custody of funds on deposit
  - d. Selling money orders or other monetary instruments
  - e. Other related financial services.
2. Currency dealers or exchangers operate along international borders, in port of entry cities (where international flights land), or near communities of resident aliens.
3. A currency dealer or exchanger near the Southwest border may be known as a "Casa de Cambio," Spanish for house of exchange. "Casas de Cambio" deal in exchanging U.S. dollars and Mexican pesos and are found on both sides of the border. Personal exchanges of routine amounts are commonly referred to as "front window" operations. Large and or unusual transactions are referred to as "back room " operations.
4. The examiner should consider concentrating BSA examinations of numerous currency dealers or exchangers in a geographic area to encompass businesses that compete directly with one another. In some situations, currency dealers or exchangers that are secretive about their own operations are more willing to discuss competitors.
5. Currency dealers or exchangers are one of the five distinctive types of financial services providers known as "money services businesses " or MSBs. (Refer to IRM 4.26.5 for a discussion on MSBs)

#### **4.26.9.5.1 (06-01-2006)**

##### **Law**

1. A currency dealer or exchanger (other than a person who does not exchange currency in an amount greater than \$1,000 in currency or monetary or other instruments for any person on any day in one or more transactions) is defined as a money services business. (31 CFR 103.11(uu)(1))

#### **4.26.9.5.1.1 (06-01-2006)**

##### **Reporting Requirements**

1. FinCEN Form 104, CTR must be filed for all currency transactions of more than \$10,000 by or on behalf of any one person in one business day. (31 CFR 103.22 (b)(1))
2. Multiple currency transactions must be aggregated, and a CTR is required, if the business knows or has reason to know that the multiple transactions are by or on behalf of any person and result in either cash in or cash out totaling more than \$10,000 in one business day. (31 CFR 103.22(c)(2))
3. The CTR must be filed within 15 calendar days following the day the reportable transaction occurs. (31 CFR 103.27(a)(1))
4. Treasury Department Form TD 90-22.56, SAR-MSB, is required to be made by currency dealers or exchangers if they suspect or have reason to suspect suspicious activities have occurred (31 CFR 103.20(a)).
5. A SAR-MSB must be filed for suspicious transactions of at least \$2,000 in funds or other assets conducted or attempted by, at, or through the money services business (31 CFR 103.20(a)(2)).
6. A money services business is required to file the SAR-MSB with the FinCEN, through the DCC, no later than 30 calendar days after the date of detection (31 CFR 103.20(b)(3)).
7. A money services business is prohibited from notifying any person involved in the transaction that a SAR has been filed (31 CFR 103.20(d)).
8. FinCEN Form 105 (CMIR) must be filed by any person who transports, mails, or ships or has someone else transport, mail, or ship currency or monetary instruments in excess of \$10,000 into or out of the country or who receives such items into the United States from abroad (31 CFR 103.23).
9. FinCEN Form 105 must be filed with the U.S. Customs Service at the time of entry into the United States or at the time of departure, mailing, or shipping from the United States (31 CFR 103.27(b)(1)).
10. Any person receiving currency or monetary instruments in excess of \$10,000 from outside the United States is required to file FinCEN Form 105 within 15 days (31 CFR 103.27(b)(2)).

11. Treasury Department Form TD F 90-22.1 (FBAR) must be filed for any financial interest in or signature or other authority over a foreign bank, securities, or other financial account which exceeds \$10,000 at any time during the calendar year (31 CFR 103.24).
12. The FBAR must be filed by June 30th of the succeeding year (31 CFR 103.27(c)).

#### **4.26.9.5.1.2 (06-01-2006)**

##### **Registration Requirements**

1. A currency dealer or exchanger is required to register on a FinCEN Form 107, (formerly TD F 90-22.55), Registration of Money Services Business and biannually renew their registration if they are not acting in an agent capacity and are not a branch location (31 CFR 103.41).
2. Certain events require re-registration which is different from a renewal registration (31 CFR 103.41(b)(4)).

#### **4.26.9.5.1.3 (06-01-2006)**

##### **Recordkeeping Requirements**

1. For records required of all financial institutions, refer to IRM 4.26.5.
2. Copies of all filed CTRs must be retained by the financial institution for five years from the date of the report (31 CFR 103.27(a)(3)).
3. Copies of all filed SAR-MSBs and the original or record of any supporting documentation shall be maintained for five years from the date of filing the SAR (31 CFR 103.20(c)).
4. Currency dealers or exchangers are required to make and retain additional records (31 CFR 103.37).
5. A currency dealer or exchanger is required to secure and maintain a record of the taxpayer identification number of each person who opens a transaction account or is extended a line of credit within 30 days after an account is opened or credit line extended.
  - a. If the person is a non-resident alien, a record of the person's passport number or description of some other government document used to verify identity is required.

- b. If the account or credit line is in the names of two or more persons, a currency dealer or exchanger is required to secure the taxpayer identification number of a person having a financial interest in the account or credit line. (31 CFR 103.37(a)(1))
6. If a currency dealer or exchanger is unable to secure a person's identification within the 30-day period, they will not be in violation if:
  - a. A reasonable effort was made to secure the identification, and
  - b. A list is maintained containing the names, addresses, and account or credit line numbers of those persons for which they were unable to secure the required identification. (31 CFR 103.37(a)(1))
7. The 30-day period may be extended if the person opening an account or credit line has applied for a taxpayer identification or social security number. (31 CFR 103.37(a)(2)).
8. There are certain instances when a taxpayer identification number need not be secured. (31 CFR 103.37(a)(3)).
9. In addition, currency dealers or exchangers are required to retain either the original, microfilm or other copy of the following records pursuant to 31 CFR 103.37(b):
  - a. Statements of bank accounts, including paid checks, deposit slips, charges, or other debit or credit memoranda.
  - b. Daily work records, including purchase and sales slips or other memoranda needed to identify and reconstruct currency transactions with customers and foreign banks.
  - c. A record of each exchange of currency involving transactions in excess of \$1,000 including the customer's name and address, passport number or taxpayer identification number, date and amount of the transaction, and currency name, country and total amount of each foreign currency.
  - d. Signature cards or other documents evidencing signature authority over each deposit or security account, containing the name, address, TIN or EIN of the depositor, the signature of the depositor or other person authorized to sign on the

account (if customer accounts are maintained in a code name, a record of the actual owner of the account).

- e. 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.
  - f. A record of each receipt of currency, other monetary instruments, investment securities, and checks, and of each transfer of funds or credit, or more than \$10,000 received on any one occasion directly and not through a domestic financial institution, from any person, account or place outside the United States.
  - g. Records prepared or received by a dealer in the ordinary course of business, that would be needed to reconstruct an account and trace a check in excess of \$100 deposited in such account through its internal recordkeeping system to its depository institution, or to supply a description of a deposited check in excess of \$100.
  - h. A record maintaining the name, address and TIN, if available, of any person presenting a certificate of deposit for payment, a description of the instrument, and date of the transaction.
  - i. A system of books and records that will enable the currency dealer or exchanger to prepare an accurate balance sheet and income statement.
10. If a currency dealer or exchanger has a financial interest in or signature or other authority in foreign financial accounts, records of these accounts must be retained. The records must contain:
- a. The name in which each account is maintained;
  - b. The number or other designation of such account;
  - c. The name and address of the foreign bank or other person with whom such account is maintained;
  - d. The type of such account; and,
  - e. The maximum value of each such account during the reporting period. (31 CFR 103.32)

11. A currency dealer or exchanger must retain these records for five years pursuant to 31 CFR 103.38(d) and 31 CFR 103.32, if applicable.
12. Copy of registration and renewal must be retained for five years, if applicable.
13. Current annual agent list and agent list(s) for the past five years (back to January 2002) must be retained, if applicable (31 CFR 103.41(d)).

#### **4.26.9.5.1.4 (06-01-2006)**

##### **AML Program Requirements**

1. All money services businesses must establish and implement a written, risk-based AML Program reasonably designed to prevent the business from being used to facilitate money laundering and the financing of terrorism.
2. At a minimum, the program shall:
  - a. Incorporate policies, procedures, and internal controls reasonably designed to assure compliance with the BSA and its implementing regulations;
  - b. Designate a compliance officer;
  - c. Provide for education or training of appropriate personnel; and.
  - d. Provide for independent review to monitor and maintain the adequacy of the program (31 CFR 103.125).

#### **4.26.9.5.2 (06-01-2006)**

##### **Records Commonly Found**

1. A currency dealer's or exchanger's records usually include:
  - a. Daily cash drawer and vault reconciliations;
  - b. Bank statements, deposit slips, and debit/credit memoranda;
  - c. Wire transmittal confirmations;
  - d. Customer records (either hard copy or electronic);
  - e. Invoices and purchase orders; and,

- f. Summary sheets.
2. An example of a BSA examination audit trail is shown in Exhibit 4.26.9-20.

#### **4.26.9.5.3 (06-01-2006)**

##### **Interview**

1. The initial interview of a currency dealer or exchanger should include questions to ascertain:
  - a. Historical/background information
  - b. Management and employee knowledge of the BSA registration, recordkeeping, reporting, and AML compliance program requirements
  - c. Information about related currency dealers or exchangers and domestic and foreign agents or nominees
  - d. Information on domestic and foreign books and records including records of agents or nominees, especially any bank account records that are maintained on behalf of the currency dealer or exchanger.
  - e. The types of transactions conducted and the records maintained. The examiner may want to prepare a flowchart of the cash in cycle, the cash out cycle, and the records maintained for each type of transaction.
  - f. Procedures for recording currency transactions over \$1,000 and identification of customers.
  - g. Procedures for recording currency transactions over \$10,000 and filing of CTRs. Also, procedures for filing SAR-MSBs, CMIRs and FBARs (if applicable).
2. The examiner must consider additional services or products offered by a currency dealer or exchanger such as money transmitting, check cashing, and sales of money orders.
3. A copy of the written BSA compliance procedures should be requested and included in the case file. An explanation of the BSA training of employees should also be documented.

4. Interview all individuals conducting currency transactions and those responsible for compliance with the BSA recordkeeping and reporting requirements.
5. Each interview should be documented in the case file.
6. Ask the owners or management if they have knowledge of any structuring transactions having occurred or if any suspicious transactions have occurred. This question also must be asked while interviewing employees who have customer contact.
7. Interview former employees if appropriate.
8. The examiner should ask to be shown how all "window" and "back room" transactions are conducted and recorded.
9. Ask open-ended questions throughout the interview. Do not ask questions that require only a "yes" or "no" answer.
10. An example of possible initial interview questions for currency dealers or exchangers is shown in Exhibit 4.26.9-22. It is only a guide that should be expanded or contracted as each BSA examination warrants.

#### **4.26.9.5.4 (06-01-2006)**

##### **Review of the Records**

1. Conduct the BSA examination at the currency dealer's or exchanger's place of business.
2. Some currency dealers or exchangers, especially Casas de Cambio, maintain inadequate or no records.
3. A currency dealer's or exchanger's records may often include the following:
  - a. Annual Summary Sheet: a record of monthly transaction totals.
  - b. Monthly Summary Sheet: a record of daily transaction totals for the month and the source document for preparing the annual summary sheet.
  - c. Client Ledger Cards: a record of transactions with regular clients (larger currency dealers or exchangers may maintain this record).



- d. Daily Transactions Log: a record summarizing daily transactions. This is the source document for preparing the monthly summary sheet and includes the beginning and ending cash balances. If cash balances are not maintained on this record, a separate cash (vault) inventory record is usually maintained.
  - e. Transaction Vouchers: a record of each transaction that shows the date, amount and rate of exchange. This record may, but usually does not, include customer identification for transactions over \$1000. This is the source document for preparing the daily transaction log.
  - f. Domestic Bank Records: these should include all account statements, duplicate deposit tickets, canceled checks, wire transfer confirmation statements, and other debit and credit memoranda.
  - g. Copies of CTRs and SAR-MSBs.
  - h. Other books and records may include a general ledger, receipt and disbursement journals, and invoices and receipts.
4. Records may include foreign bank account records and the records of domestic and foreign agents or nominees.
  5. Review the bank account records for all the domestic and foreign bank accounts over which the currency dealer or exchanger has authority. Many currency dealers or exchangers have foreign bank accounts or use foreign bank accounts held in agent or nominee names to facilitate conducting their financial services. The examiner should probe and ask for foreign bank account records.
  6. Determine if the records include all financial services provided by the currency dealer or exchanger that have been identified during interviews and from visual observation of the business operations. Pursue any records that have not been provided.
  7. Select records from a current period to evaluate. The period with the highest money flow should be considered.
  8. Select dates within the period and reconcile the transaction vouchers, daily transaction log, client ledger, and the monthly and annual summary sheets.

9. Analyze the summary and transaction records for cash in and cash out for transactions conducted by the currency dealer or exchanger. All large or unusual items should be pursued.
10. Trace daily transactions through the daily transaction log. Reconcile the transaction log's beginning and ending cash balances to prior and subsequent logs. Also, trace the transaction log cash balances to the cash (vault) inventory balances and then to the balance sheets and books. Any unexplained variations should be investigated. If cash balances are not entered on the transaction log, the examiner should ask how the currency dealer or exchanger reconciles the cash on hand.
11. Trace transactions to the transaction vouchers, checking for compliance with 31 CFR 103.37(b)(3) requirements, and trace all transactions over \$10,000 to CTRs.
12. Review the currency dealer's or exchanger's copies of CTRs, SAR-MSBs, CMIRs (if applicable) and FBARs (if applicable) for accuracy and completeness. The CBRS should also be checked to verify that the reports were actually filed.
13. Review relevant audit reports or reviews that address BSA policies, procedures, or operations for BSA relevant issues.
14. Review fund transmittal documents. Records for the transmission of funds abroad should include copies of receipts issued to customers and records evidencing interbank transfers (i.e., wire confirmations or drafts.)
15. Review the currency dealer's or exchanger's written BSA procedures (policy letter) from its AML compliance program and obtain a copy for the case file.
16. Consider using a database to input information from the transaction records, for purposes of detecting structuring and other money laundering schemes.
17. Analyze database sorts of the name, address and phone number fields to detect possible structured transactions, unreported transactions, errors and/or deficiencies in the financial institution's BSA compliance system.
18. If structured transactions or BSA violations are detected, the examiner should interview the responsible person or employee who conducted the transaction. Based on the responses, the

examiner should consider expanding the scope of the examination. (Refer to IRM 4.26.6.) All facts should be discussed with the BSA Group Manager.

19. Obtain copies of all source documents that show any apparent BSA violations.
20. Issue a Letter 1112 or referral on Form 5104 for all failures to file FinCEN Form 104, FinCEN Form 105, and Form TD F 90-22.1 and any recordkeeping violations. Prepare the referral in accordance with the examination referral guidelines. (Refer to IRM 4.26.8. )
21. Follow the procedures in IRM 4.26.6 to timely conclude the BSA examination.
22. Consider preparing a Form 5346, Examination Information Report when:
  - a. There are inadequate or few records,
  - b. Only "window" transactions are reflected in the records, or
  - c. Other information is obtained during the BSA examination that indicates a possible income tax violation warranting referral. (Refer to IRM 4.26.6.)
23. Review filed registrations (if applicable) for accuracy and completeness.
24. Verify applicability of requirement to register.
25. Review agent list (if applicable) for all required elements.
26. Forward agent list to BSA Workload Selection coordinator separate from your case file.
27. Review agent contracts and terms for acceptance and termination as an agent.
28. Review all agents rejected or terminated as an agent and forward list to BSA Workload Selection coordinator separate from your case file.

#### **4.26.9.5.5 (06-01-2006)**

##### **Evidence**

1. The examiner must obtain adequate supporting documentation for each type of the following violations:
  - a. Reporting – The date of the transaction, the amount, the individuals involved, and a detailed statement regarding the violation, including copies of source documents such as cash in/out slips, control registers, and teller cash proofs which document the violation.
  - b. Recordkeeping – The details of the specific records which were not maintained or were inadequate, including management’s response to the violations.
2. The money services business' knowledge of BSA requirements must be determined before determining whether violations should be formally referred to FinCEN.
  - a. The key officers and employees should be interviewed again to document the money services business’ response to any apparent violations.
  - b. The existence of an internal compliance program may indicate knowledge. For example, if knowledge of the reporting and recordkeeping requirements is limited to upper management and the other employees are not similarly educated, the money services business may be at least negligent (for not properly instructing the employees.) The employees need to know what their BSA obligations are. The employees are the initial contact point where the information is obtained. Failure by upper management to ensure that factual information is correctly gathered may indicate the money services business’ intent not to comply.
3. Other factors indicating the money services business’ knowledge of the BSA registration, reporting, recordkeeping, and compliance program requirements and its compliance intentions are:
  - a. Prior BSA violations and BSA-related contacts with the IRS
  - b. Training programs offered by the money services business
  - c. The MSB's formal BSA compliance procedures
  - d. Active involvement of management in oversight and internal control activities.

4. In situations where knowledge or intent cannot be established within the scope of selected records, the examiner should expand the period to include recent transactions that occurred after knowledge can be clearly documented. For example, the examiner selected records from January, February, and March. The inspection of these records discloses currency transactions that appear to be structured and which should have been reported. The money services business denied knowledge of the structuring regulations during the initial interview. In April, the examiner informed the money services business about the suspicious transactions and of the structuring regulations. The examiner later expanded the examination period to include May and June transactions. The examiner found violations in May and June. The money services business' knowledge was documented during the notification of the structuring violations and took no action to prevent the recurrence of violations. The money services business' intent to not comply should be documented.
5. Because willfulness is a state of mind, generally only circumstantial evidence of willfulness will be available. A willful violation is the intentional violation of a known legal duty.
6. Since BSA penalties are assessed by the FinCEN, which does not have any field examiners, the examiner must thoroughly document all facts on the issue of intent. After the examiner secures the necessary information and documents the apparent violations, the examiner should follow the procedures detailed in IRM 4.26.8.

#### **4.26.9.5.6 (06-01-2006)**

##### **Currency Dealer or Exchanger's Position**

1. After documenting the potential violations, the examiner should provide a list of the violations to the money services business and solicit a written explanation for each of the violations identified. The list should include:
  - a. Date of the transaction;
  - b. Customer name;
  - c. Account number (if any);
  - d. Amount of the currency transaction(s); and,
  - e. Description of the transaction(s).

2. The examiner should advise the money services business of any recordkeeping deficiencies as well as any deficiencies in their policies, procedures, internal controls, and compliance programs that might result in noncompliance with the BSA.
3. Any additional documents or information, provided by the money services business in response, should be reviewed and a determination should be made as to whether any items should be removed from the list of violations.
4. When the money services business contends that a CTR was filed, and provides its retained copy as evidence, the examiner should query the CBRS database and conduct an exhaustive search before concluding that a CTR was not received. In conducting the search, the examiner should query all customer numerical identification on the CTR such as account number (if applicable), SSN, and identification credential number.

#### **4.26.9.5.7 (06-01-2006)**

##### **Money Laundering Trends**

1. Money launderers may use the bank accounts and the investment and financial contacts of a currency dealer or exchanger on both sides of an international border to break the paper trail between their currency and themselves. This permits them to transport, convert or invest currency in the legitimate international financial system. A currency dealer or exchanger involved in money laundering may assist in converting the currency into non-monetary assets, and/or physically transporting currency, and/or making wire transfers, and/or otherwise disguising the ownership of funds.
2. Common methods used by currency dealers or exchangers involved in laundering money include:
  - a. Failing to maintain records or record specific transactions.
  - b. Failing to file reports of currency or foreign transactions.
  - c. Disguising transactions with false identification or structuring them to avoid the BSA reporting requirements.
  - d. Commingling transactions of clients with those of other clients or of the currency dealer or exchanger.

- e. Commingling transactions with those of other currency dealers or exchangers, frequently claiming that transactions with other currency dealers or exchangers are merely "accommodations" or loans and failing to record the details.
  - f. Using foreign bank accounts, agents, or nominees.
  - g. Issuing cashier's checks, money orders, personal checks, or other monetary instruments in exchange for currency.
3. Some examples of tactics used by currency dealers or exchangers involved in money laundering are:
- a. Fictitious names, addresses, and passport numbers are used in the currency dealer's or exchanger's records and on CTRs filed. Foreign governments issue passports, which are usually untraceable.
  - b. Dollars are physically smuggled out of the U.S. and deposited into a foreign bank account. The money is then wired back to the U.S. or elsewhere with the appearance of a legitimate business transaction. Some currency dealers or exchangers along the Canadian border receive U.S. or foreign currency through U.S. Post Office boxes in border cities. Couriers transport the currency into Canada for exchange or further transmission to anywhere in the world.
  - c. Currency may be transported into a foreign country and repatriated through a foreign bank. Even though a transaction may appear as foreign currency in the cash flow of the currency dealer or exchanger, it may still be from an illegal source.
4. The examiner may find instances where international funds transfers occurred without the money crossing the international border. This is accomplished by offsetting different client transactions through book entry systems shared with the currency dealer's or exchanger's foreign office, or with other currency dealers or exchangers, agents, or nominees located on either side of the border. This process is similar to the check clearing operation of the banking industry.
5. When evidence of a money laundering scheme is uncovered, a referral should be made on Form 5104. (Refer to IRM 4.26.8 for referral procedures.)

#### **4.26.9.5.7.1 (06-01-2006)**

##### **Examination Techniques**

1. The following techniques can be useful in uncovering money laundering schemes:
  - a. Prepare flowcharts of cash in and cash out for each type of financial transaction conducted by the currency dealer or exchanger to identify records that may exist but have not been provided.
  - b. Review all bank statements to determine the currency dealer or exchanger is withdrawing enough funds to meet the amounts of currency exchanged. If not sufficient, then sources of cash should be investigated in greater depth.
  - c. Review the transaction logs and client ledger sheets for large or suspicious transactions. If the paper trail ends before the conclusion of a transaction, ask the currency dealer or exchanger to explain the transaction. Record the explanation and if necessary obtain additional documents.
  - d. Review the list of foreign beneficiaries for large amounts, few destinations, or any other factors that may indicate money laundering or other illegal activities by the currency dealer or exchanger or clients.
  - e. Review wire transfer confirmations for suspicious items.
  - f. Review bank account documents for large or unusual items. Trace these items to the transaction and summary documents. Try to identify records that are not provided for the examination, such as foreign bank accounts or agent and nominee records.
  - g. Review the records for transactions with other currency dealers or exchangers. Money laundering often occurs with the cooperation of more than one currency dealer or exchanger.
  - h. Isolate and trace all transactions through the records. Client transactions may be commingled to conceal currency transactions. If the transactions cannot be separated, ask the currency dealer or exchanger to provide a complete breakdown of the individual transactions. Document the currency dealer's or exchanger's response.



- i. Identify the profits on all large, structured or suspicious transactions. If individual profits cannot be identified, ask how profits on the transactions are determined and have the currency dealer or exchanger reconstruct them.
- j. Group unusual items to identify any common or similar features such as names or addresses. Once any large, structured or suspicious transactions are identified, all similar transactions within the compliance examination period should be identified and reviewed.

#### **4.26.9.6 (06-01-2006)**

##### **Money Orders Overview**

1. Money orders are issued by national companies such as Travelers Express, American Express, or the U.S. Post Office. In addition, there are small regional or local money order companies such as Global Express. Some businesses, e.g., check cashers, may issue their own money orders.
2. Money orders are negotiable monetary instruments. Money orders are usually purchased by individuals, who do not have a bank checking account to pay their everyday bills.
3. Sales agents of money orders usually provide other services such as check cashing, wire services, or operate a business such as a grocery store, truck stop, or a convenience store.
4. Rather than run the risk of robbery, some businesses in high-risk areas will buy money orders throughout the day instead of transporting cash to the bank.
5. Most money order transactions occur at the \$200 - \$300 level.
6. An issuer, seller, or redeemer of money orders is one of the five distinctive types of financial services providers known as "money services businesses" or MSBs. (Refer to IRM 4.26.5 for a discussion on MSBs.)

#### **4.26.9.6.1 (06-01-2006)**

##### **Nationwide Money Orders**

1. Financial institutions that sell money orders for national companies are agents. The agent's relationship to the issuer of the money orders is governed by a trust agreement.

2. The agent is allowed to advertise that it sells the national company's money orders and is authorized to fill in the dollar amount on behalf of the national companies.
3. Money orders are drawn on the national company's bank account and the transaction is not complete until the national company receives the face amount from the agent and the money order clears the bank.
4. The dollar value of money orders sold by an agent can be limited by the bonding company's trust agreement or by the agent's policy, but in theory they can be in any denomination.
5. The national company issues and the agent maintains sales records, of money orders using a sequential numbering system.
6. An agent's summary sales report is sent daily to the national company and the correspondent bank sends a clearing report. Using these reports, the national company keeps a record of all money orders sold and cashed. Agents are sent a discrepancy statement for money orders cashed but not reported as sold.
7. Money received from the sale of money orders is usually deposited, by the agent, into a separate bank account. Payment is made to the national company by check, wire transfer, electronic mail or draft.
8. National money order companies either collect their fee up front when the money orders are given to the agents or have their agents remit the fee together with the face amount of the money orders sold.
9. Agents may receive commission statements or reconciliations of money orders sold. The agent's commission can be accounted for this way.
10. Identification of persons purchasing money orders in amounts under \$3,000 is often left to the individual agents, and in many instances, little or no identification is requested from the purchaser.
11. National companies keep a copy of the front and back of all cashed and canceled money orders.

**4.26.9.6.1.1 (06-01-2006)**

**Private Money Orders**

1. Generally, private companies maintain and reconcile daily records of money orders sold and cashed. Like checks, money orders are cleared by a correspondent bank. If adequate records are not maintained, additional information should be obtained from the correspondent bank.
2. Traditionally, private companies do not require identification to purchase money orders.

#### **4.26.9.6.2 (06-01-2006)**

##### **Law**

1. An issuer of money orders (other than a person who does not issue such money orders in an amount greater than \$1,000 in currency or monetary or other instruments to any person on any day in one or more transactions) is defined as a money services business (31 CFR 103.11(uu)(3)).
2. A seller or redeemer of money orders (other than a person who does not sell or redeem such money orders in an amount greater than \$1,000 in currency or monetary or other instruments to any person on any day in one or more transactions) is defined as a money services business (31 CFR 103.11(uu)(4)).

#### **4.26.9.6.2.1 (06-01-2006)**

##### **Reporting Requirements**

1. FinCEN Form 104,CTR, must be filed for all currency transactions of more than \$10,000 (31 CFR 103.22(b)(1)).
2. Multiple currency transactions must be aggregated, and a CTR is required, if the business has knowledge that the multiple transactions are by or on behalf of any person and result in either cash in or cash out totaling more than \$10,000 in one business day. (31 CFR 103.22(c)(2))
3. The CTR must be filed within 15 calendar days following the day the reportable transaction occurs. (31 CFR 103.27(a)(1))
4. Treasury Department Form TD 90-22.56, SAR-MSB, is required to be made by the money services business if they suspect or have reason to suspect suspicious activities have occurred (31 CFR 103.20(a)).

5. A SAR-MSB must be filed for suspicious transactions of at least \$2,000 in funds or other assets conducted or attempted by, at, or through the money services business (31 CFR 103.20(a)(2)).
6. To the extent that the identification of suspicious transactions required to be reported is derived from a review of clearance records or other similar records of money orders that have been sold or processed, an issuer of money orders shall only be required to report a suspicious transaction or pattern of transactions that involves or aggregates funds or other assets of at least \$5,000 (31 CFR 103.20(a)(3))
7. An MSB is required to file the SAR-MSB with FinCEN, through the DCC, no later than 30 calendar days after the date of detection (31 CFR 103.20(b)(3)).
8. A money services business is prohibited from notifying any person involved in the transaction that a SAR has been filed (31 CFR 103.20(d)).
9. FinCEN Form 105 (CMIR) must be filed by any person who transports, mails, or ships or has someone else transport, mail, or ship currency or monetary instruments in excess of \$10,000 into or out of the country or who receives such items in the United States from abroad. (31 CFR 103.23)

#### **4.26.9.6.2.2 (06-01-2006)**

##### **Registration Requirements**

1. A money order issuer, seller, or redeemer is required to register on a FinCEN Form 107, (formerly TD F 90-22.55), Registration of Money Services Business and biannually renew their registration if they are not acting in an agent capacity and are not a branch location (31 CFR 103.41).
2. Certain events require re-registration which is different from a renewal registration (31 CFR 103.41(b)(4)).

#### **4.26.9.6.2.3 (06-01-2006)**

##### **Recordkeeping Requirements**

1. For records required of all financial institutions, refer to IRM 4.26.5.

2. Copies of all filed CTRs must be retained by the financial institution for five years from the date of the report. (31 CFR 103.27(a)(3))
3. Copies of all filed SAR-MSBs and the original or record of any supporting documentation shall be maintained for five years from the date of filing the SAR (31 CFR 103.20(c)).
4. Certain records are required to be maintained for the issuance or sale of money orders which involve currency in amounts of \$3,000 to \$10,000, inclusive, by or on behalf of one individual in one business day.
5. The following information must be obtained for the records:
  - a. The purchaser's name and address;
  - b. The purchaser's social security number or alien identification number;
  - c. The purchaser's date of birth;
  - d. The date of purchase;
  - e. The type of instruments purchased;
  - f. The serial numbers of the instruments purchased; and,
  - g. The amount in dollars of each instrument purchased. (31 CFR 103.29(a)(2)(i))
6. The financial institution is required to verify the purchaser's name and address and record the specific identifying information (e.g., State of issuance and purchaser's drivers license number). (31 CFR 103.29(a)(2)(ii))
7. These records must be retained by the financial institution for five years. (31 CFR 103.29(c))
8. Copy of registration and renewal if applicable.
9. Current annual agent list and agent list(s) for the past five years (back to January 2002) if applicable (31 CFR 103.41(d)).

#### **4.26.9.6.2.4 (06-01-2006)**

#### **AML Program Requirements**

1. All money services businesses must establish and implement a written, risk-based AML program reasonably designed to prevent the business from being used to facilitate money laundering and the financing of terrorism.
2. At a minimum, the program shall:
  - a. Incorporate policies, procedures, and internal controls reasonably designed to assure compliance with the BSA and its implementing regulations;
  - b. Designate a compliance officer;
  - c. Provide for education or training of appropriate personnel; and,
  - d. Provide for independent review to monitor and maintain the adequacy of the program (31 CFR 103.125)

#### **4.26.9.6.3 (06-01-2006)**

##### **Records Commonly Found**

1. Money order agent records usually include:
  - a. Bank statements and deposit slips
  - b. Daily sales summaries
  - c. Customer records (electronic or hard copies)
  - d. Carbons or duplicates of money orders
  - e. Commission statements.
2. An example of a BSA examination audit trail is shown in Exhibit 4.26.9-23.

#### **4.26.9.6.4 (06-01-2006)**

##### **Interview**

1. Interview the officers, owners and employees to determine their knowledge of the BSA and the financial institution's procedures to comply with the reporting and recordkeeping requirements. The duties and responsibilities of the officers and employees should be documented along with a description of the financial institution's records and an explanation of the flow of

transactions through the records. Knowledge is one of the elements needed to prove willfulness with respect to apparent violations of the regulations.

2. Ask specific questions relating to the business, area, and services offered. The examiner must consider all services offered by the business, such as money transmitting, check cashing, and sales of money orders. For example, a customer could attempt to launder \$15,000 by sending a wire transfer for \$8,000 and purchasing \$7,000 in money orders.
3. Ask the owners or management of the financial institution if they have knowledge of any structured transactions having occurred, or if any suspicious transactions have occurred. This question should be asked again while interviewing employees who have customer contact.
4. Interview all individuals who handle currency transactions. Question their knowledge and training of the BSA recordkeeping and reporting requirements.
5. Ask open-ended questions throughout the interview. Do not ask questions that require only a yes or no answer.
6. An example of initial interview questions for issuers, sellers, or redeemers of money orders is shown in Exhibit 4.26.9-25. It is only a guide and should be expanded or contracted as each BSA examination warrants.

#### **4.26.9.6.5 (06-01-2006)**

##### **Review of the Records**

1. Any records the financial institution maintains that are relevant to the BSA examination can be requested and reviewed. The examiner will determine if the financial institution is maintaining adequate records and must document any recordkeeping violations.
2. Review the written policy statements, procedures, etc. of the financial institution as they relate to the BSA.
3. Analyze the records of the financial institution for all types of financial services offered. Each type of financial service should be examined separately.
4. Determine the money order register completeness by reconciling this to the summary sales reports sent to the issuing

company, the discrepancy report from the issuing company, and the bank deposits.

5. Trace large block sales or large dollar single transaction sales of money orders in the money order register or money order close out reports to the records required for recordkeeping, SAR reporting and CTR reporting. Block sales are a group of sequentially numbered money orders sold concurrently for the maximum denomination, or right below the maximum dollar amount. The maximum amount allowed for each money order is usually set at \$300, \$500 or \$1,000 by the issuing company. The review should identify:
  - a. Blocks of money orders at \$2,000 or right below for SAR reporting;
  - b. Blocks of money orders at \$3,000 to \$10,000, inclusive, for recordkeeping requirements; and,
  - c. Blocks of money orders greater than \$10,000 for CTR reporting.
6. Inspect any copies of money orders retained by the financial institution.
7. Request that the financial institution obtain copies of money orders from the money order issuer for any questionable or suspicious transactions. It may be necessary to issue a Title 31 summons to obtain this information. Refer to IRM 4.26.8 before issuing any Title 31 summons.
8. Review the financial institution's records to determine if all the required information on the purchaser of money order involving currency in amounts of \$3,000 to \$10,000, inclusive, has been maintained and verified pursuant to the recordkeeping requirements of 31 CFR 103.29.
9. It is recommended that a computer database be used when the compliance examination is part of a multiple location local project or there are a large number of block sales or large dollar sales. All single or block transactions, exceeding a dollar amount cutoff should be entered in the database from source documents to see if the transactions are related.
10. Analyze database sorts of the name field and the address field to detect possible structured transactions, unreported



transactions, errors, and deficiencies in the financial institution's BSA compliance system.

11. The databases, if applicable, of BSA examinations of nearby financial institutions in geographical targeting projects should be consolidated and sorted to detect related structuring activity occurring at more than one location.
12. Review copies of CTRs filed by the financial institution to ensure they are accurate and complete. Ensure filed CTRs have been retained by the financial institution for the required five-year period. Use the CBRS database to verify that the CTRs were timely filed and contain the same information as the copies maintained by the financial institution.
13. Query the CBRS database for transactions conducted by owners, managers, and employees of the financial institution to detect possible unreported transactions of the financial institution that were instead reported under the individual's name.
14. If structured transactions or other BSA violations are detected, the examiner should interview the responsible person or employee who conducted the transaction. Based on the answers given, the examiner should consider expanding the scope of the examination. (Refer to IRM 4.26.6.) All facts should be discussed with the BSA Group Manager.
15. Review relevant audit reports or reviews that address BSA policies, procedures, or operations for BSA issues.
16. Issue a Letter 1112 or prepare a referral on Form 5104 for all failures to file FinCEN Form 104 and any recordkeeping violations. Prepare in accordance with the examination guidelines. (Refer to IRM 4.26.8.)
17. Follow procedures in IRM 4.26.6 to timely conclude the BSA examination.
18. Prepare Form(s) 5346, Examination Information Report, when information is obtained during the BSA examination that indicates a possible income tax violation warranting referral. (Refer to IRM 4.26.6.)
19. Review copies of filed MSB registrations and renewals (if applicable) for accuracy and completeness.

20. Determine whether the business was required to register as an MSB.
21. Review agent list (if applicable) for all required elements.
22. Forward agent list to BSA Workload Selection coordinator in a separate shipment from the case file.
23. Review agent contracts and terms for acceptance and termination as an agent.
24. Review all agents rejected or terminated as an agent and forward list to BSA Workload Selection coordinator in a separate shipment from the case file.

#### **4.26.9.6.6 (06-01-2006)**

##### **Evidence**

1. The examiner must obtain documentation for each type of the following violations:
  - a. Reporting – The date of the transaction, the amount, the individuals involved, and a detailed statement regarding the violation, including copies of source documents such as cash in/out slips, control registers, and teller cash proofs which support the violation.
  - b. Recordkeeping – The details of the specific records which were not maintained or were inadequate, including management’s response to the violations.
2. The knowledge of the MSB must be established before determining whether violations should be formally referred to FinCEN.
  - a. The key officers and employees should be interviewed again to document the money services business’ to any apparent violations.
  - b. The existence of an internal compliance program may indicate knowledge. For example, if knowledge of the reporting and recordkeeping requirements is limited to upper management and the other employees are not similarly educated, the money services business may be at least negligent (for not properly instructing the employees.) The employees need to know what their BSA obligations are. The employees are the initial contact point where the

information is obtained. Failure by upper management to ensure that factual information is correctly gathered may indicate the money services business' intent not to comply.

3. Other factors that may indicate the MSB had knowledge of the BSA registration, reporting, recordkeeping, and compliance program requirements, and its compliance intentions are:
  - a. Prior BSA violations and BSA compliance related contacts with the IRS;
  - b. Training programs offered by the business;
  - c. The MSB's formal BSA compliance procedure; and,
  - d. Active involvement of management in oversight and internal control activities.
4. In situations where knowledge cannot be established within the scope of selected records, the examiner should expand the period to include recent transactions that occurred after knowledge and intent can be clearly documented. For example, the examiner selected records from January, February, and March. The inspection of these records discloses currency transactions that appear to be structured and which should have been reported. The MSB denied knowledge of the structuring regulations during the initial interview. In April, the examiner informed the MSB about the suspicious transactions and of the structuring regulations. The examiner later expanded the examination period to include May and June transactions. The examiner found violations in May and June. The MSB's knowledge was documented during the notification of the structuring violations and took no action to prevent the recurrence of violations. The MSB's intent to not comply should be documented.
5. ) Because willfulness is a state of mind, generally only circumstantial evidence of willfulness will be available. A willful violation is the intentional violation of a known legal duty.
6. Since BSA penalties are assessed by FinCEN, which does not have any field examiners, the examiner must thoroughly document all facts on the issue of intent. After the examiner secures the necessary information and documents the apparent violations, the examiner should follow the procedures detailed in IRM 4.26.8.

#### **4.26.9.6.7 (06-01-2006)**

##### **Money Order Business' Position**

1. After documenting the potential violations, the examiner should provide a list of the violations to the MSB and solicit a written explanation for each of the violations identified. The list should include:
  - a. Date of the transaction;
  - b. Customer name;
  - c. Account number (if any);
  - d. Serial number of money order(s) involved;
  - e. Amount of the currency transaction(s); and
  - f. Description of the transaction(s).
2. The examiner should advise the money services business of any recordkeeping deficiencies as well as any deficiencies in their policies, procedures, internal controls, and compliance programs that might result in noncompliance with the BSA.
3. Any additional documents or information provided by the money services business in response should be reviewed and a determination should be made as to whether any items should be removed from the list of violations.
4. When the money services business contends that a CTR was filed, and provides its retained copy as evidence, the examiner should query the CBRS database and conduct an exhaustive search to ensure that a CTR was not received. In conducting the search, the examiner should query all customer numerical identification on the CTR such as account number (if applicable), SSN, and identification credential number.

#### **4.26.9.6.8 (06-01-2006)**

##### **Money Laundering Trends**

1. The financial institution and/or the customer can be involved in potential money laundering schemes. The examiner must focus on both the financial institution and the transactor(s) during the BSA compliance examination.

2. Money laundering techniques which could be used by the financial institution include:
  - a. Failing to maintain complete records
  - b. Failing to record specific transactions
  - c. Failing to obtain the required information to comply with the recordkeeping requirements
  - d. Failing to file CTRs or CMIRs on reportable transactions
  - e. Structuring a transaction by breaking one transaction into several to circumvent the reporting requirements
  - f. Issuing money orders, instead of cash (e.g., a check casher) to avoid the \$10,000 reporting requirement.
3. Money laundering techniques which could be used by the customer/transactor include:
  - a. Using multiple locations to conduct transactions
  - b. Using several individuals at one or more locations to conduct a transaction
  - c. Using aliases when conducting transactions
  - d. Conducting several transactions at the same location at different times during one day
  - e. Requesting money orders, instead of cash, when cashing checks to circumvent a reporting requirement.
4. When evidence of a money laundering scheme is uncovered, a referral should be made on Form 5104. (Refer to IRM 4.26.8 for referral procedures.)

**4.26.9.6.8.1 (06-01-2006)**

**Examination Techniques**

1. The following techniques can be useful in uncovering money laundering schemes:
  - a. Review the financial institution's sales logs and /or daily summaries for block purchases. Trace these purchases to records of sales of \$3,000 or more,

- b. Request copies of money orders from the issuer, if necessary, to determine if transactions have been structured,
- c. Conduct BSA examinations of financial institutions within the same geographical area, and
- d. Create a database to consolidate transactions of the financial institutions, which can be sorted to identify related transactions.

#### **4.26.9.7 (06-01-2006)**

##### **Money Transmitter Overview**

1. There are currently several major and many regional money transmission companies that operate within the United States. Some of the largest include, but are not limited to, Western Union, Vigo Remittance, Travelers Express/Money Gram. In addition, many banks are aggressively competing in this business.
2. A money transmitter may allow customers to send and receive money throughout the United States or anywhere in the world. A customer can send money by visiting any participating outlet, filling out a money transfer form and paying for the transaction. The same is true for the receiving side of the transaction.
3. Each money transmitter has a home office, a transaction clearing center or service center, and several regional offices.
4. Each major money transmission company contracts with independent agents. These agents include individuals, as well as, businesses such as grocery stores, truck stops, check cashers, pharmacists, travel agents, and supermarket chains.
5. The money transmission home office pays its agents using a "fee schedule" that provides predetermined charges (fees) for money transfers.
6. Agents (agencies) receive a commission on the fees charged for transferring money.
7. Agents (agencies) are located in the 50 States, Puerto Rico, the U.S. Virgin Islands, and Guam. Some are open 24 hours a day.

8. Each money transmission company has its own forms to send and receive money. General characteristics include, but are not limited to:
  - a. The date of transaction
  - b. The amount of the transaction
  - c. The name of the person sending money (sender/payer)
  - d. The name of the person receiving the money (recipient/receiver/pay to)
  - e. The reference (transaction) number assigned by the service center.
9. When a transaction to send or to receive money is initiated by a customer, the money transmitter will contact the service center. This can be done by either dialing a toll-free telephone number or using an on-line computer system (optional equipment for agent). The information from the customer transaction form is entered into the service center computer system.
10. The original transaction documents to send or to receive money are kept by the money transmitter anywhere from six months to several years. The retention period is usually determined by the money transmission home office.
11. Identification and verification of identification on certain thresholds of transactions are governed by 31 CFR 103.22, 31 CFR 103.28, and 31 CFR 103.33(f)(2). Below the thresholds that trigger identification and verifications requirements, identification may not be required by the companies for either the person sending the money or the person receiving the money. There is a "test question" on some sending forms that waives identification on the recipient side of the transaction if the recipient knows the correct answer.
12. Money transmission companies usually give policy and procedure guidelines to each of their agents through periodic newsletter updates.
13. Money transmitters are one of the five distinctive types of financial services providers known as "money services businesses" or MSBs. (Refer to IRM 4.26.5 for a discussion on MSBs.)

#### **4.26.9.7.1 (06-01-2006)**

##### **Law**

1. A money transmitter is defined as an MSB under 31 CFR 103.11 (uu)(5).

#### **4.26.9.7.1.1 (06-01-2006)**

##### **Reporting Requirements**

1. FinCEN Form 104(CTR) must be filed for all currency transactions of more than \$10,000 in one business day. (31 CFR 103.22(b)(1)) Currency received from the sender through a money transmitter or paid to the receiver through a money transmitter can trigger the reporting requirement.
2. Multiple currency transactions must be aggregated and a CTR is required if the business has knowledge that the multiple transactions are by or on behalf of any one person and result in either cash in or cash out totaling more than \$10,000 in one business day. (31 CFR 103.22(c)(2))
3. The CTR must be filed within 15 calendar days following the day the reportable transaction occurs. (31 CFR 103.27(a)(1))
4. Treasury Department Form TD 90-22.56, SAR-MSB, is required to be made by the money services business if they suspect or have reason to suspect suspicious activities have occurred (31 CFR 103.20(a)).
5. A SAR-MSB must be filed for suspicious transactions of at least \$2,000 in funds or other assets conducted or attempted by, at, or through the money services business (31 CFR 103.20(a)(2)).
6. An MSB is required to file the SAR-MSB with FinCEN, through DCC, no later than 30 calendar days after the date of detection (31 CFR 103.20(b)(3)).
7. An MSB is prohibited from notifying any person involved in the transaction that a SAR has been filed (31 CFR 103.20(d)).

#### **4.26.9.7.1.2 (06-01-2006)**

##### **Registration Requirements**

1. A money transmitter is required to register on a FinCEN Form 107, (formerly TD F 90-22.55), Registration of Money Services Business and biannually renew their registration if they are not



acting in an agent capacity and are not a branch location (31 CFR 103.41).

2. Certain events require re-registration which is different from a renewal registration (31 CFR 103.41(b)(4)).

#### **4.26.9.7.1.3 (06-01-2006)**

##### **Recordkeeping Requirements**

1. For records required of all financial institutions, refer to IRM 4.26.5.
2. Copies of all filed CTRs must be retained by the financial institution for five years from the date of the report. (31 CFR 103.27(a)(3))
3. Copies of all filed SAR-MSBs and the original or record of any supporting documentation shall be maintained for five years from the date of filing the SAR (31 CFR 103.20(c)).
4. Certain records are required to be retained for funds transfers (wires) of \$3,000 or more sent or received by or for an individual on any one business day. (31 CFR 103.33(f))
5. The following information must be obtained for the records (31 CFR 103.33(f)):
  - a. The transmitter's name and address.
  - b. The amount of the transmittal order.
  - c. The execution date of the transmittal order.
  - d. Any payment instructions received from the transmitter.
  - e. The identity of the recipient's financial institution.
  - f. Any of the following items received with the transmittal order:
    1. The name and address of the recipient
    2. The account number of the recipient
    3. Any other specific identifier of the recipient
    4. Any form relating to the transmittal of funds that is completed or signed by the person placing the order.

6. If the transmitter is not an established customer, generally the following records also must be retained (31 CFR 103.33(f)(2)):
  - a. Verification of the transmitter's name and address.
  - b. The type and number of identification reviewed (e.g., driver's license).
  - c. The transmitter's taxpayer identification number (e.g., social security number, or, if none, alien identification number, passport number, and country of issuance, or notation in the record of the lack thereof).
7. If the recipient is not an established customer, the following records must be retained:
  - a. The original, microfilm, other copy, or electronic record of the transmittal order.
  - b. Verification of the recipient's name and address.
  - c. The type and number of the identification reviewed (e.g., driver's license).
  - d. The recipient's taxpayer identification number (e.g., social security number, alien identification number, passport number, and country of issuance).
8. These records must be retained by the financial institution for five years. (31 CFR 103.38(d))
9. Copy of MSB registration form, if applicable.
10. Current annual agent list and agent list(s) for the past five years (back to January 2002) if applicable (31 CFR 103.41(d)).

#### **4.26.9.7.1.4 (06-01-2006)**

##### **AML Program Requirements**

1. All money services businesses must establish and implement a written, risk-based AML program reasonably designed to prevent the business from being used to facilitate money laundering and the financing of terrorism.
2. At a minimum, the program shall:

- a. Incorporate policies, procedures, and internal controls reasonably designed to assure compliance with the BSA and its implementing regulations;
- b. Designate a compliance officer;
- c. Provide for education or training of appropriate personnel; and,
- d. Provide for independent review to monitor and maintain the adequacy of the program (31 CFR 103.125).

#### **4.26.9.7.2 (06-01-2006)**

##### **Records Commonly Found**

1. In addition to the required information listed in 4.26.9.7.1.3, a money transmitter's records usually include
  - a. Bank statements and deposit slips;
  - b. The money transmitter's send and receive forms completed by the customers;
  - c. Commission statements;
  - d. Agent records of \$3,000 transactions; and,
  - e. Teller's daily reconciliations.
2. An example of a BSA examination audit trail is shown in Exhibit 4.26.9-26.

#### **4.26.9.7.2.1 (06-01-2006)**

##### **Terminology**

1. Date - The date of the transaction.
2. Destination - Where the money is being sent.
3. Draft Number - A number assigned by the money transmitter on its pre-numbered forms.
4. Identification - This is generally required of the person receiving the wire transfer.

##### **Note:**

the identification of the recipient can be avoided by answering the test question.

5. Message - Additional remarks given by the sender for the recipient.
6. Method of Payment - Cash, Visa, MasterCard, etc.
7. Origin of Transaction - The city where the transaction originated.
8. Pay To - The person designated as the one to receive the money transfer.
9. Payee's Name - The person designated to receive the money.
10. Receiver - This is the name of the person receiving the money transfer.
11. Recipient's Name/Receiver - The person designated to receive the money.
12. Reference Number - A number assigned by the agent's service center to each specific transaction being sent. It can be used to trace a specific transaction.
13. Sender -The customer sending the money.
14. Test Answer - This is the response required for the test question.
15. Test Question - Secret password or words provided by the sender wherein identification is waived for the recipient.
16. Transaction Number - Number assigned to the transaction for tracing.

#### **4.26.9.7.3 (06-01-2006)**

##### **Interview**

1. Ask specific questions relating to the business, area, and services offered. The examiner must consider all financial services or products offered by the business, such as money remittance, check cashing, and sales of money orders. For example, a customer could attempt to launder \$15,000 by sending a wire transfer for \$8,000 and purchasing \$7,000 in money orders.
2. Identify the BSA compliance officer and all other personnel who are responsible for conducting, recording, and reporting of BSA transactions and evaluate their understanding of the BSA

recordkeeping and reporting requirements. It is important to establish knowledge of the BSA should any violations be noted during the examination. These individuals should be identified by name, title, and specific responsibilities.

3. Ask the owners or management of the financial institution if they have knowledge of structuring transactions having occurred, or if any suspicious transactions have occurred. This question also must be asked while interviewing employees who have customer contact.
4. Interview all individuals who handle currency transactions (i.e., prepare currency reports, maintain records, etc.). Determine their knowledge and amount of training received on the BSA recordkeeping and reporting requirements.
5. Ask open-ended questions throughout the interview. Do not ask questions that require only a yes or no answer.
6. Each interview should be documented in the case file.
7. Interview the AML compliance officer, as well as compliance program employees. Determine the level of familiarity with internal compliance programs and internal controls.
8. For examples of possible initial interview questions for a money transmitter, see Exhibit 4.26.9-28. This is only a guide that should be expanded or contracted as each BSA examination warrants.

#### **4.26.9.7.4 (06-01-2006)**

##### **Review of the Records**

1. Any records the financial institution maintains for the business that are relevant to the BSA examination can be requested and reviewed. The examiner will determine if the financial institution is maintaining adequate records and must document any recordkeeping violations.
2. Ask to see the money transmission company's policy and procedures manual regarding the BSA registration, recordkeeping, reporting, and AML compliance program requirements. The examiner should review the information for completeness and determine if AML compliance program procedures are adequate. Determine how risk of money

laundering was assessed and how this risk assessment figured into the establishment of the compliance program.

3. Inspect a sample of copies of CTRs and SAR-MSBs filed by the money services business to ensure they are accurate and complete. Ensure filed CTRs and SAR-MSBs have been retained by the financial institution for the required five-year period. Use the CBRS database to verify that the CTRs and SAR-MSBs were timely filed and contain the same information as the copies maintained by the financial institution.
4. Review internal audits and external agency audits and reviews specific to BSA policies, procedures, or operations for BSA issues.
5. Review monthly commission statements to detect large daily transactions or transactions conducted over a period of several days (multiple transactions) which appear to be related. (Each money transmitter receives commission statements from their respective money transmission business center or home office).
6. Review the daily cash reports and reconcile these to the bank deposit slips. Generally, a money transmitter will deposit all monies received each day. The daily cash reports can be traced to the daily summary sheets and the deposit slips to the monthly bank statements.
7. Review the daily summary sheets for all send and receive transactions. If the daily summary sheet has 20 transactions recorded, there should be 20 transaction documents to support them. The amounts listed on the daily summary sheet can be reconciled to the original send or receive documents. Review the original send and receive transaction forms for completeness. Determine if all the required information has been obtained and recorded on the forms. The examiner may use a dollar amount criteria for selecting forms for inspection.
8. Review the original send and receive transaction forms for completeness. Determine if all the required information has been obtained and recorded on the forms. The examiner may elect to select a dollar criteria for inspection of these forms.
9. Look at the transaction and fee amounts recorded on the transaction forms. The total amount collected line should include both the transaction amount and fees collected. These totals can be traced to the daily summary sheets.

10. Scan each group of records for possible structured transactions occurring on the same day or over a period of several days. For example, a 5:00 PM transaction with the transactor sending \$6,000, and again at the same location on the same day a 5:10 PM transaction with the transactor sending \$5,000, could be structured transactions. Examiners should be aware of these or similar situations and must be prepared to discuss suspicious transactions with the money transmitter.
11. When reviewing money transmitter transactions, note the telephone numbers given. A sender may give a false name and address, but may use a correct telephone number. The reason is that if the money cannot be delivered, the sender will want to be notified. Also watch for repetitive addresses, and senders and/or receivers names.
12. Review the financial institution's records to determine if all the required information on money transmittals of \$3,000 or more has been obtained and retained pursuant to the recordkeeping requirements of 31 CFR 103.33.
13. The examiner may elect to use a database to input information from the transaction records for purposes of detecting structuring and other money laundering schemes.
14. Analyze database sorts of the name, address, and phone number fields to detect possible structured transactions, unreported transactions, errors, and/or deficiencies in the financial institution's BSA compliance system.
15. If structured transactions or other BSA violations are detected, the examiner should interview the responsible person or employee who conducted the transaction. Based on the answers given, the examiner should consider expanding the scope of the examination. (Refer to IRM 4.26.6.) All facts should be discussed with the BSA Group Manager. The BSA Group Manager will decide whether or not to refer the violation to the Financial Crimes Enforcement Network for possible enforcement action.
16. Obtain copies of all source documents that document any apparent BSA violations.
17. Issue a Letter 1112 or make a referral on Form 5104 for all failures to file CTRs and any recordkeeping violations. Prepare in accordance with the examination guidelines. (Refer to IRM 4.26.8.)

18. Follow procedures in IRM 4.26.6 to timely conclude the BSA examination.
19. Prepare Form(s) 5346, Examination Information Report, when information is obtained during the BSA examination that indicates a possible income tax violation warranting referral. Keep in mind, however, that the primary purpose of the BSA exam is not to detect Title 26 violations. (Refer to IRM 4.26.6.)
20. If warranted, extend the examination to more than one business location in the area. If several money transmitters are in the same geographical area, concentrate in that area.
21. The databases of BSA examinations in the same geographical area should be consolidated and sorted to detect possible related structuring activity occurring at more than one location.
22. Review copies of filed MSB registration and renewal forms (if applicable) for accuracy and completeness.
23. Determine if the business is required to register as an MSB.
24. Review agent list (if applicable) for all required elements.
25. Forward agent list to BSA Workload Selection coordinator in a separate shipment from the case file.
26. Review agent contracts and terms for acceptance and termination as an agent.
27. Review all agents rejected or terminated as an agent and forward list to BSA Workload Selection coordinator in a separate shipment from the case file.
28. During a BSA compliance examination of a national money transmitter's headquarters, obtain and review information on the agent network, sales/transmission and commission records, compliance program records, and internal processes for money transmission and reconciliation. Exams at the corporate level should focus on: compliance monitoring of operations, compliance training of issuer personnel and of agents, and internal reporting of compliance issues or of unusual transaction activity.

#### **4.26.9.7.5 (06-01-2006)**

##### **Evidence**



1. The examiner must obtain documentation for each type of the following violations:
  - a. Reporting – The date of the transaction, the amount, the individuals involved, and a detailed statement regarding the violation, including copies of source documents such as cash in/out slips, control registers, and teller cash proofs which support the violation.
  - b. Recordkeeping – The details of the specific records which were not maintained or were inadequate, including management’s response to the violations.
2. The knowledge of the money services business must be determined before determining whether violations should be formally referred to FinCEN.
  - a. The key officers and employees should be interviewed again to document the money services business’ to any apparent violations.
  - b. The existence of an internal compliance program may indicate knowledge. For example, if knowledge of the reporting and recordkeeping requirements is limited to upper management and the other employees are not similarly educated, the money services business may be at least negligent (for not properly instructing the employees.) The employees need to know what their BSA obligations are. The employees are the initial contact point where the information is obtained. Failure by upper management to ensure that factual information is correctly gathered may establish evidence of the money services business’ intent not to comply.
3. Other factors indicating the money services business’ knowledge of the BSA registration, reporting, recordkeeping, and compliance program requirements, and its compliance intentions are:
  - a. Prior BSA violations and BSA compliance related contacts with the IRS
  - b. Training programs offered by the business
  - c. The MSBs formal BSA compliance procedures

- d. Active involvement of management in oversight and internal control activities.
4. In situations where knowledge cannot be determined within the scope of selected records, the examiner should expand the period to include recent transactions that occurred after knowledge can be clearly documented. For example, the examiner selected records from January, February, and March. The inspection of these records discloses currency transactions that appear to be structured and which should have been reported. The money services business denied knowledge of the structuring regulations during the initial interview. In April, the examiner informed the money services business about the suspicious transactions and of the structuring regulations. The examiner later expanded the examination period to include May and June transactions. The examiner found violations in May and June. The money services business' knowledge was documented during the notification of the structuring violations and took no action to prevent the recurrence of violations. The money services business' intent to not comply should be documented.
  5. Because willfulness is a state of mind, generally only circumstantial evidence of willfulness will be available. A willful violation is the intentional violation of a known legal duty.
  6. Since BSA penalties are assessed by FinCEN, which does not have any field examiners, the examiner must thoroughly document all facts on the issue of intent. After the examiner secures the necessary information and documents the apparent violations, the examiner should follow the procedures detailed in IRM 4.26.8.

#### **4.26.9.7.6 (06-01-2006)**

##### **Money Transmitter's Position**

1. After documenting the potential violations, the examiner should provide a list of the violations to the money services business and solicit a written explanation for each of the violations identified. The list should include:
  - a. Date of the transaction;
  - b. Customer name;
  - c. Account number (if any);

- d. Amount of the currency transaction(s); and,
  - e. Description of the transaction(s).
2. The examiner should advise the money services business of any recordkeeping deficiencies as well as any deficiencies in their policies, procedures, internal controls, and compliance programs that might result in noncompliance with the BSA.
  3. Any additional documents or information, provided by the money services business in response should be reviewed and a determination should be made as to whether any items should be removed from the list of violations.
  4. When the money services business contends that a CTR was filed, and provides its retained copy as evidence, the examiner should query the CBRS database and conduct an exhaustive search before concluding that a CTR was not received. In conducting the search, the examiner should query all customer numerical identification on the CTR such as account number (if applicable), SSN, and identification credential number.

#### **4.26.9.7.7 (06-01-2006)**

##### **Money Laundering Trends**

1. The financial institution and/or the customer can be involved in potential money laundering schemes. The examiner must focus on both the financial institution and the transactor(s) during the BSA examination.
2. Money laundering techniques, which could be used by the financial institution, include:
  - a. Failing to maintain complete records
  - b. Failing to record specific transactions
  - c. Failing to obtain the required information to comply with the recordkeeping requirements
  - d. Failing to file CTRs or SAR-MSBs on reportable transactions
  - e. Filing incomplete CTRs or SAR-MSBs
  - f. Structuring a transaction by breaking one transaction into several to circumvent the reporting requirements.

3. Money laundering techniques which could be used by the customer/transactor include:
  - a. Using multiple locations to conduct transactions
  - b. Using several individuals at one or more locations to conduct a transaction
  - c. Using aliases when conducting transactions
  - d. Conducting numerous transactions at the same location at different times during one day.
4. When evidence of a money laundering scheme is uncovered, a referral should be made on Form 5104. (See IRM 4.26.8 for referral procedures.)

#### **4.26.9.7.7.1 (06-01-2006)**

##### **Examination Techniques**

1. The following techniques can be useful in uncovering money laundering schemes:
  - a. Review electronic records if available. If not, review transmittal forms to ensure the financial institution is obtaining all the required information and verification, and for indications of fictitious information.
  - b. Review transmittal forms looking for handwriting similarities. If similarities are noted, compare signatures on the forms. (Are different names being used?)
  - c. Review send and receive forms, looking for transactions at nearby locations. It could be an indication of money laundering (i.e. paying wire transfer fees to convert cash into a check.)
  - d. Review electronic records if available. If not, review transmittal forms looking for similar names and addresses for both senders and recipients,
  - e. Review electronic records if available, if not, transmittal forms for similar phone numbers. (Are different customers using the same phone number?)
  - f. Conduct BSA examinations of financial institutions within the same geographical area,

- g. Create a database to consolidate transactions of the financial institutions, which can be sorted to identify any related transactions, possible structuring.
- h. Review all financial services offered to see if customers are structuring transactions by using multiple financial services.

#### **4.26.9.8 (06-01-2006)**

##### **Traveler's Checks Overview**

1. Traveler's checks are issued by national companies such as American Express, Thomas Cook, or VISA. There are also privately issued traveler's checks.
2. Traveler's checks are negotiable monetary instruments. Individuals usually purchase them when they are traveling on vacations or business trips, instead of carrying cash.
3. Sales agents of traveler's checks may sometimes provide other services such as check cashing, wire services, or may operate a business such as a credit union or travel agency.
4. Rather than run the risk of robbery, some businesses in high-risk areas will buy traveler's checks throughout the day instead of transporting cash to the bank.
5. An issuer, seller, or redeemer of traveler's checks is one of the five distinctive types of financial services providers known as "money services businesses" or MSBs. (Refer to IRM 4.26.5 for a discussion on MSBs.)

#### **4.26.9.8.1 (06-01-2006)**

##### **Nationwide Traveler's Checks**

1. Financial institutions typically sell traveler's checks as agents for national companies. The agent's relationship to the issuer of the traveler's checks is governed by a trust agreement.
2. The agent is allowed to advertise that it sells the national company's traveler's checks.
3. Traveler's checks are drawn on the national company's bank account and the transaction is not complete until the national company receives the face amount from the agent and the traveler's check clears the bank.

##### **Note:**

The issuer could consider the transaction complete for accounting purposes when the check is sold, or when the check is transferred to the agent, and/or when it receives the funds for the check sale from the agent. The key is that the issuer always sets aside an amount equal to the amount of the face value of the check sold to cover redemption of the check, upon transfer of the check to the agent, prior to the check's redemption (though the check may not be cashed until some time later after the sale).

4. The dollar value of traveler's checks sold by an agent can be limited by the issuing company's trust agreement or by the agent's policy, but in theory they can be in any denomination. Most domestic issuers tend to limit the denominations of traveler's checks sold in U.S. currency to \$100, or at most \$1,000. It should be noted that traveler's checks may be issued in any of several currencies by issuers. Some of the most common currencies for traveler's check issuers include the U.S. dollar, the Canadian dollar, the Euro, the Japanese yen, and the Saudi rial. When examining agents that issue traveler's checks in foreign currency, one should be aware of current exchange rates in order to evaluate compliance against BSA reporting and recordkeeping requirements.
5. The national company issues and maintains records of traveler's check issuance or sales to agents, as well as records of cashed traveler's checks. The agent maintains sales records of traveler's checks using a sequential numbering system.
6. An agent's summary sales report is sent to the national company daily and the correspondent bank sends a clearing report. Using these reports, the national company keeps a record of all traveler's checks sold and cashed. The issuer maintains, and agents are sent, a discrepancy statement for traveler's checks cashed but not reported as sold. If the agent is a nationwide entity with many outlets, the agent may consolidate its reporting records so that the national issuer may receive the same information regarding traveler's check transactions, but in a manner that does not report sales at the individual outlet location.
7. Money received from the sale of traveler's checks is usually deposited, by the agent, into a separate bank account. Payment is made to the national company by check, wire transfer, electronic mail, or draft.

8. National traveler's checks companies either collect their fee up front when the traveler's checks are given to the agents, or have their agents remit the fee together with the face amount of the traveler's checks sold.
9. Agents may receive commission statements or reconciliations of traveler's checks sold. The agent's commission can be accounted for this way.
10. Although identification of persons purchasing traveler's checks in amounts under \$3,000 is often left to the individual agents, in many instances, the MSB requires identification from the purchaser.
11. At a minimum, national companies keep a copy of the front and back of all cashed and canceled traveler's checks.

#### **4.26.9.8.1.1 (06-01-2006)**

##### **Private Traveler's Checks**

1. Generally, private companies maintain and reconcile daily records of traveler's checks sold. Like checks, traveler's checks are cleared by a correspondent bank. If adequate records are not maintained, additional information should be obtained from the correspondent bank.
2. Traditionally, private companies do not require identification to purchase traveler's checks.

#### **4.26.9.8.2 (06-01-2006)**

##### **Law**

1. An issuer of traveler's checks (other than a person who does not issue such checks in an amount greater than \$1,000 in currency or monetary or other instruments to any person on any day in one or more transactions) is defined as an MSB (31 CFR 103.11 (uu)(3)).
2. A seller or redeemer of traveler's checks (other than a person who does not sell or redeem such checks in an amount greater than \$1,000 in currency or monetary or other instruments to any person on any day in one or more transactions) is defined as an MSB (31 CFR 103.11(uu)(4)).

#### **4.26.9.8.2.1 (06-01-2006)**

##### **Reporting Requirements**

1. FinCEN Form 104 (CTR) must be filed for all currency transactions of more than \$10,000 in one business day. (31 CFR 103.22(b)(1))
2. Multiple currency transactions must be aggregated and a CTR is required if the business has knowledge that the multiple transactions are by or on behalf of any person and result in either cash in or cash out totaling more than \$10,000 in one business day. (31 CFR 103.22(c)(2))
3. The CTR must be filed within 15 calendar days following the day the reportable transaction occurs. (31 CFR 103.27(a)(1))
4. Treasury Department Form TD 90-22.56 (SAR-MSB) is required to be made by an MSB if they suspect or have reason to suspect suspicious activities have occurred (31 CFR 103.20(a)).
5. A SAR-MSB must be filed for suspicious transactions of at least \$2,000 in funds or other assets conducted or attempted by, at, or through the money services business (31 CFR 103.20(a)(2)).
6. To the extent that the identification of suspicious transactions required to be reported is derived from a review of clearance records or other similar records of traveler's checks that have been sold or processed, an issuer of traveler's checks shall only be required to report a transaction or pattern of transactions that involves or aggregates funds or other assets of at least \$5,000 (31 CFR 103.20(a)(3)).
7. An MSB is required to file the SAR-MSB with FinCEN, through DCC, no later than 30 calendar days after the date of detection (31 CFR 103.20(b)(3)).
8. An MSB is prohibited from notifying any person involved in the transaction that a SAR has been filed. (31 CFR 103.20(d)).
9. FinCEN Form 105 (CMIR) must be filed by any person who transports, mails, or ships or has someone else transport, mail, or ship currency or monetary instruments in excess of \$10,000 into or out of the country or who receives such items in the United States from abroad. (31 CFR 103.23)

#### **4.26.9.8.2.2 (06-01-2006)**

##### **Registration Requirements**

1. Traveler's check issuers, sellers, or redeemers are required to register by filing a FinCEN Form 107(formerly TD F 90-22.55),



Registration of Money Services Business, and to renew their registration biannually if they are not acting in an agent capacity and are not a branch location (31 CFR 103.41).

2. Certain events require re-registration which is different from a renewal registration (31 CFR 103.41(b)(4)).

#### **4.26.9.8.2.3 (06-01-2006)**

##### **Recordkeeping Requirements**

1. For records required of all financial institutions, refer to IRM 4.26.5.
2. Copies of all filed CTRs must be retained by the financial institution for five years from the date of the report (31 CFR 103.27(a)(3)).
3. Copies of all filed SAR-MSBs and the original or record of any supporting documentation shall be maintained by the financial institution for five years from the date of filing the SAR-MSBs (31 CFR 103.20(c)).
4. Certain records are required to be maintained for the issuance or sale of traveler's checks involving currency in amounts between \$3,000 and \$10,000, inclusive, by or on behalf of one individual in one business day. The following information must be obtained:
  - a. The purchaser's name and address;
  - b. The purchaser's social security number or alien identification number;
  - c. The purchaser's date of birth;
  - d. The date of purchase;
  - e. The type of instruments purchased;
  - f. The serial numbers of the instruments purchased; and,
  - g. The amount in dollars of each instrument purchased (31 CFR 103.29(a)(2)(i)).
5. The financial institution is required to verify the purchaser's name and address and record the specific identifying information (e.g., State of issuance and purchaser's drivers license number). (31 CFR 103.29(a)(2)(ii))

6. These records must be retained by the financial institution for five years. (31 CFR 103.29(c))
7. Copy of registration and renewal must be retained for five years, if applicable.
8. Current annual agent list and agent list(s) for the past five years (back to January 2002) must be retained, if applicable (31 CFR 103.41(d)).

#### **4.26.9.8.2.4 (06-01-2006)**

##### **AML Program Requirements**

1. All MSBs must establish and implement a written, risk-based AML program reasonably designed to prevent the business from being used to facilitate money laundering and the financing of terrorism.
2. At a minimum, the program shall:
  - a. Incorporate policies, procedures, and internal controls reasonably designed to assure compliance with the BSA and its implementing regulations;
  - b. Designate a compliance officer;
  - c. Provide for education or training of appropriate personnel; and,
  - d. Provide for independent review to monitor and maintain the adequacy of the program (31 CFR 103.125).

#### **4.26.9.8.3 (06-01-2006)**

##### **Records Commonly Found**

1. Traveler's checks agents records usually include, but are not limited to:
  - a. Inventory sheets of traveler's checks sold,
  - b. Inventory sheets of traveler's checks received from the issuer,
  - c. Inventory sheets of traveler's checks currently in stock
  - d. Bank statements and deposit slips
  - e. Teller drawer reconciliations or summaries, and

- f. A copy of the executed trust agreement between the agent and the issuer.
2. An example of a BSA examination audit trail is shown in Exhibit 4.26.9-29.

#### **4.26.9.8.4 (06-01-2006)**

##### **Interview**

1. Ask specific questions relating to the business, area, and services offered. The examiner must consider all services offered by the business, such as money transmitting, check cashing, and sales of money orders. For example, a customer could attempt to launder \$15,000 by sending a wire transfer for \$8,000 and purchasing \$7,000 in traveler's checks.
2. Interview the AML compliance officer and compliance program employees, as well as the officers and employees of the traveler's check issuer, seller, or redeemer to determine their knowledge of the BSA and the financial institution's procedures to comply with the reporting and recordkeeping requirements. The duties and responsibilities of the officers and employees should be documented along with a description of the financial institution's records and an explanation of the flow of transactions through the records. Knowledge is one of the elements needed to prove willfulness with respect to violations of the regulations.
3. Ask the owners or management of the financial institution if they have knowledge of any structuring transactions having occurred, or if any suspicious transactions have occurred. This question should be asked again while interviewing employees who have customer contact.
4. Interview all individuals who handle currency transactions. Question their knowledge and training of the BSA recordkeeping and reporting requirements.
5. Ask open-ended questions throughout the interview. Do not ask questions that require only a yes or no answer.
6. An example of possible initial interview questions for issuers, sellers, or redeemers of traveler's checks is shown in Exhibit 4.26.9-31. It is only a guide and should be expanded or contracted as each BSA examination warrants.

#### **4.26.9.8.5 (06-01-2006)**

##### **Review of the Records**

1. Any records the financial institution maintains that are relevant to the BSA examination can be requested and reviewed. The examiner will determine if the financial institution is maintaining adequate records and must document any recordkeeping violations.
2. Review the written policy statements, procedures, etc. of the financial institution as they relate to the BSA.
3. Analyze the records of the financial institution for all types of financial services offered. Each type of financial service should be examined separately.
4. Determine the traveler's check register completeness by reconciling it to the summary sales reports sent to the issuing company, the discrepancy report from the issuing company, and the bank deposits.
5. Trace large block sales or large dollar single transaction sales of traveler's checks in the traveler's check register or close out reports to the records required for recordkeeping, SAR reporting and CTR reporting. Block sales are a group of sequentially numbered traveler's checks sold concurrently for the maximum denomination. The review should identify: a. Blocks of traveler's checks at \$2,000 or right below for SAR reporting; b. Blocks of traveler's checks at \$3,000 to \$10,000, inclusive, for recordkeeping requirements; and, c. Blocks of traveler's checks greater than \$10,000 for CTR reporting.
6. Inspect any copies of traveler's checks retained by the NBFi.
7. Request that the NBFi obtain copies of traveler's checks from the traveler's check issuer for any questionable or suspicious transactions. It may be necessary to issue a Title 31 summons to obtain this information. Refer to IRM 4.26.8 before issuing any Title 31 summons.
8. Review the NBFi's records to determine if all the required information on the cash purchasers of traveler's check sales involving currency in amounts of \$3,000 to \$10,000, inclusive, has been maintained and verified pursuant to the recordkeeping requirements of 31 CFR 103.29.

9. It is recommended that a computer database be used when the examination is part of a multiple location local project or there are a large number of block sales or large dollar sales. All transactions exceeding the elected dollar cutoff should be entered in the database, from source documents, to see if the transactions are related.
10. Analyze database sorts of the name field and the address field to detect possible structured transactions, unreported transactions, errors, and deficiencies in the financial institution's BSA compliance system.
11. The databases, if applicable, of BSA examinations of nearby financial institutions in geographical targeting projects should be consolidated and sorted to detect related structuring activity occurring at more than one location.
12. Review copies of CTRs filed by the financial institution to ensure they are accurate and complete. Ensure filed CTRs have been retained by the financial institution for the required five-year period. Use the CBRS database to verify that the CTRs were timely filed and contain the same information as the copies maintained by the financial institution.
13. Query the CBRS database for transactions conducted by owners, managers, and employees of the financial institution to detect possible unreported transactions of the financial institution that were instead reported under the individual's name.
14. If structured transactions or BSA violations are detected, the examiner should interview the responsible person or employee who conducted the transaction. Based on the answers given, the examiner should consider expanding the scope of the examination. (Refer to IRM 4.26.6.) All facts should be discussed with the BSA Group Manager.
15. Review relevant audit reports or reviews that address BSA policies, procedures, or operations for BSA issues.
16. Follow procedures in IRM 4.26.6 to timely conclude the BSA examination.
17. Prepare Form(s) 5346, Examination Information Report, when information is obtained during the BSA examination that indicates a possible income tax violation warranting referral.

(See IRM 4.26.6.) Keep in mind, however, that the primary purpose of the BSA exam is not to detect Title 26 violations.

18. Review copies of filed MSB registration and renewal forms (if applicable) for accuracy and completeness.
19. Determine if the business is required to register.
20. Review agent list (if applicable) for all required elements.
21. Forward agent list to BSA Workload Selection coordinator in a separate shipment from the case file.
22. Review agent contracts and terms for acceptance and termination as an agent.
23. Review all agents rejected or terminated as an agent and forward list to BSA Workload Selection coordinator in a separate shipment from your case file.

#### **4.26.9.8.6 (06-01-2006)**

##### **Evidence**

1. The examiner must obtain adequate supporting documentation for each type of the following violations:
  - a. Reporting – The date of the transaction, the amount, the individuals involved, and a detailed statement regarding the violation, including copies of source documents such as cash in/out slips, control registers, and teller cash proofs which document the violation.
  - b. Recordkeeping – the details of the specific records which were not maintained or were inadequate, including management’s response to the violations.
2. The MSBs knowledge of BSA requirements must be determined before determining whether violations should be formally referred to FinCEN.
  - a. The key officers and employees should be interviewed again to document the business’ response to any apparent violations.
  - b. The existence of an internal compliance program may indicate of knowledge. For example, if knowledge of the reporting and recordkeeping requirements is limited to

upper management and the other employees are not similarly educated, the business may be at least negligent (for not properly instructing their employees.) The employees need to know what their BSA obligations are. The employees are the initial contact point where the information is obtained. Failure by upper management to ensure that factual information is correctly gathered may indicate the business' intent not to comply.

3. Other factors that may indicate the MSB's knowledge of the BSA registration, reporting, recordkeeping, and compliance program requirements, and its compliance intentions are:
  - a. Prior BSA violations and BSA related contacts with the IRS;
  - b. Training programs offered by the business;
  - c. The MSB's formal BSA compliance procedures; and,
  - d. Active involvement of management in oversight and internal control activities.
4. In situations where knowledge cannot be determined within the scope of selected records, the examiner should expand the period to include recent transactions that occurred after knowledge can be clearly documented. For example, an examiner initially selects records from January, February, and March. Inspection of these records discloses currency transactions that appear to be structured and which should have been reported. The business denies knowledge of the structuring regulations during the initial interview. In April, the examiner informs the business about suspicious transactions and of the structuring regulations. The examiner then expands the examination period to include May and June transactions. The examiner finds violations in May and June. The business' knowledge was documented during the April notification, yet it took no action to prevent the recurrence of violations. The business' intentional noncompliance should be documented.
5. Because willfulness is a state of mind, generally only circumstantial evidence of willfulness will be available. A willful violation is the intentional violation of a known legal duty.
6. Since BSA penalties are assessed by the FinCEN, which does not have any field examiners, the examiner must thoroughly document all facts on the issue of willfulness. After the examiner secures the necessary information and documents

the apparent violations, the examiner should follow the procedures detailed in IRM 4.26.8.

#### **4.26.9.8.7 (06-01-2006)**

##### **Traveler's Check Business' Position**

1. After documenting the potential violations, the examiner should provide a list of the violations to the money services business and solicit a written explanation for each of the violations identified. The list should include:
  - a. Date of the transaction;
  - b. Customer name;
  - c. Account number (if any);
  - d. Serial number of the traveler's check(s) involved;
  - e. Amount of the currency transaction(s); and,
  - f. Description of the transaction(s).
2. The examiner should advise the MSB of any recordkeeping deficiencies as well as any deficiencies in their policies, procedures, internal controls, and compliance programs that might result in noncompliance with the BSA.
3. Any additional documents or information provided by the MSB in response should be reviewed and a determination should be made as to whether any items should be removed from the list of violations.
4. When the MSB contends that a CTR was filed and provides its retained copy as evidence, the examiner should query the CBRS database and conduct an exhaustive search before concluding that a CTR was not received. In conducting the search, the examiner should query all customer numerical identification on the CTR such as account number (if applicable), SSN, and identification credential number.

#### **4.26.9.8.8 (06-01-2006)**

##### **Money Laundering Trends**

1. The financial institution and/or the customer can be involved in potential money laundering schemes. The examiner must focus



on both the financial institution and the transactor(s) during the BSA examination.

2. Money laundering techniques, which could be used by the financial institution, include:
  - a. Failing to maintain complete records
  - b. Failing to record specific transactions
  - c. Failing to obtain the required information to comply with the recordkeeping requirements
  - d. Failing to file CTRs, SAR-MSBs, or CMIRs on reportable transactions
  - e. Structuring a transaction by breaking one transaction into several to circumvent the reporting requirements.
3. Money laundering techniques which could be used by the customer/transactor include:
  - a. Using multiple locations to conduct transactions
  - b. Using several individuals at one or more locations to conduct a transaction
  - c. Using aliases when conducting transactions
  - d. Conducting several transactions at the same location at different times during one day.
4. When evidence of a money laundering scheme is uncovered, a referral should be made on Form 5104. (See IRM 4.26.8 for referral procedures.)

#### **4.26.9.8.8.1 (06-01-2006)**

##### **Examination Techniques**

1. The following techniques can be useful in uncovering money laundering schemes:
  - a. Review the financial institution's sales logs, inventory sheets, and /or daily summaries for block purchases. Trace these purchases to records of sales of \$3,000 or more.

- b. Request copies of traveler's checks from the issuer, if necessary, to determine if transactions have been structured.
- c. Conduct BSA examinations of financial institutions within the same geographical area.
- d. Create a database to consolidate transactions of the financial institutions, which can be sorted to identify related transactions.

**Exhibit 4.26.9-1 (01-01-2003)**

**Organizational Structure of a Gambling Casino**

Please click here for the text description of the image.

**Exhibit 4.26.9-2 (01-01-2003)**

**Computerized Casino Management System**

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**Exhibit 4.26.9-3 (06-01-2006)**

**Letter 3494, Appointment Letter for Casinos**

Here is the link for Letter 3494.

**Exhibit 4.26.9-4 (06-01-2006)**

**Information Document Request for Casino**

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**Exhibit 4.26.9-5 (06-01-2006)**

**Interview for Casino**

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**Exhibit 4.26.9-6 (01-01-2003)**

**Analysis of Incomplete CTRCs Filed**

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**Exhibit 4.26.9-7 (01-01-2003)**

**Daily Listing of CTRCs Filed**

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**Exhibit 4.26.9-8 (01-01-2003)**

**Daily Listing of CTRCs Actually Filed**

Please click here for the text description of the image.

**Exhibit 4.26.9-9 (01-01-2003)**

**Daily Listing of Customers' Cash-In Transactions**

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**Exhibit 4.26.9-10 (01-01-2003)**

**Daily Listing of Customers' Cash-Out Transactions**

Please click here for the text description of the image.

**Exhibit 4.26.9-11 (01-01-2003)**

**Daily Listing of Customers with Cash-In Transactions**

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**Exhibit 4.26.9-12 (01-01-2003)**

**Meanings of Abbreviations**

Please click here for the text description of the image.

**Exhibit 4.26.9-13 (01-01-2003)**

**Typical Organization Chart for a Check Casher**

Please click here for the text description of the image.

**Exhibit 4.26.9-14 (01-01-2003)**

**Check Casher Audit Trail**

Please click here for the text description of the image.

**Exhibit 4.26.9-15 (01-01-2003)**

**Information Document Request for a Check Casher**

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**Exhibit 4.26.9-16 (01-01-2003)**

**Interview for a Check Casher**

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**Exhibit 4.26.9-17 (01-01-2003)**

**Credit Union Audit Trail**

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**Exhibit 4.26.9-18 (01-01-2003)**

**Information Document Request for a Credit Union**

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**Exhibit 4.26.9-19 (01-01-2003)**

**Interview for a Credit Union**

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**Exhibit 4.26.9-20 (01-01-2003)**

**Currency Dealer or Exchanger Audit Trail**

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**Exhibit 4.26.9-21 (01-01-2003)**

**Information Document Request for a Currency Dealer or Exchanger**

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**Exhibit 4.26.9-22 (01-01-2003)**

**Interview for a Currency Dealer or Exchanger**

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**Exhibit 4.26.9-23 (01-01-2003)**

**Money Order Audit Trail**

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**Exhibit 4.26.9-24 (01-01-2003)**

**Information Document Request for a Money Order Business**

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**Exhibit 4.26.9-25 (01-01-2003)**

**Interview for a Money Order Business**

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**Exhibit 4.26.9-26 (01-01-2003)**

**Money Transmitter Audit trail**

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**Exhibit 4.26.9-27 (01-01-2003)**

**Information Document Request for a Money Transmitter**

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**Exhibit 4.26.9-28 (01-01-2003)**

**Interview for a Money Transmitter**

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**Exhibit 4.26.9-29 (01-01-2003)**

**Traveler's Check Audit Trail**

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**Exhibit 4.26.9-30 (01-01-2003)**

**Information Document Request for a Traveler's Check Business**

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**Exhibit 4.26.9-31 (01-01-2003)**

**Interview for a Traveler's Check Business**

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*Page Last Reviewed or Updated: 10-Sep-2017*



## Anti-Money Laundering

The scope of global Anti-Money Laundering (AML) scrutiny and enforcement for financial institutions is enormous and growing. Ten federal agencies regulate AML—and penalties for non-compliance range from, forfeitures, and indictments to the loss of reputation, stock value, and licenses to participate in the market.

Ballard Spahr represents a broad range of financial institutions—from the largest financial institutions in the nation to smaller enterprises and internet-based providers. Our attorneys draw on first-hand AML experience in both industry and government to help clients establish and refine AML policies and procedures, as well as conduct compliance training and audit existing programs.

We advise on customer identification and due diligence, requirements for filing suspicious activity reports, government exam preparation and response, due diligence for lending and acquisitions, and Office of Foreign Assets Control requirements.

If potential violations have occurred, we conduct internal investigations and assist in responding to administrative, civil or criminal investigations, and government enforcement actions.



## OUR SERVICES INCLUDE:

- Compliance counseling
- Defense in enforcement proceedings
- Drafting and reviewing compliance policies/procedures
- Due diligence during M&A transactions
- Executive and employee training
- Internal investigations
- Risk-assessment development
- Subpoenas/investigation notice response

## ANTI-MONEY LAUNDERING AND BANK SECRECY ACT (BSA) LAW: WHY IT MATTERS

Financial institutions today are faced with the task—and legal requirement—of developing policies, procedures, and controls to identify potential money laundering, fraud, trade embargo violations, tax evasion, and other criminal activity. Suspicious activity must be reported to the government.

The Financial Crimes Enforcement Network administers the BSA. The federal or independent agencies that examine financial institutions to determine compliance include the IRS, the Securities and Exchange Commission, FINRA, U.S. Customs and Border Protection, and the Federal Reserve. In addition, states have begun creating and implementing their own AML regulatory regimes.

The load has never been heavier. How you carry it makes all the difference.

## INDUSTRIES SERVED:

- Banks and credit unions
- Loan or finance companies, including nonbank lenders partnering with banks
- Nonbank residential mortgage lenders and originators
- Brokers or dealers in securities, commodities, and mutual funds
- Casinos
- Prepaid account providers and sellers
- Money transmitters, check cashers, and currency dealers and exchanges
- Insurance companies, including title insurance companies
- Dealers in jewels, precious metals, or stones
- Virtual currency exchanges

## RELATED PRACTICES INCLUDE:

- White Collar Defense/Internal Investigation
- Consumer Financial Services
- Government Regulations, Regulatory Affairs and Contracting
- Mortgage Banking
- Privacy and Data Security
- Export Control and Compliance
- Virtual Currency

To learn more, subscribe to *Money Laundering Watch* at [www.moneylaunderingwatchblog.com/subscribe](http://www.moneylaunderingwatchblog.com/subscribe).

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Peter Hardy is a national thought leader on money laundering, tax fraud, and other financial crime. He is the author of *Criminal Tax, Money Laundering, and Bank Secrecy Act Litigation*, a well-reviewed and comprehensive legal treatise published by Bloomberg BNA.

He advises corporations and individuals from many industries against allegations of misconduct ranging from money laundering, tax fraud, mortgage fraud and lending law violations, securities fraud, health care fraud, public corruption, Foreign Corrupt Practices Act violations, and identity theft and data breaches. He also advises on compliance with the BSA and AML requirements. He is the Leader of the firm's Anti-Money Laundering Team, the Co-Leader of the firm's Blockchain Technology and Cryptocurrency Team, and the editor of Ballard Spahr's blog on financial corruption, *Money Laundering Watch*. Peter co-chairs the Practising Law Institute's Anti-Money Laundering program.

Peter spent more than a decade as a federal prosecutor before entering private practice, serving as an Assistant U.S. Attorney in Philadelphia working on financial crime cases, and as a trial attorney for the Criminal Section of the Department of Justice's Tax Division in Washington, D.C.



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Beth Moskow-Schnoll concentrates her practice on white-collar litigation, regulatory enforcement and compliance, and complex civil litigation, with an emphasis on banking and other financial services litigation.

Beth counsels clients on compliance programs, particularly with regard to their obligations under the BSA, the USA PATRIOT Act, state and federal licensing requirements and sanctions regimes. She conducts BSA and OFAC risk assessments, audits and annual training and provides practical advice regarding the same. Beth also guides clients in responding to government investigations and enforcement actions.

Before joining Ballard Spahr, Beth served for more than a decade as a federal prosecutor with the U.S. Attorney's Office for the District of Delaware. As an AUSA, Beth investigated and prosecuted financial and health care fraud, including bank and credit card fraud, money laundering, asset forfeiture, and tax offenses. Beth is the managing partner of the Firm's Delaware Office and a member of the Firm's expanded board



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Adrian R. King, Jr., is Co-Practice Leader of Ballard Spahr's Government Relations, Regulatory Affairs and Contracting Group. Adrian focuses on general business and corporate law, government relations, regulatory affairs, government contracting, and gaming. He regularly represents clients before federal, state, and local executive branch and administrative agencies.

Over the years, Adrian has served the public by playing several high-level roles within Pennsylvania state government. Most recently, he was First Deputy Attorney General in the Pennsylvania Office of Attorney General, returning to Ballard Spahr in June 2014 after 17 months of service. During his time with the Office of Attorney General, he was involved in numerous high-profile matters, including the *Commonwealth of Pennsylvania v. Philip Morris USA, Inc.* litigation, which restored the payment of \$120 million in tobacco master settlement funds, and the reversal of Pennsylvania's ban on same-sex marriage.



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Michael D. Fabius is an administrative law attorney with particular experience advising clients in the highly-regulated gaming and racing industries, and in litigating claims in front of administrative agencies. In Pennsylvania and New Jersey's well-established gaming markets, Mike has advised three casino applicants in competitive application proceedings—two were successful. He also actively advises numerous casino clients, manufacturers, and other companies serving the gaming industry on gaming licensing, compliance, and transactions. This includes frequent meetings with staff and public presentations to gaming and racing regulatory agencies. In addition, Mike has extensive experience as lead regulatory counsel advising clients on compliance for large, multi-jurisdictional transactions requiring notices and approvals from several independent regulatory agencies.

Mike advises public sector and private sector clients on various areas of political and ethics laws addressing the public's access to records, open meetings, ethics, government contracting, elections, and campaign finance, and lobbying disclosure. He is a frequent presenter on Pennsylvania's Right-to-Know Law—drawing upon his extensive experience, including multiple successful appeals to Pennsylvania's Commonwealth Court on behalf of private sector clients.