



Enjoy this all-new collection of BOL Guru answers to recently submitted questions relating to the Bank Secrecy Act. Guru Bios can be found at:
<http://www.bankersonline.com/bio.html>

Question: Can a bank provide a copy of a filed SAR to its insurance company to process a claim that relates to the filing of the SAR?

Answer by Ken Gollhofer: No. Absolutely, no. You can provide all the documentation relating to the claim, including the supporting documentation for the SAR. However, the SAR itself and the fact that it was filed is irrelevant to the claim.

Question: Can you provide some guidance regarding CTR Exempt Account Reviews? What is the time period expected to be covered for the annual and biennial review (i.e. 6, 9, 12 months) for suspicious activity and what supporting documentation is expected to be in the file (i.e. copies of monthly statements, deposit detail -cash in, checks, checks reviewed to determine if unusual for the business)?

Answer by Ryan Rasske: Ideally your institution would have an on-going monitoring process that would detect suspicious transactions within exempt accounts and prompt a review. If the annual review for suspicious activity is a manual process, then your institution will have to establish written guidelines and /or procedures to follow. These steps would include the timeframes used during the review and supporting documentation required in each exemption folder. Some suggestions include:

- Review a years worth of cash activity (e.g. look for spikes in activity, unusual cash volumes, and compare levels to previous years). Sometimes these cash reports can be summarized by weekly or monthly activity.
- Explaining the nature of the business, size, number of locations, and reason for handling cash.
- Look at the last three months of statements for possible suspicious activity (e.g. kiting, several international wires, unusual ACH activity, change in balance). If suspicious activity is discovered, then you would go back further (6 months to a year).
- Include copies of signature cards and any available business documents (e.g. Articles of incorporation)
- Search the Internet for additional information (e.g. information on business, recent news articles, criminal history)

Question: On checks that are returned counterfeit, signature irregular, etc. within the 24 hr UCC deadline, banks do not take a loss. Do you believe a SAR should be filed on these items? Do you believe a SAR should be filed on large OD item returns?

Answer by John Burnett: The fact that "Check Fraud," "Counterfeit Check," and "Counterfeit Instrument (Other)" are included as checkoff items in the list of reasons a SAR is filed is a pretty strong suggestion that, if you know that you are returning checks that are counterfeit or forged (drawer signature), you should consider filing a SAR.

If you know the suspected bad actor, file if \$5,000 or more in checks are involved. Use a \$25,000 trigger if you don't have a suspect. Consider filing at lower levels.

Question: I have a customer with a small side business. This customer purchases a money order with over \$5,000.00 in cash. They do not typically make cash transactions for this amount, but could accumulate this amount of cash over time from their small business. Is this suspicious activity?

Answer by Barry Thompson: To answer this question I would need to know more about the customer.

1. What kind of business is the customer operating?
2. Have you seen any other patterns that would make you suspicious of this customer?
3. Does your customer have access to money from other sources?

I once had a customer who didn't trust financial institutions and actually kept money hidden at home. The customer decided the time had arrived to pay off the mortgage and walked into my office with over \$5,000.00 in cash. Suspicious maybe if you don't know your customer.

A one time incident would cause me to watch the account and not file the SAR without more information.

Question: We have a customer who has a cashier's check in the amount of \$34,000.00, the customer lists the check on deposit slip and states that they want \$13,000 cash back, for a net deposit \$21,000. We have some differences of opinion on what to list as "accounts affected." The \$13,000 never went into the account so one individual states it should state negotiable item no accounts

affected, another states it affected the account the remaining monies went into. Which is the correct way to report?

Answer by David Dickinson: A CTR should be filed with box 32 marked (Negotiable Instrument Cashed). No account was affected, so no account number would be listed.

Answer by Richard Insley: I agree with your conclusion, David, but would nevertheless be tempted to list the account in order to facilitate research at a later date. Knowing that the transaction is detailed on a deposit slip for a specified date, I could determine the location of the filmed record of the check very quickly. If the CTR shows only "check cashed" and a cash amount that did not match any item processed that day, it could take a while to research and reconstruct what happened. "Overcompliance" in this instance should not expose the bank under the RFPA but would enhance the paper trail.

Question:

We have several customers who are MSBs and reside and have their businesses in Mexico. How do they register and get a license to be an MSB? Can we require that they register before they conduct business with our bank?

Answer by Ken Gollhofer: U.S. laws govern U.S. businesses. A Mexican, or foreign, MSB is not required to register as an MSB in the U.S. if their only connection is a U.S. bank account. There is a FinCEN Ruling on this point. <http://www.msb.gov/pdf/fincenruling2004-1.pdf>

The most concise introduction to the issues involved is in OCC AL 2004-7:

Additional steps must be taken with a foreign MSB to comply with the requirements of section 312 of the USA PATRIOT Act (31 USC 5318(i)). Section 312 requires the bank to implement appropriate, specific, and where necessary, enhanced due diligence policies, procedures and controls when maintaining correspondent accounts for foreign financial institutions. A reasonable due diligence program under this section is one that comports with industry best practices and should include, in addition to the items listed above, consideration of foreign licensing requirements and restrictions, the condition of regulation and supervision in the customer's country, and money laundering risks associated with that country.

In addition to administering a sophisticated monitoring program for compliance with the law, you would still be responsible for monitoring their transactions for suspicious activity. For example, if your customers are transporting currency across the border, they may have responsibilities in connection with the filing of Form 105. If you determine they should be filing form 105, but they are not, then

you should evaluate filing a SAR. Form 105 -
http://www.fincen.gov/fin105_cmir.pdf

The responsibilities that are generated by dealing with foreign MSBs are considerably more sophisticated than those for dealing with domestic MSBs.

Question: If you have a business exempt as a Phase I and they are currently going through a reorganization, should you remove them as a Phase I Exemption?

Answer by David Dickinson: Not necessarily. If the TIN is the same, the customer is the same. Since a Phase I entity is exempt simply because they are publicly traded (I assume that's the type you are referring to), a reorganization doesn't kick them out. You should ensure that after the reorganization that they continue to meet the qualification of a Phase I exemption, however.

Question: BSA Exemption: The bank has elected to exempt its eligible customers by TIN. If a customer opens a new account with the same TIN, is that account automatically exempt or does the account have to be open for a specified time before it is to be included with the other accounts under the same TIN?

Answer by John Burnett: Banks designate exempt persons, not accounts. Assuming that the new account is "exemptible," the account falls under the customer's exemption on "Day 1."

An "exemptible" account is one that is a transaction account or MMDA. That would include any savings account that permits third party payments.

Answer by R.L. Carey: John is correct, but I would also suggest that you may need to analyze why a new account has been opened and are they transacting exemptable business through it. Anytime an account relationship changes like this is a great time to do a little re-examination of the customer.

Question: A SAR was filed and we have been contacted by the IRS for information regarding the filing. If the IRS Agent wants information relating to this individual on accounts that were not mentioned in the SAR or wants information that occurred before the SAR date or after the time period recorded in the SAR should we require a subpoena?

Answer by John Burnett: You are permitted to provide copies of any document that you used in completing the SAR filing. But if the agent wants more -- other

accounts, or copies of statements that you didn't look at for your filing, for example -- you must receive a subpoena or administrative summons under the IRS investigatory regulations.

If you have filed a follow-up SAR and used additional records in doing so, those records become part of the SAR file and can be shared with law enforcement without subpoenas or summonses.

Precisely this question was discussed by Ken Gollhofer in his terrific webinar on SAR filing. The CD-ROM of the program is available in the Banker Store.

Question: Is the bank required to have 2 forms of identification to open an account? Our Compliance Officer says it is the legal requirement of the Patriot Act, however I cannot find where it is required, only recommended.

Answer by David Dickinson: You only have to get enough verification so that you are reasonably satisfied that the customer is who they say they are. This is the "risk based" part. Because of that, there are no hard and fast rules for this step. You don't have to verify all identification or even two of the four things. No where does CIP say how many forms of ID are required.

Answer by Ryan Rasse: David is correct, there is no regulatory requirement stipulating how many forms of identification your bank must obtain. In fact, your bank could decide not to gather any forms of documentation and rely solely on using non-documentary methods (e.g. Credit bureau) or use a combination of both. Regardless of the verification methods your institution decides to use, the most important step will be your ability to demonstrate to your regulators (1) what method (documentary and/or non-documentary) was used, (2) results of the method used, and (3) how any discrepancies were resolved. Strong record keeping of your verification process will help carry your program a long way.