



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

4.26.5

JUNE 23, 2020

EFFECTIVE DATE

(06-23-2020)

PURPOSE

- (1) This transmits revised text for IRM 4.26.5, *Bank Secrecy Act, Bank Secrecy Act History and Law*.

MATERIAL CHANGES

- (1) IRM 4.26.5.1, *Program Scope and Objectives*, added to comply with IRM 1.11.2.2.5, *Address Management and Internal Controls*. All sections have been renumbered due to this addition.
- (2) Updated the full text to meet the federally mandated Plain Language requirements.
- (3) IRM 4.26.5.3.3(4), *1990s*, updated the language to clearly reflect the language of the final ruling.
- (4) IRM 4.26.5.3.5(3), *2010s*, added the requirements of Foreign-located MSBs, doing business in the US, to register as an MSB.
- (5) IRM 4.26.5.3.5(7), *2010s*, added reference to FinCEN's Final Rule that defines a non-bank Residential Mortgage Lenders and Originators as loan or finance companies subject to AML program requirements.
- (6) IRM 4.26.5.3.5(7), *2010s*, added reference to FinCEN's interpretive guidance which makes it clear that an administrator or exchanger is an MSB under the regulations, specifically, a money transmitter.
- (7) IRM 4.26.5.3.5(10), *2010s*, added information on FinCEN's administrative ruling allowing an alternate valid entry document issued by a U.S. Federal or state government agency as identification for a foreign currency exchange in excess of \$1,000.
- (8) IRM 4.26.5.3.5(11), *2010s*, added information on Delegation Order 15-41 being made obsolete.
- (9) IRM 4.26.5.4.3(6), *Types of Money Services Businesses*, updated the definition of a money transmitter to more clearly reflect the regulations.
- (10) IRM 4.26.5.4.3(9), *Types of Money Services Businesses*, added language to clearly define "person" as used throughout the regulation.
- (11) IRM 4.26.5.4.4(3) and (4), *Agents and Offices of Financial Institutions*, added information on FinCEN's ruling, which clarifies the requirements to file CTRs between a Licensed Money Transmitter and their agents.
- (12) IRM 4.26.5.5.1, *Currency Transaction Reports*, removed the table which contained the CTR filing requirements and verification requirements and incorporated the language into the text.
- (13) IRM 4.26.5.5.3(3), *Nonbank Financial Institutions and Exemptions*, added language on the exemption from filing a CTR between a Licensed Money Transmitter and their agents.
- (14) IRM 4.26.5.5.4, *Report of International Transportation of Currency or Monetary Instruments (CMIR)*, removed the table for FBAR and CMIR and merged the information with the text.
- (15) IRM 4.26.5.5.6, *Suspicious Activity Reports*, updated the SAR section for mandatory e-filing and updated the SAR information for additional filing requirements by financial institution.

- (16) IRS 4.26.5.6(4), *Suspicious Activity Reports*, updated the section for the requirement that Foreign-located MSBs must register and identify a person responsible for BSA.
- (17) IRM 4.26.5.6(5), *Suspicious Activity Reports*, updated the section for the prepaid access requirement to register.
- (18) IRM 4.26.5.6(10), *Suspicious Activity Reports*, updated the section to identify who is responsible for filing the MSB registration.
- (19) IRM 4.26.5.6(11), *Suspicious Activity Reports*, updated the section to identify penalties associated with the failure to register as an MSB.
- (20) IRM 4.26.5.7, *Recordkeeping*, deleted the table and merged the information into the text. Expanded the text to include a more complete description of the recordkeeping regulations.
- (21) IRM 4.26.5.8, *Structuring and Other Actions Taken to Evade BSA*, expanded the definition of structuring to more closely follow the law and regulations.
- (22) IRM 4.26.5.9(4), *Anti-Money Laundering Programs*, updated the list to include all financial institutions subject to AML program requirements.
- (23) IRM 4.26.5.9(5), *Anti-Money Laundering Programs*, added the AML program requirements for prepaid access.
- (24) IRM 4.26.5.9(7), *Anti-Money Laundering Programs*, added the penalty violations for failing to develop and implement an AML program.
- (25) IRM 4.26.5.12(9), *Delegation of Authority and IRS Jurisdiction*, removed reference to obsolete Delegation Order 15-41.
- (26) Deleted all exhibits except the Timeline of Important BSA Laws, Cases, and Regulations and 31 CFR Chapter X General Cross-Reference Index.

EFFECT ON OTHER DOCUMENTS

This supersedes IRM 4.26.5 dated October 2, 2012 and incorporates Interim Guidance Memos SBSE-04-0819-0038, *Guidance on addressing Prepaid Access Issues in Bank Secrecy Act Examination Cases*, and SBSE-04-0919-0046, *Interim Guidance on the IRS Authority Previously Delegated through Treasury Directive 15-41*.

AUDIENCE

The intended audience is employees of the Bank Secrecy Act program in Small Business/Self Employed (SB/SE) Division, and can be referenced by all field compliance personnel, especially in Examination and Collection who may be working an FBAR case.

Wanda R Griffin
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Small Business/Self-Employed

4.26.5

Bank Secrecy Act History and Law

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- 4.26.5-1 31 CFR Chapter X General Cross-Reference Index
- 4.26.5-2 Timeline of Important BSA Laws, Cases, and Regulations

4.26.5.1
(06-23-2020)
Program Scope and Objectives

- (1) **Purpose.** This IRM provides guidance on special procedures which are unique to Bank Secrecy Act (BSA) examinations, including issuance of a Title 31 summons, processing Power of Attorneys, and referrals to FinCEN for potential civil monetary penalties.
- (2) **Audience.** This IRM is for BSA managers, examiners and technical support personnel. The Title 31 summons procedures are the same for any IRS function trying to secure records to determine compliance with the FBAR requirements.
- (3) **Policy Owner.** Director, SB/SE Specialty Examination Policy.
- (4) **Program Owner.** Director, SB/SE Specialty Examination.
- (5) **Primary Stakeholders.** SB/SE Specialty Examination BSA; SB/SE Headquarters Exam, Specialty Exam Policy BSA; SB/SE Exam Quality & Tech Support, Specialty Exam NQRS; Chief Counsel, Division Counsel SB/SE.
- (6) **Contact Information.** To recommend changes or make any other suggestions related to this IRM section, see IRM 1.11.6.6, *Providing Feedback About an IRM Section - Outside of Clearance*.
- (7) **Program Goals.** The mission of the BSA Program is to safeguard the financial system from the abuses of financial crime, including terrorist financing, money laundering, and other illicit activity by providing financial institutions top quality service to help them understand their compliance obligations under the BSA.

4.26.5.1.1
(06-23-2020)
Authority

- (1) The Department of the Treasury has primary responsibility for implementing and enforcing the BSA. The Secretary of the Treasury delegated the authority to administer the BSA to the Director of the Financial Crimes Enforcement Network (FinCEN) in 31 CFR 1010.810(b)(8), *Enforcement*, and Treasury Order 180-01, 67 FR 64697. FinCEN further delegated the responsibility to examine and assure compliance with the requirements of 31 CFR Chapter X, *Financial Crimes Enforcement Network, Department of the Treasury*, for certain entities to the IRS in 31 CFR 1010.810(b)(8).
- (2) 31 CFR 1010.810(b)(8) delegates authority to the Commissioner of Internal Revenue to examine all financial institutions, except brokers or dealers in securities, mutual funds, futures commission merchants, introducing brokers in commodities, and commodity trading advisors, not currently examined by Federal bank supervisory agencies for soundness and safety.
- (3) FinCEN's delegation of authority to conduct Form 8300, *Report of Cash Payments Over \$10,000 Received in a Trade or Business*, examinations under Title 31 enables the IRS to share the results of such examination with FinCEN and other federal and state governmental agencies, without Title 26 disclosure issues. IRS retains penalty authority for all Form 8300 filing requirements under Title 26.

4.26.5.1.2
(06-23-2020)
Roles and Responsibilities

- (1) Director, Examination – Specialty Policy is the executive responsible for BSA Examination policy and procedures.
- (2) Director, Examination – Specialty Examination is the executive responsible for BSA examination operational compliance.

- (3) Chief, BSA is responsible for ensuring general information about basic BSA examiner responsibilities and IRM sections is communicated to and carried out by BSA examiners.

4.26.5.1.3
(06-23-2020)

**Program Management
and Review**

- (1) The Title 31 database contains reports to monitor the current year's work plan, as well as specific programs. These reports provide Headquarters and Field Examination with timely and reliable information. Reports used to monitor examination processes include:

- Direct examination time
- New examination starts
- Examination closures
- Average hours expended per case
- No issue percentage
- Closed case cycle time by workstream
- Open case cycle time by workstream
- Referrals to Examination
- Referrals to Employment Tax
- Referrals to CI
- Number of surveyed cases
- Workplan accomplishments

- (2) Periodic program reviews are conducted to:

- Assess the effectiveness of specific programs within Examination or across the organization,
- Determine if procedures are being followed,
- Validate policies and procedures, and
- Identify and share best/proven practices.

4.26.5.1.4
(06-23-2020)

Acronyms

- (1) The following table is a list of acronyms, and their definitions, used in this IRM:

Acronym	Definition
AML	Anti-Money Laundering
BSA	Bank Secrecy Act
CFR	Code of Federal Regulations
CFTC	Commodity Futures Trading Commission
CIP	Customer Identification Programs
CMIR	Currency and Monetary Instruments Report
CTR	Currency Transaction Report
CVC	Convertible Virtual Currencies
FBAR	Report of Foreign Bank and Financial Accounts
FI	Financial Institution
FinCEN	Financial Crimes Enforcement Network
GTO	Geographical Targeting Order

Acronym	Definition
LMT	Licensed Money Transmitter
MSB	Money Services Business
NBFI	Non-bank Financial Institution
RMLO	Residential Mortgage Lenders and Originators
SEC	Securities and Exchange Commission
USA PATRIOT Act	Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism
USC	United States Code

4.26.5.1.5
(06-23-2020)
Terms

- (1) The following table lists terms, and their definitions, used in this IRM.

Term	Definition
Bank Secrecy Act (BSA)	“BSA”, within the context of this IRM section, means that part of the BSA for which IRS has responsibilities, 31 USC 5311 through 31 USC 5332, except 31 USC 5315.

4.26.5.1.6
(06-23-2020)
Related Resources

- (1) The following is a list of resources related to the information found in this IRM.

Resource	Title
https://www.ecfr.gov/cgi-bin/text-idx?SID=4ed28aff321d97007276a7736cae032e&c=ecfr&tpl=/ecfrbrowse/Title31/31cfrv3_02.tpl	Electronic Code of Federal Regulations, Title 31 – Money and Finance, Treasury
https://www.fincen.gov/sites/default/files/shared/FIN-2012-G003.pdf	FinCEN-2012-G003, <i>Guidance on Determining Eligibility for Exemption from Currency Transaction Reporting Requirements</i>
https://www.fincen.gov/	FinCEN website
https://bsaefiling.fincen.treas.gov/main.html	FinCEN's BSA E-Filing System

Resource	Title
https://organization.ds.irsnet.gov/sites/SbseSpec/BSA/SitePages/Home.aspx	BSA Exam Share-Point
https://organization.ds.irsnet.gov/sites/SbseFraudBSA/BkSecAct/SitePages/Home.aspx	BSA Policy Share-Point
https://www.fincen.gov/resources/statutes-regulations/chapter-x	Chapter X Regulations

4.26.5.2
(12-12-2006)
Overview

- (1) This section discusses the history of the anti-money laundering laws known as the Bank Secrecy Act (BSA) and its important concepts. It provides a brief history of the legislation, regulations, and case law developed around federal anti-money laundering efforts under the BSA. A timeline of important laws, cases, and regulations appears as an exhibit. See Exhibit 4.26.5-2.

4.26.5.3
(06-23-2020)
History of the Bank Secrecy Act

- (1) Congress passed Public Law 91-508 on October 26, 1970, in response to increasing reports of people bringing bags full of currency of doubtful origin into banks for deposit. This law is often cited as the BSA. Part I, codified mostly in Title 12 of the United States Code (USC), was intended to address a concern by Congress that U.S. citizens may have been using the bank secrecy laws of other countries to conceal illegal activities. Part II of the law is cited as the Currency and Foreign Transactions Reporting Act. It is codified in 31 USC, *Money and Finance*, Chapter 53, *Monetary Transactions, Part II, Records and Reports on Monetary Instruments Transactions*.
- (2) Initial goals of the BSA were to establish requirements for recordkeeping and reporting by private individuals, banks and other financial institutions to help identify the source, volume, and movement of currency and other monetary instruments transported or transmitted into or out of the United States or deposited in financial institutions. The BSA required banks to:
 - a. Report cash transactions over \$10,000 using the Currency Transaction Report,
 - b. Properly identify persons conducting transactions, and
 - c. Maintain a paper trail by keeping appropriate records of financial transactions.
- (3) The BSA gives the Secretary of the Treasury (sometimes jointly with the Federal Reserve Board) broad discretion to define the entities subject to the law and detail the reports and records to be made and retained. 31 CFR Chapter X, *Financial Crimes Enforcement Network, Department of the Treasury*, Parts 1000 - 1099, *Financial Recordkeeping and Reporting of Currency and Foreign Transactions*, contains the regulations issued by Treasury.

4.26.5.3.1
(06-23-2020)
1970s

- (1) The BSA required the filing of reports designed to create a paper trail for currency transactions. The principal reports required were:
 - a. Currency Transaction Report (CTR), filed by financial institutions on their customers.

- b. Report of Foreign Bank and Financial Accounts (FBAR), filed by persons having accounts abroad.
 - c. Currency and Monetary Instruments Report (CMIR), filed by persons moving currency and monetary instruments into and out of the United States.
- (2) The requirements for these reports and records were initially challenged as an unconstitutional infringement of privacy rights; however, judicial decisions established BSA's constitutionality.

4.26.5.3.2
(06-23-2020)
1980s

- (1) *United States v. Deak Perera & Co.*, 566 F. Supp. 1398 (D.D.C. 1983), held that examiners are prohibited from conducting tax examinations under the guise of a BSA examination. The lower court case prohibits examiners from expanding the scope and depth of a BSA examination for the sole purpose of securing information for tax purposes only.
- (2) Congress expanded the civil and criminal penalties.
- (3) Treasury issued regulations detailing the circumstances under which a "geographic targeting order" could be issued. A geographic targeting order (GTO) is an order that imposes additional recordkeeping and/or reporting requirements on one or more domestic financial institutions or nonfinancial trades or businesses in a geographic area.

4.26.5.3.3
(06-23-2020)
1990s

- (1) Congress directed Treasury to research the uses made of BSA reports because of the millions of CTRs being filed, mostly by banks, on legitimate business activities. Legislative focus shifted from reporting all transactions to reducing, through exemptions, the number of CTRs filed.
- (2) Legislation was passed which required the reporting of suspicious transactions by banks.
- (3) Laws were passed to specifically address money laundering by and through nonbank financial institutions (NBFIs).
- (4) FinCEN amended the regulations to include certain gaming establishments, commonly called "card clubs", "card rooms", "gaming clubs", or "gaming rooms" within the definition of financial institution effective August 1, 1998
- (5) The Financial Crimes Enforcement Network (FinCEN) published the final rule requiring money services businesses (MSBs) to register with the Department of the Treasury and to maintain a current list of their agents for examination, on request, by any appropriate law enforcement agency. The law became effective as of September 21, 1999; however, registering was not required prior to December 31, 2001. More emphasis was placed on requiring financial institutions to retain records.

4.26.5.3.4
(06-23-2020)
2000s

- (1) The September 11, 2001 terrorist attacks in the U.S. led to intense Congressional interest in terrorist financing. President George W. Bush signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001, Public Law No.107-56, on October 26, 2001. The law:
- a. Mandated anti-money laundering compliance programs for all financial institutions as defined in the BSA.

- b. Enhanced the suspicious activity reporting requirements.
 - c. Required all nonfinancial trades and businesses to report the receipt of coins or currency greater than \$10,000 under the BSA as well as IRC 6050I, *Returns relating to cash received in a trade or business*. This dual Form 8300, *Report of Cash Payments Over \$10,000 Received in a Trade or Business*, filing requirement effectively released Form 8300 information from the disclosure protections of IRC 6103, *Confidentiality and disclosure of returns and return information*.
 - d. Increased civil and criminal penalties for money laundering.
 - e. Expanded the powers of the Secretary of the Treasury to issue geographic targeting orders.
 - f. Elevated FinCEN to Bureau status within Treasury.
 - g. Encouraged and protected information sharing by financial institutions with Federal law enforcement agencies and voluntary information sharing among financial institutions.
- (2) The American Jobs Creation Act of 2004, Public Law No. 108-357, increased the amount of civil penalties that could be assessed for violation of the FBAR requirements. This amendment also established a new FBAR penalty for non-willful violations. The law is effective for violations occurring after October 22, 2004.
- (3) FinCEN issued the final regulations requiring:
- a. Suspicious activity reporting by MSBs, casinos, brokers or dealers in securities, and from futures commission merchants, and introducing brokers in commodities.
 - b. Form 8300 filing by a nonfinancial trade or business under both the BSA and the IRC. The original BSA regulation did not include the requirement to report currency transactions by court clerks, their requirement to report was brought under the BSA later.
- (4) Regulations addressing the USA PATRIOT Act's requirements were issued:
- a. AML program regulations were issued for money services businesses (MSBs), mutual funds, and operators of credit card systems as well as insurance companies, and dealers in precious metals, precious stones, and jewels.
 - b. Customer identification programs were required separately for banks, savings associations, credit unions, and certain non-Federally regulated banks as well as for brokers and dealers in securities, futures commission merchants and introducing brokers, and mutual funds.
 - c. Due diligence requirements for correspondent accounts and private banking were expanded for some financial institutions including credit unions. Correspondent accounts with foreign entities were banned in certain situations such as failure of the foreign bank to comply with a U.S. summons or subpoena. Information exchanges between all financial institutions were facilitated by providing a safe harbor from civil suit.
- (5) FinCEN issued guidance on September 22, 2006 to assist MSBs in understanding the regulatory requirements regarding conducting independent reviews of their anti-money laundering programs. The guidance addresses four areas:
- a. What should be done during the review?
 - b. How often should the review occur?

- c. Should the review be documented in some manner and reported to management?
- d. Who should conduct the review? The guidance states the regulations require an independent review, not a formal audit by a certified public accountant or third-party consultant. Accordingly, a MSB does not necessarily need to hire an outside auditor or consultant. The review may be conducted by an officer, employee or group of employees, so long as the reviewer is not the designated compliance officer and does not report directly to the compliance officer.

4.26.5.3.5
(06-23-2020)
2010s

- (1) Treasury reorganized, renumbered, and reissued the BSA regulations to 31 CFR Chapter X, *Financial Crimes Enforcement Network, Department of the Treasury*, Parts 1000-1099, from 31 CFR Part 103, *Financial Recordkeeping and Reporting of Currency and Foreign Transactions*, effective on March 1, 2011. See Exhibit 4.26.5-1 for the 31 CFR Chapter X, *General Cross-Reference Index*. See IRM 4.26.5.1.6 for a link to the full text of the regulations.
- (2) FinCEN's updating of the definitions of money services businesses (MSBs) reflects past guidance and rulings, current business operations, evolving technologies, and merging lines of business. The final rule also separates the provisions dealing with stored value from those dealing with issuers, sellers, and redeemers of traveler's checks and money orders. The updated definitions became effective on September 19, 2011. See 31 CFR 1010.100(ff), *Money Service Business*, which includes:
 - a. Dealer in Foreign Exchange (formerly Currency Dealer or Exchanger),
 - b. Check Cashier,
 - c. Issuer or Seller of Traveler's Checks or Money Orders (formerly Issuer of Traveler's Checks, Money Orders, or Stored Value or Seller or Redeemer of Traveler's Checks, Money Orders, or Stored Value),
 - d. Provider of Prepaid Access (formerly under Issuer, Seller, or Redeemer of Stored Value and stored value was renamed as prepaid access),
 - e. Seller of Prepaid Access (formerly Issuer, Seller, or Redeemer of Stored Value and stored value was renamed as prepaid access),
 - f. Money Transmitter, and
 - g. U.S. Postal Service.
- (3) FinCEN added language to 31 CFR 1022.380, *Registration of money services businesses*, to ensure foreign-located MSBs have the same reporting, record-keeping and other requirements as MSBs with a physical presence in the US, with respect to their activities in the US. Foreign-located MSBs will be subject to the same civil and criminal penalties as MSBs with a physical presence in the US, with respect to their failure to comply with regulatory requirements. Foreign-located MSBs are required to designate the name and address of a person who resides in the US and is authorized, and has agreed, to be an agent to accept service of legal process with respect to compliance with the BSA and to identify the address of the location within the U.S. where the registration will be retained.
- (4) The Credit Card Accountability, Responsibility and Disclosure Act of 2009 mandated regulation of prepaid access providers. FinCEN issued definitions of prepaid access providers and sellers (31 CFR 1010.100(ff)(4), *Provider of prepaid access*, and 31 CFR 1010.100(ff)(7), *Seller of prepaid access*, and required providers to register as MSBs effective September 27, 2011. Both

providers and sellers are required to have AML programs under 31 CFR 1022.210(d)(1)(iv) and maintain additional records under 31 CFR 1022.420, *Additional records to be maintained by providers and sellers of prepaid access*. FinCEN provided additional clarification by means of “Frequently Asked Questions” on November 2, 2011 and again on March 24, 2016.

- (5) FinCEN published expanded regulations for the Report of Foreign Bank and Financial Accounts (FBAR) effective on March 28, 2011 at 31 CFR 1010.350, *Reports of foreign financial accounts*. The instructions to the FBAR Form, TD F 90-22.1, were also revised.
- (6) FinCEN developed the BSA E-Filing System and mandated electronic filing (e-filing) of most forms effective July 1, 2012. Suspicious Activity Reports, Currency Transaction Reports, Designations of Exempt Persons, and Registrations for Money Services Businesses were required to be e-filed. Mandatory e-filing of the FBAR form was exempted until June 30, 2013.
- (7) FinCEN issued the final rule defining non-bank Residential Mortgage Lenders and Originators (RMLOs) as loan or finance companies which required them to establish anti-money laundering (AML) programs and report suspicious activity under the BSA. RMLOs were required to develop and implement an AML program by August 13, 2012 and file SARs on transactions occurring after this date under regulations at 31 CFR 1029, *Rules for Loan or Finance Companies*. Any transactions involving the receipt of coin or currency over \$10,000 will continue to be subject to reporting on Form 8300.
- (8) The requirement for criminal court clerks to file Form 8300 under the BSA became effective on December 23, 2011.
- (9) FinCEN issued interpretive guidance, FIN-2013-G001, on March 18, 2013 to clarify the applicability of the regulations to persons creating, obtaining, distributing, exchanging, accepting, or transmitting virtual currencies. The guidance makes it clear that an administrator or exchanger is an MSB under the regulations, specifically, a money transmitter, unless a limitation to or exemption from the definition applies to the person. Currency is defined as the coin and paper money of the US or of any other country that is designated as legal tender and that circulates and is customarily used and accepted as a medium of exchange in the country of issuance. Virtual currency does not have legal tender status in any jurisdiction. The guidance addresses “convertible” virtual currency as it has an equivalent value in real currency or acts as a substitute for real currency. For further information, see IRM 4.26.9, *Examination Techniques for Bank Secrecy Act Industries*.
- (10) FinCEN issued administrative ruling, FIN-2014-R003, Records to be Made and Maintained by Dealers in Foreign Exchange, on March 11, 2014 to clarify circumstances in which a dealer in foreign exchange may accept alternative travel documents as identification for a non-resident alien. FinCEN authorized the following exception to the requirements of 31 CFR 1022.410(b)(3) for dealers in foreign exchange verifying the identity of non-resident aliens:
 - a. Each dealer in foreign exchange shall retain either the original or a microfilm or other copy or reproduction of each record of each exchange of currency involving transactions in excess of \$1,000, including the name and address of the customer, date and amount of the transaction, currency name, country, and total amount of each foreign currency. Unless the transaction is received by mail or common carrier, each

dealer in foreign exchange shall also retain the customer's taxpayer identification number and the number and description of the government document used to verify the customer's identity (or, if the customer is a non-resident alien, the number of the passport issued by the country of origin or the number and description of an alternate valid entry document issued by a U.S. Federal or state government agency).

- (11) The IRS, with concurrence of the Financial Crimes Enforcement Network (FinCEN), rendered TD 15-41 obsolete when it was cancelled as of June 5, 2017. This same authority is conveyed in The USA Patriot Act, Bank Secrecy Act Regulations, and memoranda of agreement between FinCEN and the IRS.
- (12) FinCEN issued interpretive guidance on May 9, 2019 to remind persons subject to the BSA how regulations relating to MSBs apply to certain business models involving money transmission denominated in value that substitutes for currency, specifically, convertible virtual currencies (CVCs). The guidance is intended to help financial institutions comply with their existing obligations under the BSA as they relate to current and emerging business models involving CVC by describing FinCEN's existing regulatory approach to the issues most frequently raised by industry, law enforcement, and other regulatory bodies within this evolving financial environment. In this regard, it covers only certain business models and necessarily does not address every potential combination of facts and circumstances. Thus, a person working with a business model not specifically included in this guidance may still have BSA obligations.

4.26.5.4
(06-23-2020)
Entities Subject to BSA

- (1) The statutory definition of financial institution in 31 USC 5312(a) lists many types of businesses, including many not offering financial services. The definition of financial institutions includes such diverse businesses as vehicle dealers and "any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside of the conventional financial institutions system".
- (2) 31 CFR 1010.100, *General definitions*, identifies only some of these businesses as financial institutions subject to the regulatory requirements of the BSA. See IRM 4.26.5.4.1 for a complete list. For example, the regulations make clear that each agent, branch, and office of a financial institution is considered a separate financial institution. MSBs and casinos are both defined as a financial institution under the regulation.
- (3) All nonfinancial trades and businesses are now required to file Form 8300, *Report of Cash Payments Over \$10,000 Received in a Trade or Business*, not only under IRC 6050I, *Returns relating to cash received in a trade or business*, but also under 31 USC 5331, *Reports relating to coins and currency received in nonfinancial trade or business*, making this a "dual purpose" form. Only one report is required to be filed and it meets the requirements of both sections of the law.
- (4) Individuals as well as businesses are responsible for some requirements such as filing the FBAR and the CMIR.

4.26.5.4.1
(10-03-2012)
**Financial Institutions
Defined in 31 CFR
1010.100(t)**

- (1) Financial institutions as defined in 31 CFR 1010.100(t), *Financial institution*, include:
- A bank. The definition of a bank in 31 CFR 1010.100(d), *Bank*, includes most depository institutions including credit unions.
 - A broker or dealer in securities.
 - A money services business as defined in 31 CFR 1010.100(ff), *Money service business*.
 - A telegraph company.
 - An authorized casino or card club that has gross annual gaming revenue in excess of \$1 million.
 - A person subject to supervision by any state or Federal bank supervisory authority.
 - A futures commission merchant.
 - An introducing broker in commodities.
 - A mutual fund.

4.26.5.4.2
(06-23-2020)
**Money Services
Business Defined**

- (1) 31 CFR 1010.100(ff) defines a money services business as a person wherever located, doing business, whether on a regular basis or as an organized or licensed business concern, wholly or in substantial part within the United States, in one or more of the capacities listed below under “Types of Money Services Businesses”. This includes but is not limited to maintenance of any agent, agency, branch, or office within the United States.

Note: This definition clarifies that the person may be located outside the United States and conducting activities in the United States,

- (2) A MSB does not include:
- a. A bank or foreign bank;
 - b. A person registered with, and functionally regulated or examined by, the Securities and Exchange Commission (SEC) or the Commodity Futures Trading Commission (CFTC), or a foreign financial agency that engages in financial activities that, if conducted in the United States, would require the foreign financial agency to be registered with the SEC or CFTC; or
 - c. A natural person who engages in money services on an infrequent basis and not for gain or profit. See 31 CFR 1010.100(ff)(8), *Limitation*. The exclusion was added to ensure that individuals making an accommodation for a friend or family member are not accidentally swept into the scope of the rule.

4.26.5.4.3
(06-23-2020)
**Types of Money
Services Businesses**

- (1) A dealer in foreign exchange is a person that accepts the currency, or other monetary instruments, funds, or other instruments denominated in the currency, of one or more other countries in an amount greater than \$1,000 for any other person on any day in one or more transactions, whether or not for same day delivery. (31CFR 1010.100(ff)(1))
- (2) A check casher is a person that accepts checks (as defined in the Uniform Commercial Code), or monetary instruments (as defined at section 31 CFR 1010.100(dd)(1), *Monetary instruments*) in return for currency or a combination of currency and other monetary instruments or other instruments, in an amount greater than \$1,000 for any person on any day in one or more transactions. (31 CFR 1010.100(ff)(2)) There are several exclusions:

- a. A person that sells prepaid access in exchange for a check (as defined in the Uniform Commercial Code), monetary instrument or another instrument,
 - b. A person that solely accepts monetary instruments as payment for goods or services other than check cashing services,
 - c. A person that engages in check cashing for the verified maker of the check who is a customer otherwise buying goods and services,
 - d. A person that redeems its own checks, or
 - e. A person that only holds a customer's check as collateral for repayment by the customer of a loan.
- (3) An issuer or seller of traveler's checks or money orders is a person that (i) issues traveler's checks or money orders that are sold in an amount greater than \$1,000 to any person on any day in one or more transactions; or (ii) sells traveler's checks or money orders in an amount greater than \$1,000 to any person on any day in one or more transactions. (31CFR 1010.100(ff)(3))
- (4) A provider of prepaid access is the participant within a prepaid program that agrees to serve as the principal conduit for access to information from its fellow program participants. The participants in each prepaid access program must determine a single participant within the prepaid program to serve as the provider of prepaid access. Until this is done, the provider is the person with principal oversight and control over the prepaid program. (31 CFR 1010.100(ff)(4)) Prepaid access does not include:
- a. Closed loop access not to exceed \$2,000 any day,
 - b. Access to domestic government or tribal funds,
 - c. Access to pre-tax flexible spending arrangements for health reimbursement or child and dependent care, or
 - d. Access solely to employment-related funds or funds not to exceed \$1,000 on any day that do not permit value to be transmitted internationally, transfers among users within a prepaid program or loading value from non-depository sources.
- (5) A seller of prepaid access is a person that receives funds or the value of funds in exchange for loading of prepaid access if that person:
- a. Sells prepaid access offered under a prepaid program that can be used before verification of customer identification under 31 CFR 1022.210(d)(1)(iv), *Anti-money laundering programs for money services businesses*, or
 - b. Sells prepaid access (including closed loop prepaid access) to funds that exceed \$10,000 to any person during any one day and has not implemented policies and procedures reasonably adapted to prevent such a sale. (CFR 1010.100(ff)(7))
- (6) A money transmitter is a person that provides money transmission services. The term "money transmission services" means the acceptance of currency, funds, or other value that substitutes for currency from one person and the transmission of currency, funds, or other value that substitutes for currency to another location or person by any means. "Any means" includes, but is not limited to, through a financial agency or institution; a Federal Reserve Bank or other facility of one or more Federal Reserve Banks, the Board of Governors of the Federal Reserve System, or both; an electronic funds transfer network; or an informal value transfer system; or any other person engaged in the transfer of funds. (31 CFR 1010.100(ff)(5))

- (7) Whether a person is a money transmitter as described in this section is a matter of facts and circumstances. (31 CFR 1010.100(ff)(5)(B)(ii)) The term **money transmitter** shall not include a person that only;
- a. Acts as a payment processor to facilitate the purchase of, or payment of a bill for, a good or service through a clearance and settlement system by agreement with the creditor or seller,
 - b. Operates a clearance and settlement system or otherwise acts as an intermediary solely between BSA regulated institutions. This includes but is not limited to the Fedwire system, electronic funds transfer networks, certain registered clearing agencies regulated by the Securities and Exchange Commission (SEC), and derivatives clearing organizations, or other clearinghouse arrangements established by a financial agency or institution,
 - c. Physically transports currency, other monetary instruments, other commercial paper, or other value that substitutes for currency as a person primarily engaged in such business, such as an armored car, from one person to the same person at another location or to an account belonging to the same person at a financial institution, provided that the person engaged in physical transportation has no more than a custodial interest in the currency, other monetary instruments, other commercial paper, or other value at any point during the transportation,
 - d. Providers of prepaid access, or
 - e. Acceptors and transmitters of funds only integral to the sale of goods or the provision of services, other than money transmission services, by the person who is accepting and transmitting the funds.
- (8) The US Postal Service except for the sale of postage or philatelic products. (31 CFR 1010.100(ff)(6))
- (9) A person is defined as an individual, a corporation, a partnership, a trust or estate, a joint stock company, an association, a syndicate, joint venture, or other unincorporated organization or group, an Indian Tribe (as that term is defined in the Indian Gaming Regulatory Act), and all entities cognizable as legal personalities at 31 CFR 1010.100(mm), *Person*.

4.26.5.4.4
(06-23-2020)
**Agents and Offices of
Financial Institutions**

- (1) The definition of financial institution under 31 CFR 1010.100, *General definitions*, also includes each agent, agency, branch, or office within the United States of any person doing business, whether on a regular basis or as an organized business concern, in one or more of the capacities listed at 31 CFR 1010.100(t), *Financial institution*, and identified above at IRM 4.26.5.4.1. Each is separately required to follow the reporting and recordkeeping requirements of the BSA.
- (2) Where the reports to be filed or records to be kept would be duplicates, only one report is required to be filed. This means that the principal office with branch locations can determine who files the report and where the records will be retained. Each is separately responsible if the requirements of the law are not met.
- (3) If a Licensed Money Transmitter (LMT) or its agent has knowledge that multiple currency transactions have been conducted by or on behalf of one person in an amount over \$10,000 during any one business day, a CTR must be filed reflecting these aggregated transactions. Simply stated, a CTR must be filed for these aggregated transactions as well as for any single currency

transaction by or on behalf of one person in an amount greater than \$10,000 in one business day. Because of the computer system involved in these types of transactions, both the LMT and their agent are considered as having knowledge of the currency transactions and a CTR would be required by both financial institutions involved in the transaction.

- (4) FinCEN specifically states that both financial institutions are technically required to file a CTR; however, to avoid unnecessary duplicative reporting, FinCEN requires that only one report be filed with respect to the same transaction. This is evidenced in FinCEN Ruling 2001-1, *Currency Transaction Reporting: Completing a CTR and Aggregation*. To reduce the number of CTRs on the same transaction, FinCEN's policy is that a LMT and their agents may engage in a contractual agreement as to which one will file the CTR. The overall factor is that there is no harm to the Government related to these contractual agreements if one CTR is being filed on the transaction.
- (5) If a required CTR is not filed, both financial institutions are liable for a violation of the BSA. The contractual agreement does not relieve either financial institution for the failure to file the CTR. See FinCEN Ruling 2003-3, *Currency Transaction Reporting: Transactions between Money Transmitters and their Agents*.

4.26.5.4.5
(06-23-2020)
**Nonfinancial Trades or
Businesses**

- (1) A nonfinancial trade or business that receives more than \$10,000 in coin or currency in a single transaction (or two or more related transactions) is required under the BSA to file a Form 8300, *Report of Cash Payments Over \$10,000 Received in a Trade or Business*, under 31 USC 5331, *Reports relating to coins and currency received in nonfinancial trade or business*, as well as under IRC 6050I, *Returns relating to cash received in a trade or business*. Form 8300 reflects this dual statutory purpose in its heading. A primary purpose of enacting 31 USC 5331 was to free the Form 8300 information from the disclosure protections applicable to information returns required by the IRC. A nonfinancial trade or business is defined in section 31 USC 5312(a)(4), *Nonfinancial Trade or Business*, to mean any trade or business other than a financial institution that is subject to the reporting requirements of 31 USC 5331, and regulations prescribed under such section, such as the BSA.
- (2) There is one significant difference between the two statutes. There is no requirement under 31 USC 5331 that the filer provide the annual written or electronic statement to each person named on the Form 8300.
- (3) Other differences between the two statutes arise because supporting sections were not changed in the BSA. For example:
 - a. A BSA summons, not a Title 26 summons, must be used if the examination is under Title 31.
 - b. The statutes of limitations differ depending on whether the case is under Title 31 or Title 26.
 - c. Penalties differ.
- (4) For a detailed discussion of Form 8300 law, see IRM 4.26.10, *Form 8300 History and Law*.

4.26.5.4.6
(06-23-2020)
Individuals

- (1) Individual owners, officers, or employees of the financial institution act on behalf of the financial institution. The knowledge, intent, or negligence of these individuals may be attributed to the financial institution. The individuals themselves are separately liable as individuals for additional penalties for willful violations. Examples of individual responsibility include:
 - a. 31 CFR 1022.380(c), *Persons required to file the registration form*, makes any person owning or controlling a money services business responsible for registering the business. Ownership or control is determined by the instructions on the registration form. A person who fails to comply with the section is liable for a civil penalty. (31 CFR 1022.380(e), *Consequences of failing to comply with 31 USC 5330, Registration of money transmitting businesses*, or the regulations thereunder)
 - b. 31 CFR 1010.820(c) states "For any willful violation of any recordkeeping requirement for financial institutions, except [those relating to foreign bank accounts] the Secretary may assess upon any domestic financial institution, and upon any partner, director, officer, or employee thereof who willfully participates in the violation, a civil penalty..."
 - c. 31 CFR 1010.820(f) further states "For any willful violation committed after October 27, 1986, of any reporting requirement for financial institutions under this part [except reports related to foreign financial accounts, reports of transactions with foreign financial agencies and records relating thereto] the Secretary may assess upon any domestic financial institution, and upon any partner, director, officer, or employee thereof who willfully participates in the violation, a civil penalty..."
 - d. 31 CFR 1010.820(g) provides for a penalty for willful violation of the FBAR, which may be asserted against individuals who are required to file because they have signature or other authority over an account titled to their employer.
- (2) Individuals as well as financial institutions are also directly required to report:
 - a. The transportation of currency or monetary instruments, under 31 CFR 1010.340, *Reports of transportation of currency or monetary instruments*,
 - b. The financial interest in, or signature or other authority over, a bank, securities, or other financial account in a foreign country under 31 CFR 1010.350, *Reports of foreign financial accounts*.
 - c. Any reports of transactions with foreign financial agencies which the Secretary may deem appropriate and promulgate a regulation to require such reporting under 31 CFR 1010.360, *Reports of transactions with foreign financial agencies*.
 - d. Individuals are also required to keep records related to an FBAR filing under 31 CFR 1010.350, *Reports of foreign financial account*. The recordkeeping requirement is required under 31 CFR 1010.420, *Records to be made and retained by persons having financial interests in foreign financial accounts*. See IRM 4.26.16, *Report of Foreign Bank and Financial Accounts (FBAR)*.

4.26.5.5
(06-23-2020)
Reports

- (1) Both individuals and financial institutions are required to obtain and/or retain information about certain financial transactions. Some of this information must be filed in reports electronically transmitted to the United States Treasury via FinCEN's BSA E-Filing System. Reports must be retained for five years.
- (2) Reporting requirements depend on the type of entity, the type of transaction, and amount of the transaction. In some cases, the information to be reported

must be verified and the document used to verify the information must be described on the report. As of April 1, 2013, financial institutions must use the new FinCEN reports, which are only available electronically through the BSA E-Filing System. FinCEN no longer accepts legacy reports. Organizations that file BSA forms with FinCEN can securely access the system after they apply for and receive a user ID and password from FinCEN.

- (3) 31 CFR 1010.370, *Reports of certain domestic coin and currency transactions*, authorizes the Secretary of the Treasury to issue orders 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 such order. These are commonly called geographical targeting orders (GTOs), although they can also target a type of transaction. Their form and related requirements depend on the order issued.
- (4) Form 8300, *Report of Cash Payments Over \$10,000 Received in a Trade or Business*, is a dual-purpose form. The same form is required by two U.S. Code titles. The IRS normally conducts Title 26 Form 8300 examinations under IRC 6050I, *Returns relating to cash received in a trade or business*. In some circumstances, Form 8300 exams are conducted under 31 USC 5331, *Reports relating to coins and currency received in nonfinancial trade or business*. Legal requirements for this form are discussed in IRM 4.26.10, *Form 8300 History and Law*.
- (5) Failure to report, not only includes a complete failure to file a report, it also includes filing a report with material omission or false statements of facts.

4.26.5.5.1
(06-23-2020)
**Currency Transaction
Reports**

- (1) As of April 1, 2013, FinCEN mandated the use of the new single reporting Form 112, *Currency Transaction Report*. The report replaced FinCEN Form 104, *Currency Transaction Report (CTR)*, and FinCEN Form 103, *Currency Transaction Reports by Casinos*. The new CTR form did not create any new obligations or otherwise change existing statutory and regulatory expectations of financial institutions.
- (2) Financial institutions electronically file the CTR to report currency (cash or coin) transactions over \$10,000 conducted by, or on behalf of, one person, as well as multiple currency transactions that aggregate to be over \$10,000 in a single day. A financial institution is required to file a report of each deposit, withdrawal, exchange of currency, or other payment or transfer, by, through, or to such financial institution involving more than \$10,000 in currency. Only cash transactions that, if alone or when aggregated, exceed \$10,000 should be reported on the CTR. Transactions are not offset against one another. If there are both "Cash In" and "Cash Out" transactions that are reportable, the amounts should be considered separately and not aggregated. However, they may be reported on a single CTR. If there is a currency exchange, it should be aggregated separately with each of the "Cash In" and "Cash Out" totals.
- (3) Before concluding any transaction with respect to which a CTR is required, a financial institution is required to verify and record the name and address of the individual conducting the transaction, as well as record the identity, account number, and the social security or taxpayer identification number, if any, of any person or entity on whose behalf such transaction is to be affected. See 31 CFR 1010.312, *Identification required*.

- (4) When completing the CTR, as with any FinCEN report, financial institutions should complete those items for which they have relevant information, regardless of whether or not individual items are deemed critical for technical filing purposes. See FIN-2012-G002, Filing FinCEN's new Currency Transaction Report and Suspicious Activity Report, issued on March 29, 2012.
 - a. Critical items (denoted with an asterisk) – financial institutions must either provide the requested information or affirmatively check the “Unknown” (Unk.) box that is provided on the report.
 - b. Non-critical items (without an asterisk) – financial institutions must provide the most complete filing information available consistent with existing regulatory expectations.

4.26.5.5.2
(06-23-2020)
**CTR Exemptions -
Banks**

- (1) Banks, including credit unions, are not required to file CTRs on transactions with certain entities and are allowed, at the discretion of the bank, to exempt certain types of business transactions. See 31 CFR 1020.315, *Transactions of exempt persons*.
- (2) Under the regulations, banks are not required to file a report with:
 - a. A bank, to the extent of such bank's domestic operations,
 - b. A department or agency of the United States, of any State, or of any political subdivision of any State;
 - c. Any entity established under the laws of the United States, of any State, or of any political subdivision of any State, or under an interstate compact between two or more States, that exercises governmental authority on behalf of the United States or any such State or political subdivision; or
 - d. Listed entities, that is, businesses appearing on a recognized stock exchange and their subsidiaries.
- (3) Banks may exempt, to the extent of its domestic operations, customers who are either non-listed businesses that regularly withdraw or deposit more than \$10,000 or payroll customers that regularly withdraw more than \$10,000 to meet payroll. Most NBFIs cannot be exempted by the bank. See 31 CFR 1020.315(e)(8), *Ineligible businesses*.
- (4) Three requirements must be met for this exemption. FinCEN issued revised guidance, FIN-2012-G003, *Determining Eligibility for Exemption from CTR requirements*, on June 11, 2012. The entity must have:
 - a. Maintained a transaction account at the exempting bank for at least two months unless, in less time, the bank or credit union performs a risk-analysis showing that exemption is appropriate,
 - b. Frequently engaged in transactions in currency with the bank in excess of \$10,000. The guidance defines frequently as five or more such transactions within the previous year; and,
 - c. Incorporated or organized under the laws of the United States or a state or be registered as and eligible to do business within the United States or a state.
- (5) At least once a year, a bank must review the eligibility of an exempt person to determine whether such person remains eligible for an exemption. As part of its annual review, a bank must review the monitoring system on each existing account of an exempt person to ensure “exempting” the customer still meets eligibility requirements.

- (6) Banks must apply special exemption rules to NBFIs. See 31 CFR 1020.315(e)(8), *Ineligible businesses*.
 - a. NBFIs that are listed entities are exempt only to the extent of domestic operations.
 - b. A business engaged primarily as a financial institution or agent of a financial institution may not be treated as a non-listed (a type of exempted) business by a bank.
 - c. If the NBFI's regulated financial service(s) is less than 50% of its gross receipts, it may be exempted.
- (7) The *Designation of Exempt Person*, FinCEN Form 110, must be filed by any bank that wishes to designate a customer as an exempt person for purposes of CTR reporting, 31 CFR 1020.315(c), *Designation of certain exempt persons*. Effective July 1, 2012, this form must be filed through FinCEN's BSA E-Filing System.
- (8) Reporting a revocation of exemption is not mandatory.
- (9) The CTR exemption provision does not relieve a bank from its obligation to file Suspicious Activity Reports.

4.26.5.5.3
(06-23-2020)
**Nonbank Financial
Institutions and
Exemptions**

- (1) An NBFI must file a CTR on reportable transaction regardless of the customer involved.
- (2) A NBFI is not required to file CTRs with respect to a transaction in currency between the institution and a commercial bank. See CFR 1010.315, *Exemption for non-bank financial institutions*. A bank is defined as a commercial bank or trust company organized under the laws of any State or of the United States. See 31 CFR 1010.100(d)(1), Bank. NBFIs that conduct currency transactions with foreign banks must file CTRs on an appropriate transaction.
- (3) A CTR is not required to be filed by either the agent or their Licensed Money Transmitter (LMT) when a transfer of currency takes place between the agent and the LMT, so long as the transfer is conducted within the scope of the agency relationship (the relationship by which the agent is authorized by the LMT to sell the LMT's money transmission services to customers). Therefore, neither the LMT nor its agent would be required to file a CTR to report the transfer of cash between them. FinCEN Ruling 2003-3, *Currency Transaction Reporting: Transactions between Money Transmitters and their Agents*.

4.26.5.5.4
(06-23-2020)
**Report of International
Transportation of
Currency or Monetary
Instruments (CMIR)**

- (1) The BSA requires persons who transport currency or monetary instruments into or out of the United States to file a report. The report is filed by the person who moves the funds into or out of the United States.
- (2) FinCEN Form 105, *Report of International Transportation of Currency or Monetary Instruments (CMIR)*, is examined by Customs, not the IRS. It must be filed by:
 - a. Each person who physically transports, mails, or ships, or causes to be physically transported, mailed, or shipped currency or other monetary instruments in an aggregate amount exceeding \$10,000 at one time from the United States to any place outside the United States or into the United States from any place outside the United States, and

- b. Each person who receives in the United States currency or other monetary instruments in an aggregate amount exceeding \$10,000 at one time that has been transported, mailed, or shipped to the person from any place outside the United States.
- (3) The CMIR can be downloaded from the FinCEN web site by selecting Resources, then Filing Information. Because the form is physically filed by persons crossing U.S. borders, it is exempted from the e-filing mandate. CMIR definitions:
 - a. Recipients - Each person who receives currency or other monetary instruments in the United States shall file FinCEN Form 105, within 15 days after receipt of the currency or monetary instruments, with the Customs officer in charge at any port of entry or departure or by mail. The mailing address is provided in the general instructions to the form.
 - b. Shippers or Mailers - If the currency or other monetary instrument does not accompany the person entering or departing the United States, FinCEN Form 105 may be filed by mail on or before the date of entry, departure, mailing, or shipping. The mailing address is provided in the general instructions to the form.
 - c. Travelers—Travelers carrying currency or other monetary instruments with them shall file FinCEN Form 105 at the time of entry into the United States or at the time of departure from the United States with the Customs officer in charge at any Customs port of entry or departure.

4.26.5.5.5
(06-23-2020)

Report of Foreign Bank and Financial Accounts (FBAR)

- (1) FinCEN Form 114, *The Report of Foreign Bank and Financial Accounts (FBAR)*, is filed by a United States person that has a financial interest in or signature authority over foreign financial accounts when the aggregate value of the foreign financial accounts exceeds \$10,000 at any time during the calendar year. The FBAR is the only BSA form for which IRS has the delegated authority to assess penalties as well as to examine. FBAR law is outlined in IRM 4.26.16, *Report of Foreign Bank and Financial Accounts (FBAR)*, and the relevant procedures are discussed in IRM 4.26.17, *Report of Foreign Bank and Financial Accounts (FBAR) Procedures*.
- (2) The electronic version of the FBAR is downloadable from the IRS Document Repository searching for Catalog # 12996D or on the FinCEN web site under Resources, then Filing Information. Filing electronically on FinCEN's BSA E-Filing system was required effective July 1, 2013.

4.26.5.5.6
(06-23-2020)

Suspicious Activity Reports

- (1) Most financial institutions are required to file Suspicious Activity Reports (SARs). Such forms require information about the reporting financial institution, the financial institution(s) where the transaction(s) took place, the person(s) conducting the transaction, the person or business the transactions are being conducted on behalf of, the suspicious activity, the person or business the transactions is being conducted on behalf of, and the person to contact for assistance.
- (2) As of April 1, 2013, FinCEN mandated the use of the new single reporting *Suspicious Activity Report (SAR)*, FinCEN Form 111. The report replaced all industry-specific SARs. The new SAR form did not create any new obligations or otherwise change existing statutory and regulatory expectations of financial institutions.

- (3) Prior Suspicious Activity Reports, listed below, are hereinafter referred to as “legacy reports”.
 - a. The Suspicious Activity Report for Depository Institutions (SAR-DI), TD F 90-22.47.
 - b. The Suspicious Activity Report by Casinos and Card Clubs (SAR-C), FinCEN Form 102.
 - c. The Suspicious Activity Report by Money Services Businesses (SAR-MSB), FinCEN Form 109.
 - d. The Suspicious Activity Report by the Securities and Futures Industries (SAR-SF), FinCEN Form 101. This Report was used by mutual funds, insurance companies, futures commission merchants and introducing brokers in commodities, and brokers or dealers in securities.
- (4) FinCEN mandated electronic filing of the SAR through the BSA E-Filing System beginning July 1, 2012.
- (5) Form 8300 *Report of Cash Payments Over \$10,000 Received in a Trade or Business*, may be used voluntarily by any trade or business to report suspicious activity by checking the Suspicious Transaction box at the top of the form. There is no filing threshold if the filing is suspicious.
- (6) Nonfinancial trades or business with BSA requirements for filing suspicious activity reports, such as insurance companies, are required to file a SAR. Checking the Suspicious Transaction box on the Form 8300 is not a substitute for filing a BSA required SAR. The entity must still file a SAR.
- (7) SAR filing requirements by financial institution:

Financial Institution	Suspicious Activity Reporting Requirements
<p>Depository Institutions including credit unions under IRS examination authority See 31 CFR 1020.320.</p>	<p>Suspicious activity involving funds of at least \$5,000 in value where the transaction:</p> <ul style="list-style-type: none"> • Involves funds derived from illegal activities or is intended or conducted to hide or disguise funds or assets derived from illegal activities as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation; • Is designed to evade any BSA requirements; or, • Has no business or apparent lawful purpose or is not the sort in which the customer would normally be expected to engage, and the bank knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.
<p>All casinos defined in 31 CFR 103.11(n)(5) and 31 CFR 103.11(n)(6) including certain casinos in Nevada See 31 CFR 1021.320.</p>	<p>Suspicious activity if it is conducted or attempted by, at or through a casino involves or aggregates funds of at least \$5,000, and the casino knows, suspects, or has reason to suspect that the transaction (or pattern of transactions):</p> <ul style="list-style-type: none"> • Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds derived from illegal activity as part of a plan to violate or evade Federal law or regulation, • Is designed, whether through structuring or other means, to evade any BSA requirements, • Serves no business or apparent lawful purpose, and the reporting casino knows of no reasonable explanation for the transaction after examining available facts, or, • Involves use of the casino to facilitate criminal activity.

Financial Institution	Suspicious Activity Reporting Requirements
MSBs, except Check Cashers See 31 CFR 1022.320.	<p>Suspicious activity if conducted by, at, or through a MSB, involves or aggregates funds of at least \$2,000, and the MSB knows, suspects, or has reason to suspect that the transaction (or pattern of transactions):</p> <ul style="list-style-type: none">• Involves funds derived from illegal activity or is intended or conducted to hide or disguise funds derived from illegal activity as part of a plan to violate or evade Federal law or regulation,• Is designed, whether through structuring or other means, to evade any BSA requirements,• Serves no business or apparent lawful purpose, and the reporting MSB knows of no reasonable explanation for the transaction after examining available facts, or,• Involves use of the money services business to facilitate criminal activity. <p>To the extent that the identification of transactions required to be reported is derived from a review of clearance records or other similar records of money orders or traveler's checks that have been sold or processed, an issuer of money orders or traveler's checks shall only be required to report a transaction or a pattern of transactions that involves or aggregates funds or other assets of at least \$5,000.</p>

Financial Institution	Suspicious Activity Reporting Requirements
Brokers or dealers in securities See 31 CFR 1023.320.	<p>Suspicious activity involving funds of at least \$5,000 where the transaction:</p> <ul style="list-style-type: none">• Involves funds derived from illegal activities or is intended or conducted to hide or disguise funds or assets derived from illegal activities as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation,• Is designed to evade any BSA requirements,• Has no business or apparent lawful purpose or is not the sort in which the customer would normally be expected to engage, and the broker or dealer in securities knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction, or,• Involves use of the broker or dealer in securities to facilitate criminal activity.

Financial Institution	Suspicious Activity Reporting Requirements
Mutual Funds See 31 CFR 1024.320.	<p>Suspicious activity involving funds of at least \$5,000 where the transaction:</p> <ul style="list-style-type: none">• Involves funds derived from illegal activities or is intended or conducted to hide or disguise funds or assets derived from illegal activities as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation,• Is designed to evade any BSA requirements,• Has no business or apparent lawful purpose or is not the sort in which the customer would normally be expected to engage, and the mutual fund knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction, or,• Involves use of the mutual fund to facilitate criminal activity.

Financial Institution	Suspicious Activity Reporting Requirements
Insurance Company See 31 CFR 1025.320.	<p>Suspicious activity involving funds of at least \$5,000 where the transaction:</p> <ul style="list-style-type: none"> • Involves funds derived from illegal activities or is intended or conducted to hide or disguise funds or assets derived from illegal activities as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation, • Is designed to evade any BSA requirements, • Has no business or apparent lawful purpose or is not the sort in which the customer would normally be expected to engage, and the insurance company knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction, • Involves use of the insurance company to facilitate criminal activity. • Has no business or apparent lawful purpose or is not the sort in which the customer would normally be expected to engage, and the futures commission merchants and introducing brokers in commodities knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

Financial Institution	Suspicious Activity Reporting Requirements
Loan or finance companies, including non-bank Residential Mortgage Lenders and Originators (RMLOs) See 31 CFR 1029.320.	<p>Suspicious activity involving funds of at least \$5,000 where the transaction:</p> <ul style="list-style-type: none">• Involves funds derived from illegal activities or is intended or conducted to hide or disguise funds or assets derived from illegal activities as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation,• Is designed to evade any BSA requirements,• Has no business or apparent lawful purpose or is not the sort in which the customer would normally be expected to engage, and the loan or finance company knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction, or,• Involves use of the loan or finance company to facilitate criminal activity.

Financial Institution	Suspicious Activity Reporting Requirements
Housing government sponsored enterprises See 31 CFR 1030.320.	<p>Suspicious activity involving funds of at least \$5,000 where the transaction:</p> <ul style="list-style-type: none"> • Involves funds derived from illegal activities or is intended or conducted to hide or disguise funds or assets derived from illegal activities as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation, • Is designed to evade any BSA requirements; • Has no business or apparent lawful purpose or is not the sort in which the customer would normally be expected to engage, and the housing government sponsored enterprise knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction, or • Involves use of the housing government sponsored enterprise to facilitate criminal activity.

4.26.5.5.7
(06-23-2020)

Retention of Reports

- (1) Currency Transaction Reports, including legacy reports, must be retained for five years from the date of filing the report. See 31 CFR 1010.306(a)(2) , *Filing of reports*.
- (2) Suspicious Activity Reports, including legacy reports, and supporting documentation must be retained for five years from the date of filing the report. These regulations for retaining a SAR include:
 - 31 CFR 1020.320(d), *Retention of records*, filed by a depository institution
 - 31 CFR 1024.320(c), *Retention of records*, filed by a mutual fund
 - 31 CFR 1021.320(d), *Retention of records*, filed by a casino or card club
 - 31 CFR 1022.320(c), *Retention of records*, filed by a money services business
 - 31 CFR 1023.320(d), *Retention of records*, filed by a broker and dealer in securities
 - 31 CFR 1029.320(c), *Retention of records*, filed by loan or finance companies
 - 31 CFR 1030.320(c), *Retention of records*, filed by housing government sponsored enterprises

- (3) There is no report retention period in the regulations for the CMIR or the FBAR reports, although certain records underlying the FBAR must be maintained for five years, 31 CFR 1010.420, *Records to be made and retained by persons having financial interests in foreign financial accounts*.
- (4) Reports required for geographic targeting orders are retained for the period set forth in the order not to exceed five years. See 31 CFR 1010.430(d), *Nature of records and retention period*.
- (5) Copies of Forms 8300 are also required to be retained for five years. See 26 CFR 1-60501-1(e)(3)(iii), *Retention of returns*.

4.26.5.6
(06-23-2020)
**Money Services
Business Registration
Procedures**

- (1) Each money services business (MSB) other than the U.S. Postal Service, must register with the Department of the Treasury. See 31 CFR 1022.380, *Registration of money services business*. Each MSB must, as part of its registration, maintain a list of its agents. See IRM 4.26.5.6.2.
- (2) Agents of MSBs are not required to register or keep a list of their own agents if they are MSBs solely because they serve as agents of other money services businesses. A person that engages in MSB activities as an agent for others and provides MSB services on its own behalf must register. See 31 CFR 1022.380(a)(3), *Agents*.
- (3) A branch office of a MSB is not required to file its own registration form. A MSB must, however, report information about its branch locations or offices as provided by the instructions to the registration form. See 31 CFR 1022.380(b)(1)(ii), *Registration procedures, In general*.
- (4) Each foreign-located person doing business, whether or not on a regular basis or as an organized or licensed business concern, in the United States as a money services business must designate the name and address of a person who resides in the United States and is authorized, and has agreed, to be an agent to accept service of legal process with respect to compliance with this chapter, and shall identify the address of the location within the United States where the registration is located. See 31 CFR 1022.380(a)(2), *Foreign-located money services business*.
- (5) Providers of prepaid access are required to register as an MSB. One participant in each prepaid program will be determined to be the provider. Only the provider is required to register with FinCEN. In addition, the provider acts as the principal administrator of information for the other participants of the prepaid program. See 31 CFR 1022.380(a)(1), *Registration*.
- (6) Five factors that may be used to determine the provider of prepaid access in the event no participant in a prepaid program agrees to be the provider and registers as such. Based on the facts and circumstances of each prepaid program, determining the provider is a matter of establishing which participant exhibits principal oversight and control. See 31 CFR 1010.100 (ff)(4)(ii), *Considerations for provider determination*.
 - a. Using an agreement approach, the prepaid program participants, however, can identify which participant will be the provider. The agreement approach is a contractual determination among the participants regarding who will serve as the provider.

- b. In accordance with 31 CFR 1022.380(a)(1), *In general*, when a provider registers as an MSB, as part of its registration and registration renewals, it must include a complete list of prepaid programs for which it serves as provider.
- (7) Registration is accomplished by filing FinCEN Form 107, *Registration of Money Services Business*. FinCEN issued a Final Notice requiring the electronic filing of BSA reports by July 1, 2012; consequently, FinCEN Form 107 must be filed using FinCEN's BSA E-Filing System. See 31 CFR 1022.380(a), *Registration requirements*, and 31 CFR 1022.380 (b), *Registration procedures*.
- (8) A MSB must retain a copy of the registration filed and any registration number that may be assigned at a location in the United States for a period of five years. See 31 CFR 1022.380(b)(1)(iii), *Registration procedures*, and 31 CFR 1010.430(d), *Nature of records and retention period*.
- (9) A MSB must be registered for the initial registration period and each renewal period. The initial registration period is the two-calendar-year period beginning with the calendar year in which the MSB is first required to be registered. 31 CFR 1022.380(b)(2), *Registration period*. The initial Form 107 must be filed on or before the end of the 180-day period beginning on the day following the date the business is established. See 31 CFR 1022.380(b)(3), *Due date*. The date the business is established is the date the financial institution conducts a transaction which meets the definition of a MSB under 31 CFR 1010.100(ff), *Money services business*.

Example: A grocery store's policy was to limit check cashing to \$500 per person, per day. Under new management, the policy was changed to allow check cashing up to \$5,000 per person, per day. The policy became effective on February 1, 2019; however, the store did not cash a check greater than \$1,000 until March 1, 2019. The 180-day period begins on March 2, 2019, the day following the day they cashed a check which met the \$1,000 threshold for a check casher under the definition of a MSB.

- (10) Any person who owns or controls a MSB is responsible for registering the business; however, only one registration form is required to be filed for each registration period. If more than one person owns or controls a MSB, the owning or controlling persons may enter into an agreement designating one of them to register the business. The failure of the designated person to register the MSB does not, however, relieve any of the other persons who own or control the business of liability for the failure to register the business. See 31 USC 5330(a), *Persons required to file the registration form*.
- (11) It is unlawful to do business without being registered. A failure to comply with the registration requirements includes the filing of false or materially incomplete information in connection with the registration of a MSB. Any person who fails to comply with the registration requirements shall be liable for a civil penalty of \$5,000 for each violation. Each day a violation of 31 USC 5330 or this section continues constitutes a separate violation. In addition, under 31 USC 5320, *Injunctions*, the Secretary of the Treasury may bring a civil action to enjoin the violation. See 18 USC 1960, *Prohibition of unlicensed money transmitting businesses*, for a criminal penalty for failure to comply with the registration requirements of 31 USC 5330 or this section.

4.26.5.6.1

(06-23-2020)

**Money Services
Business Renewal and
Re-registration
Procedures**

- (1) Registration must be renewed every two calendar years beginning with the first calendar year in which the MSB is required to register. The form must be filed on or before the last day of the calendar year preceding the next two-year renewal period. The same filing and retention rules for the MSB registration form apply to the renewal.

Note: Elm cashes a check for \$8,000 on February 11, 2018. The initial registration is due on or before August 8, 2018, February 12, 2018 starts the 180 days. 2018 is the first year of the two-calendar year period, 2019 is the second year of the two-calendar year period. Elm must file a renewal on or before December 31, 2019. Barring any changes which would require a re-registration, renewals would be due on or before December 31, 2021, December 31, 2023, and so on.

Note: Elm cashes a check for \$8,000 on September 1, 2017. The initial registration is due on or before February 28, 2018, September 2, 2017 starts the 180 days. 2018 is the first year of the two-calendar year period, 2019 is the second year of the two-calendar year period. Elm must file a renewal on or before December 31, 2019. Barring any changes which would require a re-registration, renewals would be due on or before December 31, 2021, December 31, 2023, and so on. Computed as:

Dates	# of Days
September 2, 2017 – September 30, 2017	29
October 2017	31
November 2017	30
December 2017	31
January 2018	31
February 2018	28
Total days	180

The initial registration date is based on the due date, not the date filed. Consequently, even if ELM filed the initial FinCEN Form 107, *Registration of Money Services Business*, on November 12, 2017 the first year of the two-calendar year period would be 2018 as the FinCEN Form 107 was due on or before February 28, 2018.

- (2) MSBs are required to re-register with FinCEN if one of the following events occur:
- MSB registered under the law of any State experiences a change in ownership or control that requires the business to re-register under State law.
 - Transfer of more than 10 percent of the voting power or equity interests of a MSB, other than a MSB that must report such transfer to the Securities and Exchange Commission.
 - MSB experiences a more than 50-percent increase in the number of its agents during any registration period.

The FinCEN Form 107 must be filed not later than 180 days after such event. The calendar year in which the change, transfer, or increase occurs is treated as the first year of a new two-year registration period. See 31 CFR 1022.380(b)(4), *Events requiring re-registration*.

4.26.5.6.2
(06-23-2020)
**Money Services
Business Agent List**

- (1) A MSB must prepare and maintain a list of its agents. The initial agent list must be prepared by the due date of the initial registration form and must be revised each January 1 for the immediately preceding 12-month period. The list is not filed with the registration form but must be maintained at the location in the United States reported on the registration form. The original list of agents and any revised list must be retained for five years as specified in 31 CFR 1010.430(d), *Nature of records and retention period*.
- (2) The agent list must include the information specified in 31 CFR 1022.380(d)(2), *Information included on the list of agents*:
 - a. The agent's name, address, telephone number, and type of financial services offered,
 - b. A listing of the months during the preceding 12 months in which the gross transaction amount of the agent for financial products or services issued by the MSB maintaining the agent list exceeded \$100,000,
 - c. The name and address of the agent's bank having an account for part of the funds received as an agent of the listing principal,
 - d. The year the agent first became an agent, and
 - e. The number of branches or subagents the agent has.

4.26.5.7
(06-23-2020)
Recordkeeping

- (1) Recordkeeping requirements depend on the financial institution conducting the transaction, the type of financial transaction, and the amount of the transaction. In some cases, the information to be recorded must be verified and the document used to verify the information must be described in the record. Ordinary business records may be used. If business records are not ordinarily kept, they must be prepared by the financial institution, 31 CFR 1010.430(b), *Nature of records and retention period*. There are no official forms for records.
- (2) Individuals, as well as financial institutions, may be required to keep certain records. For example, a person or entity with a foreign financial account is required not only to file a report under 31 CFR 1010.350, *Report of foreign financial accounts*, but also to maintain a record to back up the report, 31 CFR 1010.420, *Records to be made and retained by persons having financial interests in foreign financial accounts*.
- (3) Where verification is required under the BSA, a financial institution shall verify a person's identity by examination of a document (other than a customer signature card), preferably one that contains the person's name, address, and photograph, that is normally acceptable by financial institutions as a means of identification when cashing checks for persons other than established customers. Verification of the identity of an individual who indicates that he or she is an alien or is not a resident of the United States may be made by passport, alien identification card, or other official document evidencing nationality or residence (for example, a foreign driver's license with indication of home address). See 31 CFR 1010.410(e)(5), *Verification*.

Note: Examiners must ensure the government issued ID is valid. Examiners should identify procedures the financial institution uses to identify and update IDs that are expired prior to completing the transaction.

- (4) 31 CFR 1010.410, *Records to be made and retained by financial institutions*. When a record is required, a financial institution shall retain either the original or a microfilm or other copy or reproduction of the transaction. Records required under this section include:
- a. 31 CFR 1010.410(a) – Record of each extension of credit in an amount in excess of \$10,000.
 - b. 31 CFR 1010.410(b) – Record resulting in the transfer of currency or other monetary instruments, funds, checks, investment securities, or credit, of more than \$10,000 to or from any person, account, or place outside of the United States.
 - c. 31 CFR 1010.410(c) – Record of a transaction intended to result in the transfer of funds, or of currency, other monetary instruments, checks, investment securities, or credit, of more than \$10,000 to a person, account or place outside the United States.
 - d. CFR 1010.410(d) – Record required under a Geographical Targeting Order, not to exceed five years.
- (5) 31 CFR 1010.410(e)(1) – Requires each agent, agency, branch, or office located within the United States of a nonbank financial institution (NBFI) to obtain and retain information with respect to a transmittal of funds in the amount of \$3,000 or more. Required information:
- a. The name and address of the transmittor
 - b. The amount of the transmittal order
 - c. The execution date of the transmittal order
 - d. Any payment instructions received from the transmittor with the transmittal order
 - e. The identity of the recipient's financial institution
 - f. As many of the following items as are received, the name, address, account number and any other specific identifier of the recipient; and
 - g. Any form that is completed or signed by the person placing the transmittal order
- (6) 31 CFR 1010.410(e)(2), *Transmitters other than established customers*, and 31 CFR 1010.410(e)(3), *Recipients other than established customers*. NBFIs who transmit funds or delivery proceeds in person to a recipient in the amount of \$3,000 or more for non-established customers are required to secure the information listed above. In addition, the NBFI must obtain and retain the type of identification reviewed and number of the identification document (for example, driver's license) as well as a record of the person's taxpayer identification number (for example, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack of such documents. If the NBFI has knowledge that the person placing the transmittal order or receiving the funds is not the transmitter, they must obtain and retain a record of the taxpayer identification number, or, if none, alien identification number or passport number and country of issuance, if known by the person placing the order or receiving the proceeds, or a notation in the record of the lack thereof. If the proceeds are delivered other than in person, the NBFI must retain a copy of the check or other instrument used to effect payment, or the information contained the instrument, as well as the name and address of the person to which it was sent.
- (7) 31 CFR 1010.410(e)(4), *Retrievability*. NBFIs must be able to retrieve transmitter or recipient information by reference to their name. If the person is an

established customer with an account number, information must be retrievable by account number. The information need not be retained in any manner, so long as the NBFIs are able to retrieve the required information, either by accessing transmittal of funds records directly or through reference to some other record maintained by the NBFIs.

- (8) 31 CFR 1010.415, *Purchases of bank checks and drafts, cashier's checks, money orders and traveler's checks*. No financial institution may issue or sell a bank check or draft, cashier's check, money order or traveler's check for \$3,000 or more in currency without maintaining a record. The record must be obtained for each issuance or sales of one or more of these instruments to any individual purchaser which involves currency in amounts of \$3,000 to \$10,000 inclusive.
- (9) 31 CFR 1010.420, *Records to be made and retained by persons having financial interests in foreign financial accounts*. Records of accounts reported on a Report of Foreign Financial Accounts (FBAR) must be retained by each person having a financial interest in or signature or other authority over any such account. The record is to be retained for a period of five years and kept always available for inspection as authorized by law. The record must contain:
 - a. Name in which each such account is maintained.
 - b. Number or other designation of such account.
 - c. Name and address of the foreign bank or other person with whom such account is maintained.
 - d. Type of such account.
 - e. Maximum value of each such account during the reporting period.
- (10) 31 CFR 1020.410(c), *Records to be made and retained by banks*, including credit unions under IRS exam authority. Each bank shall, in addition, retain either the original or a copy or reproduction of each of the following:
 - a. Document granting signature authority over each deposit or share account, including any notations, if such are normally made, of specific identifying information verifying the identity of the signer,
 - b. Statement, ledger card or other record on each deposit or share account, showing each transaction in, or with respect to, that account,
 - c. Check, clean draft, or money order drawn on the bank or issued and payable by it, over \$100 or those drawn on accounts which can be expected to have drawn on them an average of at least 100 checks per month over the calendar year or on each occasion on which such checks are listed in the regulations,
 - d. Item in excess of \$100 (other than bank charges or periodic charges made pursuant to agreement with the customer), comprising a debit to a customer's deposit or share account, not required to be kept, and not specifically exempted,
 - e. 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. Record of each remittance or transfer of funds, or of currency, other monetary instruments, checks, investment securities, or credit, of more than \$10,000 to a person, account or place outside the United States,
 - g. Check or draft in an amount in excess of \$10,000 drawn on or issued by a foreign bank which the domestic bank has paid or presented to a nonbank drawee for payment,

- h. Item, including checks, drafts or transfers of credit, of more than \$10,000 received directly and not through a domestic financial institution, by letter, cable or any other means, from a bank, broker or dealer in foreign exchange outside the United States,
- i. Record of each receipt of currency, other monetary instruments, investment securities or checks, and of each transfer of funds or credit, of more than \$10,000 received on any one occasion directly and not through a domestic financial institution, from a bank, broker or dealer in foreign exchange outside the United States,
- j. Records prepared or received by a bank in the ordinary course of business, which would be needed to reconstruct a transaction account and to trace a check in excess of \$100 deposited in such account through its domestic processing system or to supply a description of a deposited check in excess of \$100. This subparagraph shall be applicable only with respect to demand deposits,
- k. Record containing the name, address, and taxpayer identification number, if available, of the purchaser of each certificate of deposit, as well as a description of the instrument, a notation of the method of payment, and the date of the transaction,
- l. Record containing the name, address and taxpayer identification number, if available, of any person presenting a certificate of deposit for payment, as well as a description of the instrument and the date of the transaction, and
- m. Deposit slip or credit ticket reflecting a transaction in excess of \$100 or the equivalent record for direct deposit or other wire transfer deposit transactions. The slip or ticket shall record the amount of any currency involved.

(11) 31 CFR 1021.410, *Additional records to be made and retained by casinos.*

- a. For each deposit of funds, account opened or line of credit extended, a casino shall, secure and maintain a record of the name, permanent address, and social security number of the person involved, or if in the names of two or more persons, the casino shall secure the name, permanent address, and social security number of each person having a financial interest in the deposit, account or line of credit.

(12) 31 CFR 1021.410 also requires the original or a copy or reproduction of each of the following:

- a. Record of each receipt (including but not limited to funds for safekeeping or front money) of funds by the casino for the account (credit or deposit) of any person.
- b. Record of each bookkeeping entry comprising a debit or credit to a customer's deposit account or credit account with the casino.
- c. Statement, ledger card or other record of each deposit account or credit account with the casino, showing each transaction in or with respect to, a customer's deposit account or credit account with the casino.
- d. Record of each extension of credit in excess of \$2,500.
- e. Record of each advice, request or instruction received or given by the casino for itself or another person with respect to a transaction involving a person, account or place outside the United States.
- f. Records prepared or received in the ordinary course of business which would be needed to reconstruct a person's deposit account or credit account or to trace a check deposited through the casino's records to the bank of deposit.

- g. Records, documents or manuals required to be maintained by a casino under state and local laws or regulations, regulations of any governing Indian tribe or tribal government, or terms of any Tribal-State compacts entered pursuant to the Indian Gaming Regulatory Act.
 - h. Records which are prepared or used by a casino to monitor a customer's gaming activity.
 - i. For card clubs only, records of all currency transactions by customers, including without limitation, records in the form of currency transaction logs and multiple currency transaction logs, and records of all activity at cages or similar facilities, including, without limitation, cage control logs.
- (13) 31 CFR 1021.410(c), for casinos which input, store, or retain, in whole or in part, for any period, any record required to be maintained on computer disk, tape, or other machine-readable media shall retain the same on computer disk, tape, or machine-readable media. All indexes, books, programs, record layouts, manuals, formats, instructions, file descriptions, and similar materials which would enable a person readily to access and review the records that are input, stored, or retained on computer disk, tape, or other machine-readable media shall be retained for the period such records are required to be retained.
- (14) 31 CFR 1022.410, *Additional records to be made and retained by dealers in foreign exchange*.
 - a. Record of the taxpayer identification number of each person for whom a transaction account is opened or a line of credit is extended within 30 days after such account is opened or credit line extended.
 - b. Statements of accounts from banks, including paid checks, charges or other debit entry memoranda, deposit slips and other credit memoranda representing the entries reflected on such statements;
 - c. Daily work records, including purchase and sales slips or other memoranda needed to identify and reconstruct currency transactions with customers and foreign banks;
- (15) 31 CFR 1022.410(b)(3) requires a record of each exchange of currency involving transactions in excess of \$1000, including the name and address of the customer (and passport number or taxpayer identification number unless received by mail or common carrier) date and amount of the transaction and currency name, country, and total amount of each foreign currency. FinCEN issued administrative ruling, FIN-2014-R003, *Records to be Made and Maintained by Dealers in Foreign Exchange*, on March 11, 2014 to clarify circumstances in which a dealer in foreign exchange may accept alternative travel documents as identification for a non-resident alien. FinCEN authorized the following exception to the requirements of 31 CFR 1022.410(b)(3) for dealers in foreign exchange verifying the identity of non-resident aliens:
 - a. Each dealer in foreign exchange shall retain either the original or a microfilm or other copy or reproduction of each record of each exchange of currency involving transactions in excess of \$1,000, including the name and address of the customer, date and amount of the transaction, and currency name, country, and total amount of each foreign currency.
 - b. Unless the transaction is received by mail or common carrier, each dealer in foreign exchange shall also retain the customer's taxpayer identification number and the number and description of the government document used to verify the customer's identity (or, if the customer is a non-resident alien, the number of the passport issued by the country of

origin or the number and description of an alternate valid entry document issued by a U.S. Federal or state government agency).

- (16) 31 CFR 1022.410, *Additional records to be made and retained by dealers in foreign exchange.*
- a. Signature cards or other documents evidencing signature authority over each deposit or security account, containing the name of the depositor, street address, taxpayer identification number (TIN) or employer identification number (EIN) and the signature of the depositor or of a 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),
 - b. 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,
 - c. 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,
 - d. 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, and
 - e. Record maintaining the name, address and taxpayer identification number, if available, of any person presenting a certificate of deposit for payment, as well as a description of the instrument and date of transaction.
- (17) 31 CFR 1022.420, *Additional records to be maintained by providers and sellers of prepaid access.* Providers and sellers of prepaid access that are subject to the requirements of this chapter shall maintain access to transactional records for a period of five years. The provider of prepaid access, as defined in 31 CFR 1010.100(ff)(4), *Provider of prepaid access*, shall maintain access to transactional records generated in the ordinary course of business that would be needed to reconstruct prepaid access activation, loads, reloads, purchases, withdrawals, transfers, or other prepaid-related transactions.
- (18) 31 CFR 1023.410, *Additional records to be made and retained by brokers or dealers in securities.*
- a. A broker or dealer shall secure and maintain a record of the social security number of an individual having a financial interest in an account.
 - b. Every broker or dealer in securities shall, in addition, retain either the original or a microfilm or other copy or reproduction of each of the following: document granting signature or trading authority over each customer's account; records described in 17 CFR 240.17a-3, *Records to be made by certain exchange members, brokers and dealers*, a record of each remittance or transfer of funds, or of currency, checks, other monetary instruments, investment securities, or credit, of more than \$10,000 to a person, account, or place, outside the United States; and a record of each receipt of currency, other monetary instruments, checks, or investment securities and of each transfer of funds or credit, of 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.

4.26.5.7.1
(10-03-2012)
Retention of Records

- (1) 31 CFR 1010.430(d), *Nature of records and retention periods*, is the overall authority for record retention. Generally, records must be retained for five years from the date of the transaction. This five-year period is reaffirmed in sections 31 CFR 1010.420, *Records to be made and retained by persons having financial interests in foreign financial accounts*, and 31 CFR 1010.415, *Purchases of bank checks and drafts, cashier's checks, money orders and traveler's checks*, for foreign financial account records maintained by persons and for issuers and agents of money orders, travelers' checks, and similar instruments. Records required under a targeting order are maintained according to the terms of the order. The five-year record retention for suspicious activity reports and supporting documentation is found in the regulations that establish a Suspicious Activity Reporting requirement.
- (2) Failure to retain records is a recordkeeping violation for penalty application purposes.

4.26.5.8
(06-23-2020)
**Structuring and Other
Actions Taken to Evade
BSA**

- (1) 31 USC 5324(a), Domestic Coin and Currency Transactions Involving Financial Institutions, prohibits certain actions between any person and a domestic financial institution for evading the:
 - a. Reporting requirements of 31 USC 5313(a) (Currency Transaction Reports),
 - b. Recordkeeping requirements of 31 USC 5325 (Requirement to secure customer identification prior to issuing or selling a bank check, cashier's check, traveler's check, or money order for currency at \$3,000 or more) or any regulation prescribed under any such section,
 - c. Reporting or recordkeeping requirements imposed by any order issued under 31 USC 5326 (Geographic Targeting Order), or
 - d. Securing identification prior to conducting a wire transfer of \$3,000 or more, or any recordkeeping requirements imposed by any regulation prescribed under section 21 of the Federal Deposit Insurance Act.
- (2) 31 CFR 1022.410(b)(3) requires a MSB to create and retain a record of each exchange of currency involving transactions in excess of \$1,000, including the name and address of the customer (and passport number or taxpayer identification number unless received by mail or common carrier) date and amount of the transaction and currency name, country, and total amount of each foreign currency. 31 USC 5324(a) is silent as to the prohibition of structuring of a foreign currency exchange to circumvent the recordkeeping requirements of 31 CFR 1022.410(b)(3).
- (3) 31 USC 5324(a)(1) prohibits the causing or attempting to cause a domestic financial institution to fail to file a report or fail to maintain a record.
- (4) 31 USC 5324(a)(2) prohibits actions which cause or attempt to cause a domestic financial institution to file a report or maintain a record that contains a material omission or misstatement of fact.
- (5) 31 USC 5324(a)(3) prohibits the structuring, or assisting in the structuring, or attempting to structure any transaction with one or more domestic financial institutions.

- (6) 31 USC 5324(b) was added in 2001 to prohibit certain actions between any person and a nonfinancial trade or business for the purpose of evading the reporting requirements of 31 USC 5331, *Reports relating to coins and currency received in nonfinancial trade or business*, any regulation prescribed under such section. The prohibited action includes causing or attempting to cause a nonfinancial trade or business to fail to file a report, file a report with a material omission, or structuring or assisting in structuring, or attempting to structure any transaction with one or more nonfinancial trades or businesses.
- (7) 31 USC 5324(c) was added in 1982 to prohibit a person from conducting transactions for the purpose evading the reporting requirements of 31 USC 5316, *Report of International Transportation of Currency or Monetary Instruments (CMIR)*.
- (8) 31 CFR 1010.820(e) allows the Secretary to assess upon any person a civil penalty not to exceed the amount of coins and currency involved in the structured transaction, for the willful violation of this law. The amount of the civil penalty assessed is reduced by the amount of any forfeiture to the United States in connection with the transaction for which the penalty was imposed. Criminal penalties under 31 USC 5324(d) are dependent upon the type of violation.

4.26.5.9
(06-23-2020)
**Anti-Money Laundering
Programs**

- (1) The statutory definition of a financial institution at 31 USC 5312, *Definitions and application*, is much broader than the regulatory definition. 31 USC 5318(h) requires all financial institutions as defined in 31 USC 5312(a)(2) to establish anti-money laundering (AML) programs with minimum standards. It applies to statutory requirements unless the Secretary of the Treasury is given the authority to exempt entities.
- (2) On April 29, 2002, FinCEN temporarily deferred/exempted the AML program requirement contained in 31 USC 5318(h), *Anti-Money Laundering Programs*, to implement regulations specific to each industry covered by the requirement. Therefore, unless FinCEN has promulgated an AML compliance program requirement specific to a category of financial institution, the statutory requirement does not apply. See 31 CFR 1010.205, *Exempted anti-money laundering programs for certain financial institutions*.
- (3) 31 USC 5318(h) states that to guard against money laundering through financial institutions, each financial institution must establish AML programs, including, at a minimum:
 - a. The development of internal policies, procedures and controls.
 - b. The designation of a compliance officer.
 - c. An ongoing training program for employees.
 - d. An independent audit function to test programs.
- (4) AML program regulations have been issued for:
 - a. 31 CFR 1020.210, *Anti-money laundering program requirements for financial institutions regulated only by a Federal functional regulator*, including banks, savings associations, and credit unions. State chartered credit unions that are not insured by the National Credit Union Administration are not required to have an anti-money laundering program at this time.
 - b. 31 CFR 1021.210, *Anti-money laundering program requirements for casinos*.

- c. 31 CFR 1022.210, *Anti-money laundering programs for money services businesses.*

Note: A provider of prepaid access is a MSB and therefore is required to have an AML program.

- d. 31 CFR 1023.210, *Anti-money laundering program requirements for brokers or dealers in securities.*
- e. 31 CFR 1024.210, *Anti-money laundering program requirements for mutual funds.*
- f. 31 CFR 1025.210, *Anti-money laundering programs for insurance companies.*
- g. 31 CFR 1026.210, *Anti-money laundering program requirements for futures commission merchants and introducing brokers in commodities.*
- h. 31 CFR 1027.210, *Anti-money laundering programs for dealers in precious metals, precious stones, or jewels.*
- i. 31 CFR 1028.210, *Anti-money laundering programs for operators of credit card systems.*
- j. 31 CFR 1029.210, *Anti-money laundering programs for loan or finance companies.*

Note: FinCEN has defined a non-bank residential mortgage lender or originator as a loan or finance company for the purpose of requiring them to establish AML programs.

- k. 31 CFR 1030.210, *Anti-money laundering programs for housing government sponsored enterprises*

- (5) 31 CFR 1022.210(d)(1)(iv) adds an additional AML program requirement for a provider or seller of prepaid access. A MSB that is a provider or seller of prepaid access must establish procedures to verify the identity of a person who obtains prepaid access under a prepaid program and obtain identifying information concerning such a person, including name, date of birth, address, and identification number. Sellers of prepaid access must also establish procedures to verify the identity of a person who obtains prepaid access to funds that exceed \$10,000 during any one day and obtain identifying information concerning such a person, including name, date of birth, address, and identification number. Providers of prepaid access must retain access to such identifying information for five years after the last use of the prepaid access device or vehicle; such information obtained by sellers of prepaid access must be retained for five years from the date of the sale of the prepaid access device or vehicle.
- (6) Regulations state the AML program must be reasonable designed to prevent the financial institution from being used to facilitate money laundering or the financing of terrorist activities. Some of the regulations have additional requirements, such as approval by senior management and integrating automated data processing systems into their compliance procedures. The AML program must be in writing and available to the Department of Treasury upon request.
- (7) Violation of the AML compliance program requirements of 31 USC 5318(h), *Anti-Money Laundering Programs*, and the related regulations under it may result in penalties set out in 31 USC 5321, *Civil penalties*, and 31 USC 5322, *Criminal penalties*.

4.26.5.10

(06-23-2020)

Customer Identification Program

- (1) In addition to anti-money laundering program rules, 31 USC 5318(l), *Due Diligence for United States Private Banking and Correspondent Bank Accounts Involving Foreign Persons*, provides that regulations must be issued requiring financial institutions to prescribe identification procedures on a customer opening an account at a financial institution. The regulations shall, at a minimum, require financial institutions to implement, and customers (who must be given adequate notice) to comply with, reasonable procedures for:
 - a. Verifying the identity of any person seeking to open an account to the extent reasonable and practicable.
 - b. Maintaining records of the information used to verify a person's identity, including name, address, and other identifying information.
 - c. Consulting lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency to determine whether a person seeking to open an account appears on any such list.
- (2) Current Customer Identification Programs (CIP) regulations:
 - 31 CFR 1020.220, *Customer identification programs for banks, savings associations, credit unions, and certain non-Federally regulated banks*, includes credit unions under IRS examination authority.
 - 31 CFR 1024.220, *Customer identification programs for mutual funds*.
 - 31 CFR 1023.220, *Customer identification programs for broker-dealers*.
 - 31 CFR 1026.220, *Customer identification programs for futures commission merchants and introducing brokers*.
- (3) A CIP which must be in writing, with risk-based procedures, is considered part of an AML program if an AML program is required.
- (4) The CIP must also include procedures for responding to circumstances in which the financial institution cannot form a reasonable belief that it knows the identity of a customer. These procedures should describe:
 - a. When the entity should not open an account,
 - b. The terms under which a customer may use an account while the entity attempts to verify the customer's identity,
 - c. When the entity should close an account, after attempts to verify a customer's identity have failed, and
 - d. When the entity should file a Suspicious Activity Report in accordance with applicable law and regulation.
- (5) The name, date of birth, address, and identification number of the customer must be retained for five years after the date the account is closed, or if a credit card account, five years after the account is closed or becomes dormant. The description of the identification document, any identification number contained in the document, the place of issuance, and if any the date of issuance and expiration date; description of the methods and results of any measures undertaken to verify the identity of the customer, and a description of the resolution of any substantive discrepancy discovered when verifying the identity information obtained must all be retained for five years.

4.26.5.11
(10-03-2012)

Statute of Limitations

- (1) 31 USC 5321(b) provides for the statute of limitations on the assessment of penalties and civil actions to collect the assessments based on violations of 31 USC Chapter 53, *Monetary Transactions*, and the regulations of 31 CFR Chapter X, *Financial Crimes Enforcement Network, Department of the Treasury*. The Secretary of the Treasury may assess a civil penalty for violation of 31 USC Chapter 53 and the regulations of 31 CFR Chapter X at any time before the end of the six-year period beginning on the date of the transaction for which the penalty is assessed.
- (2) A civil action to recover the civil penalty assessed may be commenced at any time before the end of the two-year period beginning on the later of:
 - The date the penalty was assessed, or
 - The date any judgment becomes final in any criminal action under 31 USC 5322, *Criminal penalties*, in connection with the same transaction for which the penalty is assessed.
- (3) A civil money penalty may be imposed for any BSA violation notwithstanding the fact that a criminal penalty has been imposed for the same violation. 31 USC 5321(d). See IRM 4.26.8.6.5, *Parallel Civil & Criminal Referrals*.

4.26.5.12
(06-23-2020)

**Delegation of Authority
and IRS Jurisdiction**

- (1) When it enacted the BSA, Congress gave the Secretary of the Treasury the authority to interpret, prescribe regulations, examine, summon, assess civil penalties, bring court action through the Department of Justice, and delegate these functions. See 31 USC 5318, *Compliance, exemptions, and summons authority*.
- (2) The authority of the Secretary to administer the BSA has been delegated to the Director of the FinCEN in Treasury Order 180-01, 67 FR 64697. FinCEN has retained some authorities but delegated examination authority.
- (3) Civil examination authority is delegated at 31 CFR 1010.810(b) to:
 - a. Federal banking agencies for the banks that they examine for safety and soundness.
 - b. Securities and Exchange Commission examines brokers or dealers in securities and investment companies.
 - c. Commissioner of Customs for Reports of Transportation of Currency or Monetary Instruments (CMIRs).
 - d. Commodity Futures Trading Commission for futures commission merchants, introducing brokers in commodities, and commodity trading advisors.
 - e. Commissioner of Internal Revenue at 31 CFR 1010.810(b)(8) to examine for BSA compliance all financial institutions not currently examined by a Federal functional regulator.
- (4) Most entities under IRS jurisdiction are commonly referred to as NBFIs. Some definitions found in 31 CFR 1010.100, *General definitions*, contain dollar thresholds that determine whether the business is an NBFI for BSA purposes. NBFIs currently include:
 - a. Money Services Businesses (MSBs), subject to certain transaction thresholds.
 - b. Casinos and Card Clubs (including Indian tribal casinos).
 - c. Insurance companies subject to the AML compliance program requirements of the BSA.

- d. Dealers in precious metals, precious stones, and jewels subject to the AML compliance program requirements of the BSA.
 - e. Residential Mortgage Lenders and Originators.
- (5) MSBs (subject to certain threshold amounts) under IRS jurisdiction include a:
- a. Dealer in Foreign Exchange (\$1,000 threshold).
 - b. Check Cashier (\$1,000 threshold).
 - c. Issuer or Seller of Traveler's Checks or Money Orders (\$1,000 threshold).
 - d. Provider of Prepaid Access (\$2,000 closed loop threshold; \$1,000 limited open loop threshold).
 - e. Seller of Prepaid Access (in certain specified situations).
 - f. Money Transmitter.
- (6) Banking entities currently under IRS jurisdiction include:
- a. Agents of foreign banks,
 - b. Non-federally supervised banks, and
 - c. Credit unions that are state-chartered and not federally insured.
- (7) Authority for investigating criminal violations is delegated to IRS Criminal Investigation by 31 CFR 1010.810(c)(2), except that Customs retains authority for reports of transportation of currency or monetary instruments.
- (8) All FBAR enforcement authority was delegated in April 2003 to IRS, 31 CFR 1010.810(g). IRS can now interpret FBAR law, issue administrative rulings, examine FBAR cases, and assess FBAR penalties. The Financial Management Service (FMS) collects FBAR penalties assessed by the IRS.
- (9) 31 CFR 1010.810, *Enforcement*, by providing that:
- a. The US Postal Service is outside IRS examination authority.
 - b. The IRS Commissioner may redelegate his authority. The Commissioner has done so in authorizing IRS employees to conduct BSA examinations.

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Exhibit 4.26.5-1 (10-03-2012)

31 CFR Chapter X General Cross-Reference Index



Department of the Treasury Financial Crimes Enforcement Network

31 CFR Chapter X General Cross-reference Index

The following provides a general cross-reference index for the transfer of FinCEN's regulations from 31 CFR Part 103 to 31 CFR Chapter X on March 1, 2011. This index is provided for informational purposes only and does not replace or supersede FinCEN's regulations.

31 CFR Part 103 31 CFR Chapter X

103.11 1010.100.
 103.12 1010.301.
 103.15(a)-(g) 1024.320(a)-(g).
 103.16(a) Deleted.
 103.16(b)-(i) 1025.320(a)-(h).
 103.17(a)-(h) 1026.320(a)-(h).
 103.18(a)-(f) 1020.320(a)-(f).
 103.19(a)-(h) 1023.320(a)-(h).
 103.20(a)-(f) 1022.320(a)-(f).
 103.21(a)-(g) 1021.320(a)-(g).
 103.22(a) Deleted.
 103.22(b)(1) 1010.311.
 103.22(b)(2)(i)-(iii) ... 1021.311(a)-(c).
 103.22(c)(1) & (2) 1010.313(a) & (b).
 103.22(c)(3) 1021.313.
 103.22(d)(1)
 Sentences 1 and 3 1020.315(a).
 103.22(d)(1)
 Sentence 2 1010.315.
 103.22(d)(2)-(9) 1020.315(b)-(i).
 103.23(a)-(d) 1010.340(a)-(d).
 103.24 1010.350.
 103.25(a)-(e) 1010.360(a)-(e).
 103.26(a)-(d) 1010.370(a)-(d).
 103.27(a)(1) 1010.306(a)(1).
 103.27(a)(2) Deleted.
 103.27(a)(3) & (4) 1010.306(a)(2) & (3).
 103.27(b)-(e) 1010.306(b)-(e).
 103.28 1010.312.
 103.29(a)-(c) 1010.415(a)-(c).
 103.30(a)-(c) 1010.330(a)-(c).
 103.30(d)(1)(i)-(iv) ... 1021.330(a)-(d).
 103.30(d)(2) 1010.330(d)(2).
 103.30(d)(3) 1010.330(d)(1).
 103.30(e) 1010.330(e).
 103.31 1010.401.
 103.32 1010.420.
 103.33(a)-(d) 1010.410(a)-(d).
 103.33(e) 1020.410(a).

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103.33(f) & (g) 1010.410(e) & (f).
 103.34(a) & (b) 1020.410(b) & (c).
 103.35(a) & (b) 1023.410(a) & (b).
 103.36(a)-(c) 1021.410(a)-(c).
 103.37(a)-(c) 1022.410(a)-(c).
 103.38(a)-(d) 1010.430(a)-(d).
 103.39 1010.440.
 103.41(a)-(f) 1022.380(a)-(f).
 103.51 1010.980.
 103.52(a) & (b) 1010.940(a) & (b).
 103.53(a)-(f) 1010.950(a)-(f).
 103.54 1010.960.
 103.55(a)-(c) 1010.970(a)-(c).
 103.56(a)-(g) 1010.810(a)-(g).
 103.57(a)-(h) 1010.820(a)-(h).
 103.58 1010.830.
 103.59(a)-(d) 1010.840(a)-(d).
 103.60(a)-(c) 1010.850(a)-(c).
 103.61 1010.920.
 103.62(a)-(c) 1010.930(a)-(c).
 103.63(a)-(c) 1010.314(a)-(c).
 103.64(a) 1021.210(b).
 103.64(b)(1) 1021.100(a).
 103.64(b)(2) 1021.100(b).
 103.64(b)(3) 1021.100(c).
 103.64(b)(4) 1021.100(d).
 103.64(b)(5) 1021.100(e).
 103.71 1010.911.
 103.72(a)-(c) 1010.912(a)-(c).
 103.73(a) & (b) 1010.913(a) & (b).
 103.74(a)-(c) 1010.914(a)-(c).
 103.75(a)-(c) 1010.915(a)-(c).
 103.76 1010.916.
 103.77 1010.917.
 103.80 1010.710.
 103.81(a)-(e) 1010.711(a)-(e).
 103.82 1010.712.
 103.83(a) & (b) 1010.713(a) & (b).
 103.84 1010.714.

Exhibit 4.26.5-1 (Cont. 1) (10-03-2012)**31 CFR Chapter X General Cross-Reference Index**

<u>31 CFR Part 103</u>	<u>31 CFR Chapter X</u>	<u>31 CFR Part 103</u>	<u>31 CFR Chapter X</u>
103.85	1010.715.	103.123(a)(10)	1026.100(h).
103.86(a)–(d)	1010.716(a)–(d).	103.123(a)(11)	Deleted.
103.87(a) & (b)	1010.717(a) & (b).	103.123(a)(12)	Deleted.
103.90(a)	1010.505(b).	103.123(a)(13)	Deleted.
103.90(b)	1010.505(c).	103.123(b)–(d)	1026.220(a)–(c).
103.90(c)	1010.505(a).	103.125(a)–(e)	1022.210(a)–(e).
103.90(d)	1010.505(d).	103.130(a)	Deleted.
103.100(a)(1) & (a)(3) Deleted.		103.130(b) & (c)	1024.210(a) & (b).
103.100(a)(2) & (a)(4)	1010.520(a)(1) & (2).	103.131(a)(1)	1024.100(a).
103.100(b)	1010.520(b).	103.131(a)(2)	1024.100(c).
103.110(a)(1)	Deleted.	103.131(a)(3)	1010.100(r).
103.110(a)(2) & (3) ...	1010.540(a)(1) & (2).	103.131(a)(4)	1024.100(d).
103.110(b)–(d)	1010.540(b)–(d).	103.131(a)(5)	1010.100(gg).
103.120(a)(1)	1020.100(d)(1) & 1023.100(e)(1).	103.131(a)(6)	1010.100(iii).
103.120(a)(2)	1010.100(r).	103.131(a)(7)	1010.100(yy).
103.120(a)(3)	1010.100(tt).	103.131(a)(8)	1010.100(iii).
103.120(a)(4)	Deleted.	103.131(b)–(d)	1024.220(a)–(c).
103.120(b)	1020.210.	103.135(a)(1)	1028.100(e).
103.120(c)(1) & (2) ...	1023.210(a) & (b) & 1026.210(b)(1) & (2).	103.135(a)(2)	1028.100(d).
103.120(d)	1021.210(a).	103.135(a)(3)	1028.100(a).
103.121(a)(1)	1020.100(a).	103.135(a)(4)	1028.100(f).
103.121(a)(2)	1020.100(b).	103.135(a)(5)	1028.100(b).
103.121(a)(3)	1020.100(c).	103.135(a)(6)	1028.100(c).
103.121(a)(4)	Deleted.	103.135(b) & (c)	1028.210(a) & (b).
103.121(a)(5)	1020.100(d)(2).	103.137(a)(1)	1025.100(a).
103.121(a)(6)	1010.100(yy).	103.137(a)(2)	Deleted.
103.121(a)(7)	1010.100(iii).	103.137(a)(3)	Deleted.
103.121(a)(8)	1010.100(iii).	103.137(a)(4)	1025.100(b).
103.121(b)–(d)	1020.220(a)–(c).	103.137(a)(5)	1025.100(c).
103.122(a)(1)	1023.100(a).	103.137(a)(6)	1025.100(d).
103.122(a)(2)	1023.100(b).	103.137(a)(7)	1025.100(e).
103.122(a)(3)	1023.100(c).	103.137(a)(8)	1025.100(f).
103.122(a)(4)	1023.100(d).	103.137(a)(9)	1025.100(g).
103.122(a)(5)	Deleted.	103.137(a)(10)	1025.100(h).
103.122(a)(6)	1023.100(e).	103.137(a)(11)	Deleted.
103.122(a)(7)	Deleted.	103.137(a)(12)	Deleted.
103.122(a)(8)	Deleted.	103.137(b)–(e)	1025.210(a)–(d).
103.122(a)(9)	Deleted.	103.140(a)(1)	1027.100(a).
103.122(b)–(d)	1023.220(a)–(c).	103.140(a)(2)	1027.100(b).
103.123(a)(1)	1026.100(a).	103.140(a)(3)	1027.100(c).
103.123(a)(2)	Deleted.	103.140(a)(4)	1027.100(d).
103.123(a)(3)	1026.100(b).	103.140(a)(5)	1027.100(e).
103.123(a)(4)	1026.100(c).	103.140(a)(6)	Deleted.
103.123(a)(5)	1026.100(d).	103.140(a)(7)	1027.100(f).
103.123(a)(6)	Deleted.	103.140(b)–(d)	1027.210(a)–(c).
103.123(a)(7)	1026.100(e).	103.170(a)–(d)	1010.205(a)–(d).
103.123(a)(8)	1026.100(f).	103.175(a)	1010.100(c).
103.123(a)(9)	1026.100(g).	103.175(b)	1010.605(a).
		103.175(c)	1010.605(b).
		103.175(d)	1010.605(c).

Exhibit 4.26.5-1 (Cont. 2) (10-03-2012)

31 CFR Chapter X General Cross-Reference Index

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103.175(e)	1010.605(d).
103.175(f)	1010.605(e).
103.175(g)	Deleted.
103.175(h)	1010.605(f).
103.175(i)	1010.605(g).
103.175(j)	1010.605(h).
103.175(k)	1010.605(i).
103.175(l)	1010.605(j).
103.175(m)	1010.605(k).
103.175(n)	1010.605(l).
103.175(o)	1010.605(m).
103.175(p)	1010.605(n).
103.175(q)	1010.605(o).
103.175(r)	1010.605(p).
103.175(s)	Deleted.
103.175(t)	Deleted.
103.176(a)–(g)	1010.610(a)–(g).
103.177(a)–(f)	1010.630(a)–(f).
103.178(a)–(e)	1010.620(a)–(e).
103.185(a)–(f)	1010.670(a)–(f).
103.186(a)(1)	1010.651(a)(2).
103.186(a)(2)	1010.651(a)(3).
103.186(a)(3)	1010.651(a)(1).
103.186(b)	1010.651(b).
103.187(a)(1)	1010.652(a)(2).
103.187(a)(2)	1010.652(a)(3).
103.187(a)(3)	1010.652(a)(4).
103.187(a)(4)	1010.652(a)(1).
103.187(b)	1010.652(b).
103.188(a)(1)	1010.653(a)(1).
103.188(a)(2)	1010.653(a)(2).
103.188(a)(3)	1010.653(a)(3).
103.188(a)(4)	1010.653(a)(4).
103.188(b)	1010.653(b).
103.192(a)(1)	1010.654(a)(1).
103.192(a)(2)	1010.654(a)(2).
103.192(a)(3)	1010.654(a)(3).
103.192(a)(4)	1010.654(a)(4).
103.192(b)	1010.654(b).
103.193(a)(1)	1010.655(a)(1).
103.193(a)(2)	1010.655(a)(2).
103.193(a)(3)	1010.655(a)(3).
103.193(a)(4)	1010.655(a)(4).
103.193(b)	1010.655(b).

Exhibit 4.26.5-2 (10-03-2012)**Timeline of Important BSA Laws, Cases, and Regulations**

Year	Citation	Rule
1974	<u>California Bankers Association v. Schultz</u> , 416 US 21 (1974)	BSA reporting requirements do not violate 4th Amendment.
1978	<u>US v. Fitzgibbon</u> , 576 F.2d 279 (10th Cir.), cert. den. 439 U.S. 910 (1978)	BSA reporting requirements do not violate 1st Amendment.
1979	<u>US v. Dichne</u> , 612 F.2d 632 (2nd Cir), cert. den. 445 U.S. 928 (1980)	BSA reporting requirements do not violate 5th Amendment.
1979	<u>US v. Thompson</u> , 603 F.2d 1200 (5th Cir. 1979)	Multiple transactions in any one day for any one person must be treated as single transaction.
1983	<u>US v. Deak Perera</u> , 566 F. Supp. 1398 (DDC 1983)	In <u>Deak-Perera</u> , the revenue agent gathered information for tax examination purposes under the pretense of gathering the information for a BSA examination. The court held that the IRS could not gather information by the use of false or misleading representations during the course of an examination.
1986	Anti Drug Abuse Act of 1986, Public Law 99-570	Money laundering is itself a crime. 18 USC 1956 and 1957. Structuring to evade BSA reporting requirements is prohibited. 31 USC 5324.
1989	31 CFR 103.26 (now 1010.370)	Circumstances when Secretary of the Treasury may issue "targeting orders" requiring special additional reports and records in geographical and business areas where necessary to meet the overall purposes of the BSA.
1990	Crime Control Act of 1990, Public Law 101-647	Required reports on the uses made of CTRs.
1990	31 CFR 103.29 (now 1010.415)	Financial institutions must record sale or issuance of certain monetary instruments of \$3,000 or more.
1992	Annunzio-Wylie Anti-Money Laundering Act of 1992, Public Law 102-550	Authorized Secretary to require mandatory suspicious transaction reports. Enhanced penalties for conspiracy to launder money.

Exhibit 4.26.5-2 (Cont. 1) (10-03-2012)**Timeline of Important BSA Laws, Cases, and Regulations**

Year	Citation	Rule
1994	The Money Laundering Suppression Act (MLSA) of 1994, Public Law 103-325	<p>Some key sections highlights:</p> <p>Directed Treasury to reduce filed CTRs by 30%.</p> <p>Mandated registration of money transmittal businesses.</p> <p>Requested states to implement local registration.</p> <p>Clarified intent needed to criminally violate anti-structuring laws. The government need not prove the defendant knew that structuring was illegal. Legislation overturned 1994 <u>Ratzlaff</u> case.</p>
1996	31 CFR 103.21 (now 1021.320)	Banks must report suspicious transactions.
1996	31 CFR 103.22 (now 1010.315)	Banks exempted from reporting transactions with certain businesses.
1996	31 CFR 103.11 (now 1010.100)	Tribal casinos included under BSA.
1997	31 CFR 103.33 (now 1010.410)	Wire transfers of \$3,000 or more require that records be kept and that the transactor's identity be verified.
1997	31 CFR 103.22 (now 1010.315)	Revised exemptions by banks to reflect mandatory exemptions required by MLSA of 1994.
1998	The Money Laundering and Financial Crimes Strategy Act of 1998, Public Law 105-310	Set up a new strategy to coordinate Federal and State anti-money laundering programs. 31 USC 5340 et seq.
1998	31 CFR 103.11 (now 1010.100)	Card Clubs included as financial institutions and are treated like casinos.
1998	31 CFR 103.22 (now 1010.315)	Revised. Banks are further permitted to exempt certain "unlisted business" and "payroll customers" from the CTR reporting requirement.
1999	Uniform Money Services Business Act of March 1999	National Conference of Commissioners on Uniform State Laws creates uniform law for state adoption in response to 1994 Act.
1999	Money Service Business (MSB): Definition (31 CFR 103.11(n) and (gg)) (now 1010.100(n) and (gg)) and Registration (31 CFR 103.41 (now 1022.380))	<p>31 CFR 103 is renumbered. (Now 31 CFR Part X.) New numbering gives Subpart D (103.41) to MSBs and renumbers all sections thereafter.</p> <p>Revised MSB definitions effective 09/20/1999.</p> <p>Registration required.</p>

Exhibit 4.26.5-2 (Cont. 2) (10-03-2012)**Timeline of Important BSA Laws, Cases, and Regulations**

Year	Citation	Rule
2000	Suspicious activity reporting mandatory for certain MSBs (31 CFR 103.20 (now 1022.320))	Suspicious activity rules become effective for MSBs.
2001	USA PATRIOT Act, Public Law 107-56, October 2001. Amends BSA in many important respects	Amended the purpose of the BSA, 31 USC 5311, to include reports and records useful in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism. Broadened BSA scope to apply to nonfinancial trades and businesses (all businesses except those required to file CTRs) in several sections including summons authority, penalty application, geographical targeting orders and whistle-blower protections. Added 31 USC 5331 making Form 8300 a dual filing requirement. Added 31 USC 5318(h) to require all financial institutions (31 USC 5312 definition) to set up anti-money laundering programs. Encouraged information sharing by U.S. financial institutions. Improved law enforcement access to foreign bank records.
2001 - 2004	Regulations were issued to clarify the anti-money laundering (AML) program requirements for • Financial institutions regulated by an Federal Functional Regulator, SRO and casinos, 31 CFR 103.120 (now 1022.320) • Money services businesses, 31 CFR 103.125 (now 1022.210) • Mutual Funds, 31 CFR 103.130 (now 1024.210) • Operators of Credit Card Systems, 31 CFR 103.135 (now 1028.100)	<ul style="list-style-type: none"> • AML programs meeting existing regulatory requirements of Federal Functional Regulators and certain self-regulatory organizations are deemed compliant. Casinos meeting existing BSA AML program requirements are deemed compliant, 67 FR 21112, Apr. 29, 2002. • Nonbank financial institutions generally are exempted until regulations are issued, 67 F.R. 21110, See also 31 CFR 103.170 (now 1010.205). • New regulations now require AML programs for money services businesses, mutual funds, and operators of credit card systems

Exhibit 4.26.5-2 (Cont. 3) (10-03-2012)**Timeline of Important BSA Laws, Cases, and Regulations**

Year	Citation	Rule
2001 - 2004	Regulations were issued detailing customer identification programs for certain financial institutions	<ul style="list-style-type: none"> • Customer Identification programs are required for banks, savings associations, credit unions, and certain non-Federally regulated banks, securities brokers and dealers, futures commission merchants and Banks, savings associations, credit unions, and certain non-Federally regulated banks, 31 CFR 103.121 (now 1020.100) • Brokers and dealers in securities, 31 CFR 103.122 (now 1023.100) • Futures commission merchants and introducing brokers, 31 CFR 103.123 (now 1026.100) • Mutual funds, 31 CFR 103.131 (now 1024.100) introducing brokers, and mutual funds
2001 - 2004	Regulations were issued to clarify due diligence requirements for certain financial institutions, 31 CFR 103.175 - 183 (now 1010.605 - 630)	Special due diligence programs are required for banks including credit unions, securities brokers and dealers, and futures commission merchants and introducing brokers
2003	31 CFR 103.56(g) (now 1010.810(g))	Delegates all FBAR enforcement authority to the IRS.
2004	American Jobs Creation Act of 2004, Public Law 108-357. Amends 31 USC 5321(a)(5) for FBAR penalties.	The creation of non-willful FBAR penalties and FBAR penalties are increased.
2005	31 CFR 103.137 (now 1025.100)	Requires Anti-Money Laundering Programs for Insurance companies. 70 FR 66760, Nov. 3, 2005
2005	31 CFR 103.140 (now 1027.100)	Requires Anti-Money Laundering Programs for Dealers in Precious Metals, Stones or Jewels. 70 FR 33716, June 9, 2005
2006	31 CFR 103.15 (now 1024.320)	Requires Reports by Mutual Funds of Suspicious Transactions 71 FR 26219, May 4, 2006
2006 -2007	Regulations were issued documenting special measures against certain entities	<ul style="list-style-type: none"> • 103.188 (now 1010.653) Special measures against commercial Bank of Syria, 71 FR 13267, Mar. 15, 2006 • 103.192 (now 1010.654) Special measures against VEF Bank, 71 FR 39560, July 13, 2006 • 103.193 (now 1010.655) Special Measures against Banco Delta Asia, 72 FR 12739, Mar. 19, 2007

Exhibit 4.26.5-2 (Cont. 4) (10-03-2012)**Timeline of Important BSA Laws, Cases, and Regulations**

Year	Citation	Rule
2006	31 CFR 103.120 (now 1020.210 (banks), 1023.210 (brokers or dealers in securities), 1026.210 (futures commission merchants and introducing brokers in commodities) and 1021.210 (casinos and card clubs)) regarding AML programs was amended	AML programs for financial institutions regulated by a Federal functional regulator or a self-regulatory organization (SRO) must meet the requirements of 31 CFR 103.176 (now 1010.610) regarding correspondent accounts and 103.178 (now 1010.620) regarding private banking accounts, 71 FR 512, Jan. 4, 2006.
2006	31 CFR 103.176 (now 1010.610)	Covered financial institutions (federally regulated/SRO) must have Due Diligence programs for Correspondent Accounts for Foreign Financial Institutions, 71 FR 514, Jan. 4, 2006 as amended at 71 FR 16041 Mar. 30, 2006, 72 FR 44774, Aug. 9, 2007
2006	31 CFR 103.178 (now 1010.620)	Covered financial institutions (federally regulated/SRO) must have Due Diligence programs for private banking accounts, 71 FR 515, Jan. 4, 2006 as amended at 71 FR 16041, Mar. 30, 2006
2007	31 CFR 103.22 (now 1021.210)	<ul style="list-style-type: none"> • Casinos exempted from filing CTRs on certain transactions, 72 FR 35013 June 26, 2007 including • Transactions with an on-site dealer in foreign exchange or check casher • Refund of cash played at same table • Bills inserted into electronic gaming devices • Jackpots from slot machines or video lottery terminals.
2007	<u>Berger v. IRS</u> 487 F Supp 2d 482 (D.N.J. 2007)	In response to request under Freedom of Information Act and Privacy Act, IRS properly withheld material constituting Bank Secrecy Act reports or information derived or extracted from such reports because this type of information was restricted from release by 31 USC 5319, and therefore, exempt from disclosure under 5 USC 552(b)(3).
2008	<u>United States v e-Gold, Ltd.</u> 550 F Supp 2d 82 (D.D.C. 2008)	“Money transmitting business” for purposes of 31 USC 5330 is not limited to businesses that engage in cash transactions.
2008 - 2009	31 CFR 103.22 (now 1020.315)	<ul style="list-style-type: none"> • Effective January 2009 “Designation of exempt person” rules were substantially relaxed, 73 FR 74016, Dec. 5, 2008. • Filing is not required on “Phase 1” customers except listed entities. • Time for a non-listed business transaction account or payroll account was reduced from 12 months to two months or less if a risk assessment allows this. • Filing renewal is not required although annual reviews are still required.

Exhibit 4.26.5-2 (Cont. 5) (10-03-2012)**Timeline of Important BSA Laws, Cases, and Regulations**

Year	Citation	Rule
2009-2010	31 CFR 103.80 – 103.87 (now 31 CFR 1010.710-1010.717)	Effective December 17, 2009, FinCEN amended the procedures for requesting an administrative ruling and began to publish them on its website, not in the federal register.
2010	31 CFR 103.11 (now 1010.100)	April 14, 2010, mutual funds included in the definition of financial institutions.
2011	31 CFR 103 various (now 31 CFR 1000 various)	<ul style="list-style-type: none"> • 75 FR 75593, December 3, 2010. Effective January 3, 2011, SAR disclosure prohibitions specifically include disclosure of information that could indicate that a SAR was filed, not just disclosure of the SAR itself. • The prohibition against disclosure to the subject is broadened to include anyone not authorized to receive SAR information. • Entities entitled to access SAR information are detailed.
2011	31 CFR 103 (now 31 CFR 1000 to 1099)	Published 75 FR 65812, Oct. 26, 2010, as amended at 76 FR 10517, Feb. 25, 2011 and Effective March 1, 2011. BSA regulations were expanded, reorganized, and moved from 31 CFR Chapter I part 103 to 31 CFR Chapter X parts 1000 – 1099. The reorganization results in separate parts applicable to specified industries. The same topics generally have the same section number within each industry.
2011	31 CFR 103.24 (now 31 CFR 1010.350)	Effective March 28, 2011, FBAR regulations were expanded and revised. The 2008 FBAR instructions were also revised.
2011	31 CFR Parts 1010, 1021, and 1022	Effective September 19, 2011, MSB definitions and nomenclature were revised. Clarified that certain foreign-located MSBs with a U.S. presence, such as having U.S. customers or recipients, are subject to the BSA rules and must provide a U.S. contact on their registration with FinCEN.
2011	31 CFR 1010 and 1022	The Credit Card Accountability, Responsibility and Disclosure Act of 2009 mandated regulation of prepaid access providers. Effective September 27, 2011, FinCEN issued definitions of prepaid access providers and sellers, 31 CFR 1010.100(ff)(4) and (7), and required registration as MSBs, 31 CFR 1022.380, AML programs, 31 CFR 1022.210(d)(1)(iv) and record maintenance, 31 CFR 1022.420.
2012	31 CFR 1010 and 1029	Effective April 16, 2012, Residential Mortgage Lenders and Originators (RMLOs), as now defined in 31 CFR 1010.11(III)(1), are required to establish anti-money laundering programs and to file SARs, 31 CFR 1029.210 and .320. They continue to file Form 8300 for receipt of currency in excess of \$10,000, 31 CFR 1029.330, but are exempted currently from other BSA requirements.

Exhibit 4.26.5-2 (Cont. 6) (10-03-2012)**Timeline of Important BSA Laws, Cases, and Regulations**

Year	Citation	Rule
2013	31 CFR 1010 and 1022	FinCEN issued interpretive guidance, FIN-2013-G001, on March 18, 2013 to clarify the applicability of the regulations to persons creating, obtaining, distributing, exchanging, accepting, or transmitting virtual currencies. The guidance makes it clear that an administrator or exchanger is an MSB under the regulations, specifically, a money transmitter, unless a limitation to or exemption from the definition applies to the person.
2014	31 CFR 1022.410(b)(3)	FinCEN issued administrative ruling, FIN-2014-R003, <i>Records to be Made and Maintained by Dealers in Foreign Exchange</i> , on March 11, 2014 to clarify circumstances in which a dealer in foreign exchange may accept alternative travel documents as identification for a non-resident alien.
2014	31 CFR 1010 and 1022	FinCEN issued interpretive guidance, FIN-2019-G001, on May 9, 2019 to remind persons subject to the BSA how regulations relating to MSBs apply to certain business models involving money transmission denominated in value that substitutes for currency, specifically, convertible virtual currencies.