

BSA/AML/CFT Guidance for Trust Companies:

Transaction Monitoring and SAR Reporting for Foreign Structures

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Why am
I here?



FinCEN Assesses \$1.5 Million Civil Money Penalty against Kingdom Trust

“This enforcement action is an important statement that ***we will not tolerate trust companies*** with weak compliance programs ***that fail to identify and report suspicious activities***, particularly with respect to high-risk customers whose businesses pose an elevated risk of money laundering.”



Division of Banking

SOUTH DAKOTA
Division of Banking



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Anti-Money Laundering and Countering the Financing of Terrorism Guidance

On October 26, 2001, the USA PATRIOT Act became effective, bringing significant amendments and additions to the customer identification and Anti-Money Laundering (AML) provisions of the Bank Secrecy Act (BSA). The U.S. Department of the Treasury rules implementing BSA are codified at Title 31 Code of Federal Regulations (CFR) Chapter X entitled "Financial Crimes Enforcement Network, Department of the Treasury." Chapter X Section 1010.100 defines a financial institution to include a commercial bank or trust company organized under the laws of any state or of the U.S.

In short, all South Dakota chartered trust companies must develop and implement policies and procedures to ensure compliance with BSA reporting requirements. The South Dakota Division of Banking (Division) performs an AML/Countering the Financing of Terrorism (CFT) review in conjunction with each trust company's regularly scheduled examination. Trust company management is strongly encouraged to consult with legal counsel or others with knowledge and expertise in the field in developing a program for AML/CFT compliance that is specific to each trust company's respective business plan.

The following guidance is not all inclusive but provides trust company management with fundamental information pertaining to AML/CFT provisions and requirements. Management should refer to the Federal Financial Institutions Examination Council (FFIEC) BSA/AML Examination Manual for additional guidance.

What has your experience been post-Kingdom Trust?



AML Program Expectations

31 CFR §1010.210

- Amended September 15, 2020, to include state-chartered, non-depository trust companies
- Policies/Procedures/Controls – i.e., an AML/CFT Program
- Compliance Officer
- Training
- Independent Audit Function (every 12-18 months)
- Risk-based procedures for ongoing customer due diligence
 - Nature/Purpose of Customer Relationships
 - Suspicious Transaction Monitoring
- Annual Risk Assessments . . . by the Board of Directors



This proposed rule would:

[T]he proposed rule seeks to ***avoid one-size-fits-all approaches*** to customer risk that can lead to financial institutions ***declining*** to provide financial services to ***entire categories of customers***.

as well as provide for certain technical changes to program requirements;
and

- promote clarity and consistency across FinCEN's program rules for different types of financial institutions.



Is your program adequate?

Where and how
will examiners
and auditors look for
BSA/AML/CFT Issues?

EXAMINATION PROCEDURES

1. Review the policies, procedures, and processes related to trust and asset management services.

- Adequate given the bank's trust and asset management activities?
- Are controls adequate to protect from money laundering and terrorist financing?

EXAMINATION PROCEDURES

2. Review the bank's procedures for **gathering additional identification information.**

- when necessary, about the settlor, grantor, trustee, or others with authority to direct a trustee, and
- who has authority over the account, to establish identity of the customer.

EXAMINATION PROCEDURES

3. From a review of MIS and internal risk rating factors, does the bank identify and monitor trust and asset management relationships?

EXAMINATION PROCEDURES

4. Determine how the bank includes trust and asset management relationships in firm-wide BSA/AML aggregation systems.

EXAMINATION PROCEDURES

5. Is the bank's system for monitoring trust and asset management relationships for suspicious activities – and for reporting of suspicious activities – adequate?

EXAMINATION PROCEDURES

For standalone trust examination, apply the core examination procedures, for comprehensive guidance on the BSA/AML examination scope.

The trust examination may need to cover additional areas, **including training, the BSA compliance officer, independent review, and follow-up items.**

EXAMINATION PROCEDURES: *TRANSACTION TESTING*

Based on the **risk assessment** of the trust and asset management **relationships**, as well as prior examination and audit reports, **select a sample**

- of **higher-risk** trust and asset management services **relationships**
- Include relationships with **grantors and co-trustees**, if they have authority or control,
- as well as any **higher-risk assets** such as private investment companies (PIC) or **asset protection trusts**

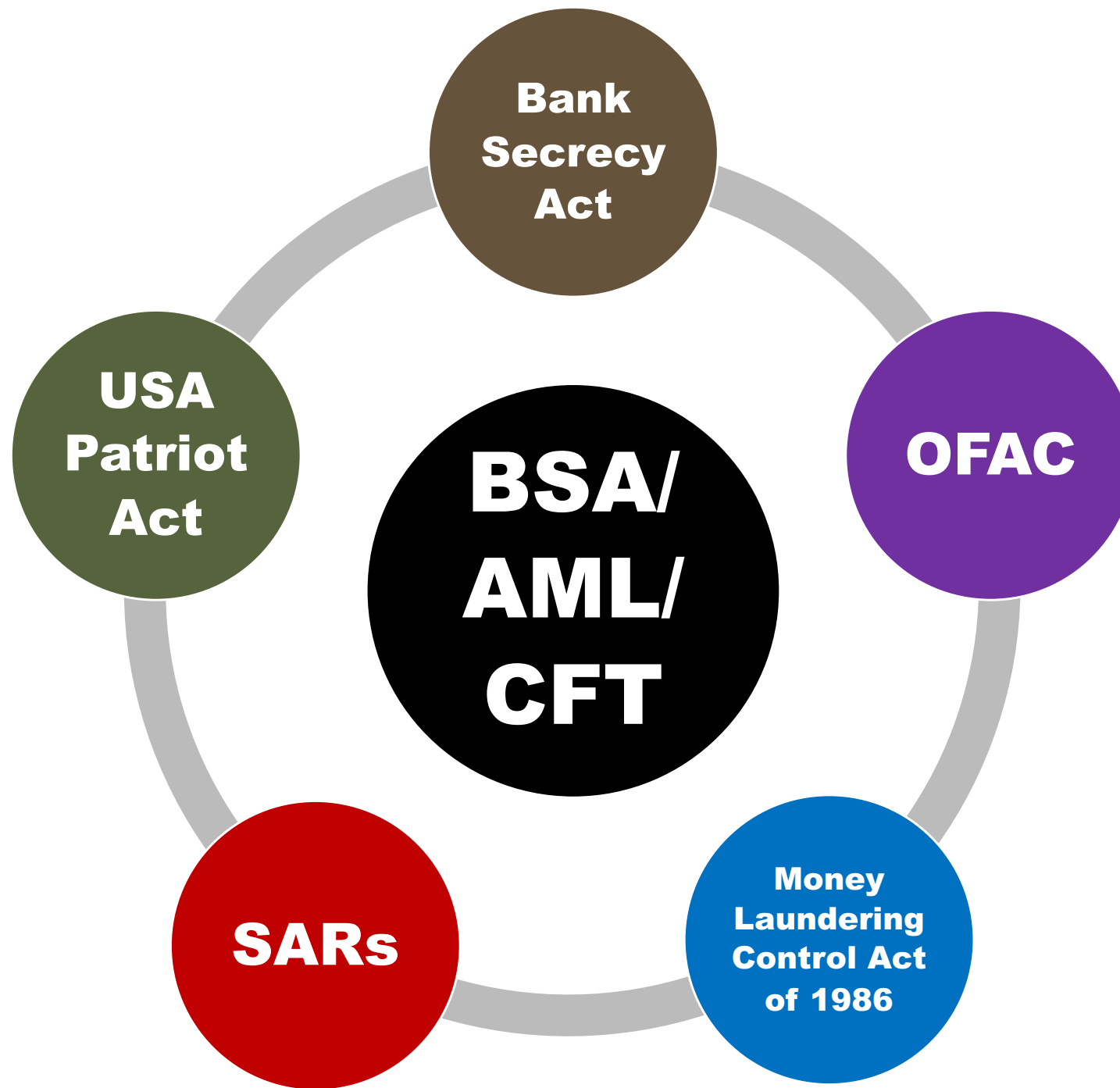


EXAMINATION PROCEDURES: *TRANSACTION TESTING*

From the sample selected, perform the following **examination procedures**:

- Review account opening documentation, including the CIP, to ensure that **adequate due diligence** has been performed and that **appropriate records** are maintained
- Review account statements and, as necessary, specific transaction details
- Compare expected transactions with actual activity and **determine whether actual activity is consistent with the nature of the customer's business and the stated purpose of the account**
- Identify any **unusual or suspicious activity**







Customer Identification Program (CIP)

What do Trust Companies need to do?

CIP: What's Required?

- Written CIP
- Incorporated into the AML/CFT compliance program
- Subject to approval by the Board of Directors
- **Reasonable belief** that **true identity** of each customer is known
- Account opening procedures **specify the identifying information** that will be **obtained from each customer** (consider a grid)
- Include **reasonable and practical risk-based procedures** for verifying the identity of each customer

CIP: What's an “Account”?

- **Formal relationship** to provide or engage in services,
- Includes safekeeping services and **cash management, custodian, or trust services**
- An account does **not** include:
 - Products or services for which a formal relationship **is not established**
 - Any account that the bank/trust company **acquires**
 - Accounts opened to participate in an **employee benefit plan** established under the Employee Retirement Income Security Act of 1974

CIP: Who is a “Customer”?

- A customer is a “**person**” (an individual, a corporation, partnership, a **trust**, **an estate**, or any other entity **recognized as a legal person**)
- Person who opens a new account
- An **individual** who opens a new account for **individual who lacks legal capacity**
- An **individual** who opens a new account for **an entity that is not a legal person** (e.g., a civic club)
- By contrast, when an account is opened by an **agent on behalf of another person**, the bank must obtain the identifying information of the **person on whose behalf the account is being opened**

CIP: NOT a Customer

A customer *does NOT include*:

- a person who does not receive banking services, such as a person whose loan application is denied or trust relationship is declined
- existing customer as long as the bank has a reasonable belief that it knows the customer's true identity
- federally-regulated or state-regulated bank
- governmental entity
- publicly-traded companies

CIP: Customer Information Required Before Account Opening

- At a minimum, the bank **must obtain** from each customer **before opening the account**:
 - Name
 - Date of birth (for individuals)
 - Residential Address
 - Identification number
- Based on its **risk assessment**, a bank **may require identifying information** in addition to the items above for certain customers or product lines



CIP: Customer Verification

- Must verify customer identity within a **reasonable period of time after the account is opened**
 - Policies tend to require verification prior to account opening
 - Pre-acceptance is the time to verify identity for trust accounts
- The verification procedures must use the identifying information
 - Need not establish the accuracy of every element of identifying information obtained
 - But it **must verify enough information** to form a **reasonable belief** that it knows the **true identity of the customer**
 - Must describe **when it will use documents, or non-documentary** methods, or a combination of both

CIP: Document Verification People

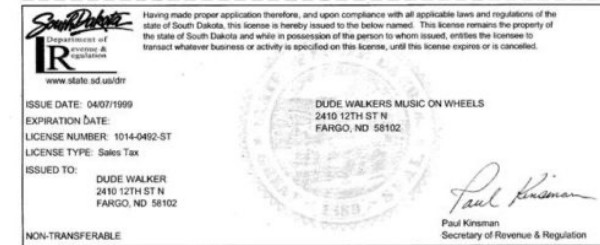
- Unexpired government-issued form of identification
- Evidence of a customer's nationality or residence and bear a **photograph** or similar safeguard (e.g., driver's license, passport)
- Other forms of identification may be used (if, so should review more than a single document)



CIP: Document Verification

Entities

- Certified articles of incorporation
- An unexpired government-issued business license
- LLC/Partnership Agreement
- Trust instrument
- Letters of Office



Secretary of State, Office
400 E Capitol Ave.
Pierre, SD 57501
(605) 773-4843

ARTICLES OF INCORPORATION
DOMESTIC BUSINESS CORPORATION

Please Type or Print Clearly in Ink
Please submit one Original and one Photocopy
FILING FEE: \$150 payable to SECRETARY OF STATE

Filed this 14 day of April 2005
Sheryl Kuhl
SECRETARY OF STATE

Required Articles

The name of the corporation is RECEIVED
APR 14 2005
SD SEC. OF STATE

Article I

Note: The name must include the term corporation, incorporated, company, limited or the applicable abbreviation.

Article II

The number of shares the corporation is authorized to issue 100

Article III

The address of the principal executive office in or out of the State of South Dakota.

State SD County CLAY City PIRTON
State SD County CLAY City PIRTON

Article IV

The South Dakota Registered Agent name RECEIVED
APR 14 2005
SD SEC. OF STATE

Street Address or P.O. Box Number in This State and
City PIRTON State SD Zip 57501

Mailing Address in This State, if Different from Street Address
City PIRTON State SD Zip 57501

When listing a Commercial Registered Agent, please state their CRA #.
This number can be obtained from the Commercial Registered Agent.

EXAMPLE
(NAME OF SELF-INSURED PROVIDER)
TRUST AGREEMENT

This certificate (hereinafter referred to as the "Certificate") is made this day of April, 2005, by and between (hereinafter referred to as the "Trustee") and (hereinafter referred to as the "Beneficiary") engaged in the business of providing health care services ("Care") or other services, and (hereinafter referred to as the "Provider") engaged in the business of providing health care services ("Health Care").

PART I - RECITALS:

1.01 The Trustee is the owner and operator of a medical care facility in South Dakota, and pursuant to the laws of South Dakota, the Trustee has created an approved self-insured plan for professional liability coverage ("Plan").

1.02 The Trustee has to provide a plan of insurance to its employees, and it is the Trustee's policy to provide a plan of insurance to its employees.

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PART II - AGREEMENTS:

2.01 Self-Insured Trust Fund: The Trustee and the Trustee hereby create the Trust Fund for the purpose of covering the financial responsibility requirements of the Plan, and the Trustee shall pay the administrative expenses of operating the Plan and the Trust Fund. The Trust Fund is created in accordance with, and is an integral part of, the Plan. The Trustee, or its legally appointed successor, shall make contributions to the Trust Fund from time to time in cash or in the form of marketable securities. All contributions received, the income therefrom, and other monies received, and all other assets acquired by investment or otherwise shall be held, invested, controlled, and administered by the Trustee pursuant to the terms of the agreement set forth in the Plan. The Trustee is not responsible for the collection or collection of any contribution under or required by the Plan, but is responsible only for promptly receiving a contribution to the agreement. The Trustee is also specifically engaged and agrees to receive, to hold on behalf of the Trustee, and to draw upon before of credit necessary to assure the soundness of the Plan.

2.02 Control of Fund: The Trustee shall have legal title to the Fund and shall be responsible for the proper administration and investment of the Fund. The Trustee shall hold the Fund in trust for the purposes of the Plan, and, as described in the Plan, the Trustee shall not exercise any control over the Fund except as provided in the agreement.

2.03 Contributions to Fund: To assure the soundness of the Fund, the Trustee shall make quarterly contributions to the Fund in accordance with the Plan, and the Trustee shall also, with the approval of the Commissioner of Insurance ("Commissioner"), hold letters of credit as necessary to assure that the Fund assets shall hold the minimum amount of the Plan, but only if the estimated liabilities are less than \$2,000,000.

IN WITNESS WHEREOF, the Trustee and the Trustee have hereunto set their hands and seals this day of April, 2005.

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(NAME OF SELF-INSURED PROVIDER)
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2.02 Control of Fund: The Trustee shall have legal title to the Fund and shall be responsible for the proper administration and investment of the Fund. The Trustee shall hold the Fund in trust for the purposes of the Plan, and, as described in the Plan, the Trustee shall not exercise any control over the Fund except as provided in the agreement.

2.03 Contributions to Fund: To assure the soundness of the Fund, the Trustee shall make quarterly contributions to the Fund in accordance with the Plan, and the Trustee shall also, with the approval of the Commissioner of Insurance ("Commissioner"), hold letters of credit as necessary to assure that the Fund assets shall hold the minimum amount of the Plan, but only if the estimated liabilities are less than \$2,000,000.

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CIP: Non-Documentary Verification

- Banks are **not required** to use non-documentary methods
- If using non-documentary methods to verify a customer's identity **must have procedures**, which may include:
 - Contacting a customer
 - Obtaining a financial statement
 - Checking references with other financial institutions
 - Independently verifying the identity by **comparing** information provided by the customer with information obtained from a **consumer reporting agency, public database, or other source**



CIP: Lack of Verification

When customer identification CANNOT be verified, procedures should describe:

- When **not** to open an account
- The terms under which a customer **may use an account while** the bank **attempts to verify the customer's identity**
- When the bank should **close an account** after attempts to verify a customer's identity have failed
- When the bank **should file a SAR** in accordance with applicable law and regulation



CIP: Other Procedures

- Recordkeeping Requirements and Document Retention
- Comparison with Government Lists
- Adequate Customer Notice
- Reliance on Another Financial Institution
- Use of Third Parties



CIP: Customer Due Diligence (CDD)

Written, risk-based procedures for conducting ongoing CDD:

- Understand the **nature** and **purpose** of the customer **relationship**
- Conduct **ongoing** monitoring:
 - for the purpose of identifying and reporting **suspicious transactions**
 - on a risk basis, to maintain and **update** customer information, **including information regarding the beneficial owner(s) of legal entity customers**
- Types of transactions **expected of the customer as a baseline against which suspicious transactions** are identified



CIP: Beneficial Ownership Legal Entities

Establish and maintain written procedures that are reasonably designed to:

- Identify and verify **beneficial owner(s) of legal entity customers**
- Include such procedures in its anti-money laundering compliance program



CIP: Beneficial Ownership Legal Entities

Legal Entities

- Corporation, LLC, LLP
- other entity that is created by the **filing of a public document** with a Secretary of State or other similar office
- a general partnership
- and any similar entity formed under the laws of a foreign jurisdiction

NOT Legal Entities

- **Trusts** (except statutory trusts by a filing with a Secretary of State or similar office)
- Banks and bank holding companies
- Insurance company
- Publicly traded company
- Governmental Entities

OFAC: Office of Foreign Assets Control Reporting



- Separate/distinct “Program” from CIP
- Review government lists for “hits”
- Risk-based commensurate with institution profile
- “Should” have written OFAC compliance program
 - Identify **higher-risk areas**
 - Appropriate **internal controls** for screening & reporting
 - Independent **testing** for compliance
 - Designated bank employee(s) responsible for OFAC compliance
 - Training

FinCEN §314(a) Reporting

- Separate/distinct from CIP/OFAC
- FinCEN Publishes Reports ~ 2 weeks
- Bank reviews list against current customers
 - Customer w/in last 12 months
 - Transactions w/in last 6 months
- Must report positive matches w/in 2 weeks
- Contact SD Division of Banking to “get on the list”



Other Required Reporting

- Currency Transaction Reporting
- Foreign Financial Account Reporting

Suspicious Activity Report

Knows, suspects, or has reason to suspect criminal violations:

- Any insider abuse
- \$5,000 transaction if suspect identified
- \$25,000 any transaction
- Suspicious transactions:
 - Related to money laundering
 - Designed to evade BSA
 - No business/lawful purpose, abnormal for client, no reasonable explanation



Suspicious Activity Report

- Whether to investigate and/or file SAR **largely subjective**
- **Don't need proof** – just suspicious
- **Lack of SARs** filings may be **suspicious** to regulators



Suspicious Activity Report

- How long do you have to file a SAR?
 - Thirty (30) days if suspect identified
 - Sixty (60) days if no suspect identified.
- SAR record retention requirement?
 - Five (5) years from date of SAR filing
- Who can know about the SAR filing?
 - “A SAR, an any information that would reveal the existence of a SAR, are confidential and shall not be disclosed except:
 - FinCEN, Law Enforcement, Relevant Regulators
 - Underlying facts OK
 - Within corporate structure as appropriate/necessary

SAR: Policy & Procedure

What are the five (5) components of an effective SAR Monitoring & Reporting System?

1. Identification or alert of unusual activity
2. Managing alerts/red flags
3. SAR decision making
4. SAR completion and filing
5. Monitoring and SAR filing on continuing activity

SAR: FinCEN Guidance/Consideration “Company Specific”

- “Red flags”
- Training
- Reports
- Escalation (including board or board committees)
- Investigative process procedures
- Not-filed SAR log
- Periodic resource review
- Confidentiality
- Law Enforcement Requests
- Segregation of Duties
- Advisory Key Terms



Hypothetical Scenario Review



THANK YOU!



Jamie Schupp

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