



State of Washington

**DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF BANKS**

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TO: All Washington State-chartered Trust Companies
RE: Compliance with the Federal Financial Crimes Rules and Regulations
DATE: March 1, 2017

The Washington State Department of Financial Institutions Division of Banks (DFI) is reminding all trust companies of the applicable federal rules and regulations relating to financial crimes including, but not limited to, the Bank Secrecy Act, USA PATRIOT Act, Office of Foreign Assets Control (OFAC), Financial Crimes Enforcement Network 314(a) program, and the Internal Revenue Service (IRS).

I. BACKGROUND

The Bank Secrecy Act requires U.S. financial institutions¹ to assist the U.S. government to detect and prevent money laundering. Specifically, the act requires financial institutions to keep records of cash purchases of negotiable instruments, file reports of cash transactions exceeding \$10,000, and to report suspicious activity that might signify money laundering, tax evasion, or other criminal activities. In 2001, the USA PATRIOT Act became effective and brought significant changes to the customer identification requirements and anti-money laundering provisions of the Bank Secrecy Act. Herein, the Bank Secrecy Act and the USA PATRIOT Act are collectively referred to as "BSA."

The United States Department of Treasury bureau of Financial Crimes Enforcement Network (FinCEN) is charged with promulgating and implementing BSA rules and regulations for financial institutions.² Such BSA regulations are codified in Title 31 CFR Chapter X.

II. SUMMARY

All Washington state-chartered trust companies should establish and maintain an effective compliance program that complies with the requirements under: BSA, OFAC, the FinCEN 314(a) program, and the IRS reporting requirements for foreign accounts.

DFI will perform a review of each company's policies, procedures, and compliance with the federal regulations in conjunction with the company's regularly scheduled trust examination. Trust company management is strongly encouraged to consult with legal counsel or others with knowledge and expertise in developing a program for BSA compliance that is specific to each

¹ Trust companies are defined as financial institutions under 31 U.S.C. 5312(a)(2)(B).

² Trust companies are defined as financial institutions under 31 CFR 1010.100 (d)(1).

trust company's respective business plan. Below is a brief description of applicable BSA and related provisions.

III. BSA CUSTOMER IDENTIFICATION PROGRAM, OFAC REPORTING, AND FINCEN 314(a) PROGRAM

Customer Identification Program

When opening a new account, certain actions must be taken by a trust company to ensure the identity of the customer opening the account, *as well as* ensure that such customer is not considered a known or suspected terrorist. Such actions are considered part of a written Customer Identification Program (CIP), which is required by law.³

1. What is a Customer Identification Program?

A written CIP implements reasonable procedures a trust company will (1) use to verify the identity of any customer seeking to open an account; (2) maintain records of the information used to verify the person's identity; and, (3) determine whether the customer appears on a Federally-issued list showing known or suspected terrorists or terrorist organizations.

2. Who is considered a "customer" under the rule?

A customer is considered a "person" including an individual, corporation, partnership, trust, estate, or any other entity recognized as a legal person who opens a new account.⁴ A customer also includes an individual who opens an account on behalf of another individual who lacks legal capacity⁵; however, when an account is opened by an *agent* on behalf of another person, the trust company must obtain the identifying information of the person on whose behalf the account is being opened.⁶ For further information please refer to the Final CIP Rules [FAQ](#) (FIL-34-2005) published by the Federal Deposit Insurance Corporation (FDIC).

3. How is the identity of the customer verified?

Customer information required at the time of account opening includes, at a minimum: Name, Date of Birth (for individuals), Address, and a Taxpayer Identification Number.⁷ For a "person" other than an individual, the trust company should obtain documents showing the legal existence of the entity, such as the articles of incorporation, unexpired government-issued business license, a partnership agreement, or a trust instrument.⁸

4. What is the definition of an "account"?

An account is a "relationship" derived between a trust company and a customer.⁹ An account includes safe deposit boxes or safekeeping arrangements, cash management, custodial, or trust

³ 31 CFR 1010.220.

⁴ 31 CFR 1020.100(c)(1).

⁵ 31 CFR 1020.100(c)(1)(ii)(A).

⁶ FFIEC BSA/AML Examination Manual, page 48.

⁷ 31 CFR 1020.220(a)(2)(i)(A).

⁸ 31 CFR 1020.100(a)(2)(ii)(A)(2).

⁹ 31 CFR 1020.100(a)(1).

services.¹⁰ An account does not include an account opened to participate in a benefit plan under Employee Retirement Income Security Act of 1974 (ERISA).¹¹ Furthermore, an account does not include a relationship with a federally regulated bank, a governmental entity, or a publicly traded company.¹²

OFAC Reporting

5. How can I determine if a customer appears on a list of known or suspected terrorists or terrorist organizations?

The CIP must include procedures for determining whether the customer appears on any federal government list of known or suspected terrorist organizations.¹³ Every financial institution, including a trust company, is required to comply with OFAC reporting requirements. Institutions must compare new accounts against government lists of known or suspected terrorists or terrorist organizations. They must also periodically compare current accounts against the OFAC-generated lists.

For trust companies, DFI interprets “accounts” to include all related parties including, but not limited to: grantors, beneficiaries, and co-trustees. Any “hits” must be reported to OFAC. Institutions should establish an OFAC compliance program commensurate with the institution’s risk (based on products, services, customers and geographic locations). The institution should also designate an individual responsible for ensuring compliance with the program. For more information about the OFAC lists and reporting requirements, please visit the U.S. Department of the Treasury [OFAC](#) resource website.

FinCEN 314(a) Program

6. How do I sign up to receive updates on known or suspected terrorists or terrorist organizations?

To receive updates on known or suspected terrorists or terrorist organizations, trust companies should enroll in the FinCEN 314(a) program. *Please note* that the FinCEN 314(a) program is separate and apart from the OFAC program. Further information including instructions on how to enroll in the 314(a) program is available on the DFI [website](#).

IV. ADDITIONAL MONITORING

Currency Transaction Reporting (CTR)

31 C.F.R. § 1010.310 requires financial institutions, including trust companies, to report currency transactions involving amounts greater than \$10,000, subject to certain exemptions.¹⁴ If any such transactions occur, the trust company must file a Currency Transaction Report (CTR) with

¹⁰ 31 CFR 1020.100(a)(1).

¹¹ 31 CFR 1020.100(a)(2)(iii).

¹² 31 CFR 1020.315(b)(1) through (4).

¹³ 31 CFR 1020.220(a)(4).

¹⁴ 31 CFR 1010.311.

the Internal Revenue Service within 15 days of the transaction.¹⁵ Please refer to the FinCEN [instructions](#) on filing a CTR.

Suspicious Activity Reporting (SAR)

Generally, 31 C.F.R. § 1020.320 requires financial institutions, including trust companies, to file a Suspicious Activity Report (SAR) with FinCEN for transactions involving \$5,000 (any amount for an insider) or more in funds and assets if the institution knows, suspects, or has reason to suspect that the transaction: involves funds derived from illegal activities, is related to illegal activities, is designed to evade any other BSA regulation, or has no apparent lawful purpose or source. Please be aware that although legal in our state, marijuana related business may be subject to SAR reporting under the regulation.

Trust companies should report SARs when there are criminal violations involving: Insider abuse in *any* amount; \$5,000 or more when a suspect can be identified; and, \$25,000 or more when a suspect cannot be identified. Please refer to the FinCEN [instructions](#) on filing a SAR.

IRS - Foreign Bank and Financial Account Reporting

31 C.F.R. § 1010.350, requires financial institutions, including trust companies, to file a Report of Foreign Bank and Financial Account, also known as “FBARs” (TD-F 90-22.1), or any successor forms. In general, each United States person having a financial interest in—or signature or other authority over—a bank, securities, or other financial account in a foreign country, must report such a relationship to the Commissioner of Internal Revenue for each year in which such relationship exists. For more information, please visit the [IRS website](#) on FBARs.

V. TRUST COMPANY EXEMPTIONS

Anti-Money Laundering Program

Under 31 C.F.R. § 1010.205(b)(2), trust companies are specifically exempt from Section 1010.210, which requires financial institutions to establish an Anti-Money Laundering (AML) Program. AML programs generally are in place to detect potential money laundering activities through the institution. An AML program has, at a minimum, four key elements:

- A system of internal controls to ensure ongoing compliance;
- Independent testing of BSA compliance;
- A specifically designated person or persons responsible for managing BSA compliance (BSA Officer); and,
- Training for appropriate personnel.

Although not legally required this time, trust company management should familiarize itself with basic AML principles should the law change to include trust companies into the AML program requirements. Furthermore, a strong AML program assists an institution with detecting suspicious activity. Currently, there is a FinCEN rule in process to extend AML requirements to state-chartered trust companies. This notice of proposed rulemaking was published in the Federal Register on August 25, 2016.

¹⁵ 31 CFR 1010.306(a).

FinCEN Beneficial Ownership Rules

On May 11, 2016, FinCEN published its final AML rules, which included the Beneficial Ownership Rules. These rules address the obligations of a bank or trust company to identify the beneficial ownership of a legal entity (*i.e.* a “look through” identifying individuals behind corporate entities or trusts). A FAQ issued by FinCEN July 9, 2016, explains that only statutory trusts filed with the Secretary of State are subject to the beneficial ownership rules. Refer to question 22 of the [FAQ](#) for further information.

VI. RESOURCES

- [FDIC Bank Secrecy Act and Anti-Money Laundering Resources.](#)
- [FFIEC Bank Secrecy Act/Anti-Money Laundering Examination Manual.](#)
- [Electronic Code of Federal Regulations: Title 31 Chapter X.](#)
- [U.S. Department of the Treasury OFAC Information and Resources.](#)
- [U.S. Department of the Treasury FinCEN Information and Resources.](#)
- [Internal Revenue Service - Foreign Bank and Financial Account Reporting Information.](#)