
DIVISION OF BANKING

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MEMORANDUM

NUMBER: 10-003

DATE: JUNE 23, 2011

TO: SOUTH DAKOTA TRUST COMPANIES

FROM: BRET AFDAHL, Division Director

RE: BANK SECRECY ACT

On October 26, 2001, the USA Patriot Act (Patriot Act) became effective. The Patriot Act brought significant amendments and additions to the customer identification and anti-money laundering provisions of the Bank Secrecy Act (BSA). The United States Department of Treasury (Treasury) rules implementing BSA are codified at Title 31 Code of Federal Regulation (CFR) Chapter X entitled "Financial Recordkeeping and Reporting of Currency and Foreign Transactions." 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 United States.

In short, all South Dakota chartered trust companies must develop and implement policies and procedures to ensure BSA compliance. The South Dakota Division of Banking (Division) performs a BSA review in conjunction with each company's regularly scheduled trust 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 BSA 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 BSA provisions.

Anti-Money Laundering Program (Exclusionary Language)

Section 1010.210 requires financial institutions to establish an Anti-Money Laundering (AML) Program. However, Section 1010.205 exempts non-federally regulated trust companies from the requirements in Title 31 USC 5318(h)(1) concerning the establishment of an AML Program. Specifically exempted are the development of internal policies, procedures, and controls; the designation of a compliance officer; an ongoing employee training program; and an independent audit function for testing purposes. Although non-federally regulated trust companies are exempted from many of the requirements that regulated banks must comply with, it would be beneficial for trust companies to complete a risk assessment of their products and services, customer base, and geographic location(s) to assist in identifying any potential areas that may present a higher level of risk for money laundering activity. Risk assessment guidance can be found at FinCEN's website: www.fincen.gov/statutes_regs/bsa/. The FinCEN website should be used as a resource for trust companies to review statutes and administrative rulings, access forms, obtain definitions, review FAQ's, and review federal register notices.

Customer Identification Program

Section 1010.220 requires financial institutions, including trust companies, to establish a Customer Identification Program (CIP). Section 1020.220 provides specific guidance for creating and maintaining an adequate CIP Program. The CIP covers accounts established to provide custodial and trust services. Generally, a trust company must implement a written CIP commensurate with its size and complexity. The intent of the regulation, at a minimum, is to require financial institutions to implement reasonable procedures to verify the identity of any person seeking to open an account, to the extent reasonable and practicable; maintain records of the information used to verify the person's identity; and determine whether the person appears on any list of known or suspected terrorists or terrorist organizations issued by the Office of Foreign Assets Control (OFAC). OFAC reporting guidance can be found at the following website:

<http://www.ustreas.gov/offices/enforcement/ofac/>.

Financial Crimes Enforcement Network Section 314(a) Reporting

Financial institutions should be aware that their responsibilities to share information with the Financial Crimes Enforcement Network (FinCEN), a bureau of the Treasury, are separate and distinct from the rules and regulations of OFAC. FinCEN issues Section 314(a) notices, approximately every two weeks. When these notices, which identify individuals and entities suspected of illegal activities, are received, financial institutions are required to compare their customer list with the list of businesses and individuals on the 314(a) notice to determine and report if there is a "match". FinCEN does not require non-federally regulated trust companies to comply with Section 314(a) notice requirements; however, individual State regulatory authorities have the authority to impose this requirement on their respective financial institutions. This matter is currently under Division consideration.

Currency Transaction Reporting

Section 1010.310 requires financial institutions, including trust companies, to report currency transactions involving amounts greater than \$10,000, subject to certain exceptions. It is acknowledged that transactions involving trust and other fiduciary accounts rarely involve currency, but if such a transaction occurs and the amount is \$10,000 or more, then the trust company must file a Currency Transaction Report with the Internal Revenue Service within 15 days of the transaction.

Suspicious Activity Reporting

Section 1010.320 requires financial institutions, including trust companies, to file a Suspicious Activity Report (SAR) with the Financial Crimes Enforcement Network (FINCEN) for transactions involving \$5,000 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 or is intended or conducted in order to hide or disguise funds or assets derived from illegal activities (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) 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;
- The transaction is designed to evade any requirements of this part or of any other regulations promulgated under BSA regulations; or,
- The transaction has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the bank knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

Foreign Financial Account Reporting

Section 1010.350 requires financial institutions, including trust companies, to file a Report of Foreign Bank and Financial Accounts (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 shall report such relationship to the Commissioner of Internal Revenue for each year in which such relationship exists.