

Guidance



Department of the Treasury Financial Crimes Enforcement Network

FIN-2009-G004

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Subject: Frequently Asked Questions

**Casino Recordkeeping, Reporting, and Compliance Program
Requirements**

This document provides guidance interpreting the requirements of the Bank Secrecy Act (“BSA”) regulations¹ as they apply to the casino and card club industries in the United States. We additionally published frequently asked questions for casinos and card clubs as FIN-2007-G005 on November 14, 2007. Casinos and card clubs may continue to rely on the guidance contained in FIN-2007-G005, which has not been incorporated into this publication.

Section A: 31 C.F.R. § 103.11 Casino and Card Club Definitions

Question 1: Do Nevada slot route operators operate “casinos” for purposes of rules implementing the BSA?

Answer 1: A Nevada slot route operator is a gaming licensee who, pursuant to a participation agreement, owns and maintains slot machines at three or more business establishments. The business establishments are owned and operated by other persons.² While it is common for Nevada slot route operators to lease space from a property owner (usually referred to as a “space lease agreement”), and to pay a monthly rental payment to such a landlord, the Nevada slot route operator may have its own “nonrestricted” license to conduct gaming on the premises.³ A Nevada slot route operator with a “nonrestricted” license to conduct gaming at a business establishment would be operating a “casino” at the business establishment for purposes of FinCEN’s BSA rules,⁴ if gross annual gaming revenue of its operations at the business establishment exceeds \$1 million.⁵

¹ See 31 C.F.R. Part 103.

² See Nevada Revised Statute § 463.018 and Nevada Gaming Commission Regulation 1.170.

³ Nevada gaming statutes define a “nonrestricted license” to include “a license for, or the operation of, a slot machine route.” See Nevada Revised Statute § 463.0177(3). A Nevada “nonrestricted license” or “nonrestricted operation” also includes, among other things: (i) “. . . license for, or an operation consisting of, 16 or more slot machines;” or (ii) “. . . license for, or operation of, any number of slot machines together with any other game, gaming device, race book or sports pool at one gaming establishment.” See Nevada Revised Statute § 463.0177(1) – (2).

⁴ Only one “casino” will operate at a given establishment. The party that holds a “nonrestrictive license” and operates the slot machines pursuant to a participation agreement would be the operator of a casino. See Nevada

Question 2: Are gaming or gambling establishments with gross annual gaming revenue of \$1,000,000 or less subject to any BSA requirements?

Answer 2: Yes. The requirement to file a FinCEN/IRS Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business, for currency⁶ received in a trade or business applies to businesses that are not casinos or financial institutions under FinCEN's rules. The term "cash" for Form 8300 reporting purposes includes coin and currency of the United States or any other country, and may include cashier's checks, bank drafts, traveler's checks, or money orders received over \$10,000 in one transaction (or two or more related transactions) during a 12-month period.⁷ For purposes of illustration, the following gaming and gambling establishments or nongaming related businesses normally would be subject to Form 8300 requirements:⁸ (i) casinos or card clubs with gross annual gaming revenue of \$1,000,000 or less; (ii) tribal bingo halls, off-track betting parlors, greyhound tracks, horse race tracks,⁹ or (iii) a casino hotel, gift shop, cater/banquet service, conference/seminar facilities,¹⁰ etc. The BSA prohibits any person from structuring transactions to evade reporting or recordkeeping requirements under the BSA.¹¹

Revised Statute § 463.245 ("A gaming license may not be issued to any person if the issuance would result in more than one licensed operation at a single establishment, whether or not the profits or revenue from gaming are shared between the licensed operations").

⁵ Each business establishment with gross annual gaming revenues exceeding \$1 million would contain a separate "casino" for purposes of our rules. Nevada licenses gaming activity separately at each location. *See* Nevada Gaming Commission Regulation 3.010 ("[The Nevada Gaming Commission] may deny an application for a state gaming license if the Commission deems that the place or location for which the license is sought is unsuitable for the conduct of gaming operations"). If a Nevada slot route operator is not operating a casino for purposes of our rules, but qualifies as a check casher, or currency dealer or exchanger, as those terms are defined in 31 C.F.R. § 103.11(uu)), it may be considered a money services business ("MSB") and subject to BSA requirements applicable to MSBs.

⁶ *See* 31 C.F.R. § 103.30(a)(1).

⁷ *See* 31 C.F.R. § 103.30 and Section 6050I of Title 26 of the United State Code. The negotiable instruments are treated as currency if they are received in a "designated reporting transaction" or used in an attempt to avoid the Form 8300 requirement. Designated reporting transactions include the retail sale of consumer durables, collectibles, or travel or entertainment activities. *See* 31 C.F.R. § 103.30(c).

⁸ However, if these other gambling establishments or nongaming related business satisfy the definition of a money services business ("MSB") in rules implementing the BSA (such as a check casher, or currency dealer or exchanger, as those terms are defined in 31 C.F.R. § 103.11(uu)), then they would be subject to FinCEN Form 104, Currency Transaction Report ("CTR") and other requirements applicable to MSBs.

⁹ For treatment of bingo, *see* FinCEN's Frequently Asked Questions – Casino Recordkeeping, Reporting and Compliance Program Requirements (FIN-2007-G005, November 14, 2007), Question and Answer 2; for treatment of off-track betting, Question and Answer 5; for treatment of greyhound tracks, Question and Answer 6; and for treatment of horse race tracks, Question and Answer 7. Also, please note that these gambling establishments maybe subject to FinCEN Form 105, Report of International Transportation of Currency and Monetary Instruments ("CMIR") as well as Treasury Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts. *See* 31 C.F.R. §§ 103.23 and 103.24, respectively.

¹⁰ *See* 31 C.F.R. § 103.30(d)(iii).

¹¹ *See* 31 U.S.C. 5324. Structuring would include attempts to cause Form 8300 not to be filed, or to file a false or incomplete form. The filer can check item 1b on the Form 8300 to report the structuring. In addition, it can be checked if there is an indication of possible illegal activity with the transaction.

Section B: 31 C.F.R. § 103.22 Currency Transaction Reporting Requirements

Question 3: What is the definition of a gaming day and what effect does it have on aggregating a customer's reportable currency transactions?

Answer 3: A gaming day is defined as the normal business day of a casino or card club. If a casino or card club offers 24-hour gaming, the term "gaming day" means that 24-hour period by which a casino or card club keeps its books and records for business, accounting, and tax purposes.¹² A casino or card club must have only one gaming day, which is common to all its gambling operating divisions or departments. Maintaining one gaming day facilitates the aggregation of transactions for purposes of currency transaction reporting.

Question 4: Is a card club required to file FinCEN Form 103, Currency Transaction Report by Casinos ("CTRC"), for customer currency buy-ins at poker games?

Answer 4: Yes. When a customer at a poker table buys-in¹³ for more than \$10,000 in chips with currency, in a single transaction or a series of related transactions in the same gaming day, a card club must assure compliance with CTRC requirements for such transactions. The same would apply to other non-house banked card games (*e.g.*, games commonly referred to as "California Games"¹⁴ in certain card clubs or card rooms). If the card club has knowledge of the transactions, it must report the transactions on a CTRC.¹⁵

A card club must implement a program reasonably designed to assure compliance with the BSA.¹⁶ For the reporting of transactions in currency, regardless of whether a card club has a multiple transaction log, it must have a system of internal controls, procedures for using all available information to determine and verify, when required, the name, address, Social Security or Taxpayer Identification Number, and other identifying information for a person, as well as train personnel.¹⁷

In addition, BSA rules impose record retention requirements on card clubs.¹⁸ These requirements are independent of the requirement to implement a program for ensuring compliance with the BSA. FinCEN understands that many card clubs have internal controls that include a multiple transaction log to record currency transactions above a given threshold (usually \$2,500 - \$3,000). A card club that prepares or uses records of currency transactions, including currency transaction logs or multiple currency transaction logs, must retain the records.¹⁹ Also, the record retention requirement applies to transactions conducted in card or

¹² See 31 C.F.R. § 103.64(b)(4).

¹³ A buy-in is the amount of funds a player uses to purchase casino chips when commencing play. A buy-in can occur in cash, credit or as a deposit withdrawal.

¹⁴ "California Games" are games in which one player acts as the bank for the game and the other players bet against the bank. The banker collects all winning bets and pays all losing bets from his/her bankroll. Games may include California Blackjack, Pai Gow Poker, Pai Gow Tiles, and Super Pan.

¹⁵ The BSA defines knowledge for this purpose. See 31 C.F.R. § 103.22(c)(3).

¹⁶ See 31 C.F.R. § 103.64.

¹⁷ See 31 C.F.R. §§ 103.28 and 103.64(a)(2)(i), (a)(2)(iii), and (a)(2)(v)(A).

¹⁸ See 31 C.F.R. § 103.38(d).

¹⁹ See 31 C.F.R. § 103.36(b)(11).

poker rooms located within the facilities of casinos. Also, please note that to comply with regulations implementing the BSA, card clubs may need to prepare and retain records not otherwise produced in the ordinary course of business.²⁰ Similarly, a casino that prepares or uses multiple transaction logs or other records for monitoring the gaming activity of a customer (*e.g.*, in a poker room) must retain the records.²¹

Question 5: Must a casino or card club have an internal control for customer chip redemptions at a cage?

Answer 5: Yes. Casinos and card clubs are required to develop and implement written programs that are reasonably designed to assure compliance with all applicable BSA requirements. This includes establishing internal controls²² to monitor compliance with currency transaction reporting requirements with regard to known customers. Neither 31 C.F.R. § 103.22(b)(2) nor (c)(3) states specifically that a casino or a card club must create a record of transactions that are less than \$10,000, a casino or card club would need an effective internal control for customers (known or unknown).²³ Therefore, to be able to identify large chip redemptions at a reasonable threshold under \$10,000 that were paid with currency that may have been structured to avoid reporting requirements or otherwise to obscure large cash out transactions, a casino or card club must have an internal control for customer chip redemptions at a cage. A casino or card club must aggregate customer currency transactions that occur on the floor or the cage, when it has obtained knowledge of such transactions either from examining records or actual knowledge (including of large chip redemptions for currency).²⁴ For similar reasons, a casino would need a method for identifying large redemptions at a reasonable threshold under \$10,000 of a betting ticket, token, or “TITO” ticket²⁵ that were paid with currency to a known customer.²⁶

²⁰ See 31 C.F.R. § 103.38(b) which states that “If no record is made in the ordinary course of business of any transaction with respect to which records are required to be retained by this subpart, then such a record shall be prepared in writing by the financial institution.” Therefore, a card club employee monitoring a non-house banked card game, who has obtained actual knowledge of a reportable currency transaction, would be required to produce a record of the transaction for purposes of currency transaction reporting.

²¹ See 31 C.F.R. § 103.36(b)(8).

²² Independently, other Federal, state and tribal gaming commissions have established requirements for each duly licensed or authorized casino to establish minimum requirements for internal controls (*i.e.*, procedures) over gaming operations for complying with regulatory requirements (*i.e.*, Minimum Internal Control Standards – “MICS”).

²³ A known customer would include one who has a check cashing, credit or deposit account, or whose identity (*i.e.*, name, date of birth, address, and government identification number) has been previously verified on a filed CTRC or any federal tax form containing customer information. Also, an effective BSA internal control will include, in many instances, the creation and retention of records, including those not otherwise produced in the ordinary course of business. See 31 C.F.R. § 103.64(a)(2)(i) and 103.38(b).

²⁴ As illustrative examples, when: (i) customers provide to cage cashiers their identification credentials and/or casino account numbers for such large redemptions for currency (*i.e.*, just before, during or immediately after); or (ii) cashiers know who such customers are (*i.e.*, known customers) even in the absence of identification credentials or given account numbers for such redemptions.

²⁵ For a further explanation of Ticket in/Ticket Out (“TITO”), see FIN-2007-G005, Nov. 14, 2007, Question and Answer 16, footnote 57.

²⁶ FinCEN has addressed identifying betting ticket, chip, token, or TITO ticket redemptions for currency at a cage conducted by “unknown” customers in regards to suspicious activity reporting in Question and Answer 16 of FIN-2007-G005 (Nov. 14, 2007). As discussed in Question and Answer 16, a casino must implement procedures

Question 6: To what extent is a casino required to aggregate credit card advances with other types of cash out transactions for currency transaction reporting purposes?

Answer 6: A casino is required to file a CTRC on currency transactions by or on behalf of any customer that, alone or when aggregated, exceed \$10,000 in a gaming day. A casino must aggregate and report multiple currency transactions when it has knowledge that such transactions have occurred. Therefore, when a customer uses a credit card at an automated teller machine (“ATM”) or other cash access devices located in a casino or on casino property,²⁷ and then goes to a cage cashier to receive currency for this advance on credit, such transactions would be subject to currency transaction reporting, and they would need to be aggregated with other cash out transactions in which a casino has obtained knowledge to determine whether they exceeded \$10,000 to a customer in a gaming day.

Question 7: Is a casino or card club chip runner, casino floor person, or a casino host required to be listed as an agent on a CTRC when they conduct currency transactions on behalf of customers?

Answer 7: No. When cashing out chips in excess of \$10,000 in a gaming day for a customer who is actively gambling, a chip runner²⁸ or a floor person,²⁹ is acting within the scope of employment and is an agent of the card club or casino; they are not agents of a customer with respect to such transactions. Accordingly, the chip runner or floor person would not be listed as an agent of a customer on a CTRC. Similarly, a casino host,³⁰ acting within the scope of employment, is an agent of a casino, when conducting any currency transactions in excess of \$10,000 in a gaming day for a customer and would not be listed as an agent of a customer on a CTRC. If these casino or card club employees handle currency transactions in excess of \$10,000 for a customer, they would be required to obtain identification information from that customer for completion of a CTRC.

Question 8: When a customer refuses to provide a Social Security Number for completing a CTRC, can a casino or card club write “Refused” in Item 7 of the CTRC?

reasonably designed to assure the detection and proper reporting of suspicious transactions. *See* 31 C.F.R. § 103.64(a)(2)(v)(B).

²⁷ Customers can obtain cash directly from an ATM located within a casino typically up to \$500 per day per customer, depending on limits set by their depository institutions. For amounts above that general threshold, an ATM machine prints out vouchers that customers may take to a cage for payment, insert into a slot machine to play, or take to a kiosk machine for dispensing currency. In the event that the advance is dispensed at a kiosk machine, a casino may have knowledge of a customer’s transaction based on: (i) its contractual agreement with a financial service provider for the kiosk and (ii) its system of internal controls which typically requires that such a transaction of \$1,000 or more be linked to a customer.

²⁸ A chip runner is a card club or card room employee or a casino poker room employee who works on the gaming floor selling or redeeming gaming chips and/or conducting transactions at the cage on behalf of customers who are actively gambling.

²⁹ A floor person is a management employee who supervises the operation of a gaming table within a pit and also prepares a player rating card on each rated customer. Also known as a casino “rater.”

³⁰ A casino host is a marketing executive of a casino who is responsible for catering to high-end customers’ needs. Duties include assisting in the opening of deposit and credit accounts for customers, and issuing complimentary gifts and services to customers to induce their continued patronage.

Answer 8: No. When a casino or card club has obtained actual knowledge of a reportable currency transaction, it must obtain the identification information (such as customer name, permanent address, and Social Security Number (“SSN”)) needed to file a complete and accurate CTRC, and then verify the name and address “before concluding the transaction.” If the customer’s state driver’s license does not contain a Social Security Number and the customer does not provide a paper Social Security Number card issued by the Social Security Administration, a casino or card club can enter a verbally provided SSN on a CTRC. Also, FinCEN understands that a casino may have the customer complete an IRS Form W-9, Request for Taxpayer Identification Number and Certification,³¹ to obtain a person’s correct Taxpayer Identification Number³² or, if the customer has a deposit or credit account with the casino, the casino will review the account to obtain the SSN since the SSN is required at the time that the account is opened.³³ In all cases, a casino or a card club must file a CTRC for reportable transactions with all of the required identifying information that it has obtained from a customer, government records it maintains and/or other verified internal records.³⁴

Question 9: Are two separately licensed, but jointly-owned riverboat casinos that are operating from the same dock and sharing certain information systems, required to aggregate currency transactions by the same customer that occurred at both casinos?

Answer 9: No. Each casino licensee is a separate financial institution for purposes of complying with currency transaction reporting. Two riverboat casinos that are under common ownership and common management, share certain information systems, maintain similar accounting and internal control procedures, or use the same docking facilities, but which have separate licenses, are not required under 31 C.F.R. § 103.22(b)(2) and (c)(3) to aggregate and report customer currency transactions that occurred at both facilities.³⁵ Nonetheless, for two

³¹ IRS Form W-9 requires the customer to certify, under penalties of perjury, that the number shown on the form is the correct Taxpayer Identification Number, and he/she is a U.S. person (including a U.S. resident alien), when the customer signs and dates the form.

³² Please note that the Internal Revenue Service issues an Individual Taxpayer Identification Number (“ITIN”) to be used as a tax processing number for individuals who do not qualify to obtain Social Security Numbers (“SSNs”). Since an ITIN is not acceptable as a primary means of identification for purposes of completing Items 14 and 28 on the CTRC, FinCEN will discuss it in the next set of casino frequently asked questions.

³³ In these situations, if a customer refuses to provide a SSN on a Form W-9 for filing a CTRC or completing a Federal income tax form, FinCEN understands that many state and tribal regulators support the standard industry practice of providing a receipt and retaining a customer’s chips, tokens and/or tickets until a SSN is provided at which time a CTRC will be completed. FinCEN understands that casinos’ experiences have shown that customers will return with their identification credentials to complete the cashing out of large chip, ticket, and/or token transactions which are then followed by the filings of CTRCs. Also, if a casino or card club knows, suspects, or has reason to suspect that a suspicious transaction was conducted or attempted by, at, or through a casino or card club, and involve \$5,000 or more a FinCEN Form 102 is applicable. Information that could point to the need for a SARC may include a customer providing a false SSN in the past, refusing to provide a SSN or not providing it within the filing period for the CTRC.

³⁴ See 31 C.F.R. § 103.64(a)(2)(v)(A).

³⁵ A somewhat similar analysis would apply to land-based tribal casinos authorized pursuant to the Indian Gaming Regulatory Act. See 25 U.S.C. § 2701 et seq. Therefore, a tribal government may own more than one tribal casino in the same state, but each casino that is separately licensed by the tribal government or the tribal gaming commission would be considered a separately authorized gaming establishment for purposes of currency transaction reporting, even when the casinos have the same Taxpayer Identification Number for purposes of Title 26.

riverboat casinos with automated data processing systems that are closely integrated, automated programs for compliance with the BSA must provide for the use of these systems to aid in assuring compliance with identifying transactions that appear to be suspicious and that are conducted between the two casinos by known customers³⁶ (e.g., to evade the \$10,000 reporting requirement through structuring).³⁷

Question 10: Is a casino required to file a CTRC on customer jackpot wins from casino games other than slot jackpot or video lottery terminal wins?

Answer 10: Yes. A casino is required to file a CTRC on customer jackpot wins paid in currency from casino games other than slot jackpot or video lottery terminal wins.³⁸ These include among other games, bingo (traditional),³⁹ Caribbean stud poker, keno, or let it ride poker.⁴⁰ These transactions may need to be aggregated with other cash out transactions.

Section C: 31 C.F.R. § 103.21 Suspicious Transaction Reporting Requirements

Question 11: May a casino share information with another casino concerning potential suspicious activity?

Answer 11: Yes, casinos may utilize Section 314(b)⁴¹ information sharing to work together to identify money laundering and terrorist financing. Also, casinos can utilize Section 314(b) information sharing with depository institutions and money services businesses. Section 314(b) as implemented by 31 C.F.R. § 103.110, establishes a safe harbor from liability for a financial institution or association of financial institutions that voluntarily chooses to share information with other financial institutions for the purpose of identifying and, where appropriate, reporting money laundering or terrorist activity (if required notification, verification and information security is in place). Section 314(b) permits sharing information relating to transactions that a financial institution suspects may involve the proceeds of one or more specified unlawful activities listed in 18 U.S.C. §§ 1956 and 1957, which include an array of fraudulent and other

³⁶ See Question and Answer 5, Footnote 22, for a discussion of known customers.

³⁷ See 31 C.F.R. §§ 103.21(a)(2)(ii), 103.63, and 103.64(a)(2)(vi). FinCEN recognizes that even for two casinos with automated data processing systems and programs that are closely integrated, that for an unknown customer that lacks a casino deposit (i.e., safekeeping, front money or wagering), credit, check cashing, player rating/player tracking, or slot club account, that as a practical matter, it would difficult to monitor such a customer for suspicious activity reporting without associating information from casino surveillance and multiple transaction logs on currency transactions that are less than CTRC reporting threshold at both casinos.

³⁸ A casino is not required to file a CTRC on slot jackpot or video lottery terminal wins in excess of \$10,000 in currency. See FIN-2007-G005, Nov. 14, 2007, Question and Answer 12.

³⁹ Traditional bingo is played with cards or paper having a grid of numbered squares corresponding to numbered balls drawn at random; it is not played with any computerized electronic aids.

⁴⁰ For treatment of poker under the BSA, see FIN-2007-G005, November 14, 2007, Question and Answer 2.

⁴¹ See 314(b) of the USA PATRIOT Act of 2001 (Public Law 107-56) which states in part that: “[u]pon notice provided to the Secretary, 2 or more financial institutions and any association of financial institutions may share information with one another regarding individuals, entities, organizations, and countries suspected of possible terrorist or money laundering activities.”

criminal activities.⁴² The safe harbor afforded by Section 314(b) is only available to financial institutions that are required to implement an anti-money laundering program, which includes, for example, depository institutions regulated by a federal functional regulator,⁴³ casinos, and money services businesses.⁴⁴

Section 314(b) does not replace the existing obligations of financial institutions to file suspicious activity reports when required. Please note that the Section 314(b) process cannot be used by a casino to exchange information with another casino about customers conducting non-criminal financial activities, such as card counting. Also, please note that the process cannot be used to share a copy of a filed FinCEN Form 102, Suspicious Activity Report by Casinos and Card Clubs (“SARC”) or the fact that it was filed, with another financial institution.⁴⁵ However, the underlying information in the SAR may be disclosed as long as the existence/fact that a SAR has been filed is not revealed. For additional information on the Section 314(b) voluntary information sharing program, or to submit a notice to FinCEN to share information voluntarily, refer to www.fincen.gov.

Question 12: Is a casino or card club required to file a SARC, or FinCEN Form 109, Suspicious Activity Report by Money Service Business (SAR-MSB), for suspicious money transfers or wire transfers that it receives or sends?

Answer 12: A casino or a card club’s requirement to report suspicious activities applies to all types of financial services conducted or attempted by, at, or through a casino or card club. When a casino or card club sells or redeems money transfers or wire transfers within its cage facility, conducted pursuant to a contractual or other arrangement with a money transfer issuer or a bank, it would be required to file a SARC, when it knows, suspects or has a reason to suspect that the transaction or pattern of transactions is both suspicious and involves \$5,000 or more. However, if the casino or card club enters into a contractual agreement to lease space within the establishment to a money transfer company and the company’s agent(s) operate the business, then the money services business suspicious activity reporting rules would apply and the money transfer company would use FinCEN Form 109 to report suspicious activity.⁴⁶

Question 13: To what extent should casinos and card clubs use the “other” box in Item 26 on the SARC to describe the type of suspicious activity?

Answer 13: Item 26 on the SARC contains a list of 16 specific types of suspicious activity. Because suspicious transactions may comprise more than one of the listed types of activities, casinos and card clubs should check as many boxes as are applicable (but be sure to check at least one box). FinCEN encourages casinos and card clubs to *refrain* from checking box “q” for “Other” on the form unless the activity is not covered by the existing list of suspicious

⁴² See FIN-2009-G002, Guidance on the Scope of Permissible Information Sharing Covered by Section 314(b) Safe Harbor of the USA PATRIOT Act (June 16, 2009).

⁴³ See 31 C.F.R. § 103.120.

⁴⁴ See 31 C.F.R. § 103.125.

⁴⁵ See 31 U.S.C. § 5318(g)(2) and 31 C.F.R. § 103.21(e).

⁴⁶ See 31 C.F.R. § 103.20

activities.⁴⁷ Please note that casinos and card clubs must complete Part VI, the narrative portion of the form,⁴⁸ regardless of whether the “Other” box is checked. FinCEN understands that some casinos and card clubs may have mistakenly interpreted box “q”, “Other (Describe in Part VI)” to mean that to complete the SARC’s “Narrative,” you must check this box, since it asks a filer to describe the suspicious activity in Part VI. This is incorrect.

Filing forms without checking the appropriate type(s) of suspicious activity or failing to check appropriate boxes describing the types of suspicious activity diminishes their utility to law enforcement and limits FinCEN’s ability to sort these particular forms for review and analysis to look for patterns of suspicious activities.

Question 14: What type of records is a casino or card club required to retain to support a SARC that it has filed?

Answer 14: A casino or card club must maintain supporting documentation or business record equivalents⁴⁹ with a copy of the filed suspicious activity report for five years from the date of filing the report. Typically, such documentation may include canceled checks, confessions, credit bureau reports, credit slips/vouchers, deposit/withdrawal slips, multiple transaction logs, player rating and slot club account records,⁵⁰ identification credentials, spreadsheets, photographs, surveillance audio and/or video recording media, and surveillance logs.⁵¹ For casinos that have hotels, and in the absence of any information other than a customer’s name, other supporting documentation may include credit/debit cards, guest folios, and safety deposit box registrations.

Question 15: Once a casino or card club files a SARC, what are its ongoing filing requirements when customers continue to frequent the casino or card club and/or conduct additional suspicious activity?

Answer 15: After a casino or card club files a SARC it should report continuing suspicious activity with a report being filed at least every 90 days.⁵² This notifies law enforcement of the

⁴⁷ For example, annually over the last six years approximately 25 to 35 percent of forms filed had only the “Other” box checked or no specific activity checked at all, instead of checking the appropriate type(s) of suspicious activities. Casinos and card clubs *should avoid checking “Other”* to complete the SARC’s Narrative unless the type of suspicious activity that occurred is not listed in Item 26 (*see* FinCEN Form 102, Instructions, Item 26).

⁴⁸ For guidance on how to prepare a clear and concise narrative, *see* FIN-2007-G005, Nov. 14, 2007, Question and Answer 2.

⁴⁹ *See* FinCEN Guidance FIN-2007-G003, Suspicious Activity Report Supporting Documentation, issued on June 13, 2007.

⁵⁰ Player rating records, which we addressed in 54 F.R. 1165 – 1167 (Jan. 12, 1989), reflect all cash activity recorded on them (regardless of the amount) that have occurred on the gaming floor. Player rating and slot club accounts track gaming activity and serve as a marketing tool to: (i) identify frequent customers as well as higher dollar players, (ii) encourage continued patronage, and (iii) ensure that complementaries are awarded on a cost-effective basis. Casinos utilize internal controls to help to ensure accountability for customers using player rating and slot club account cards. A customer's computerized player rating or slot club account record typically contains a customer's name, permanent address, date of birth, sometimes other identification information (*e.g.*, Social Security Number for purposes of Internal Revenue Code income tax reporting for jackpot wins) as well as a player’s gambling activity.

⁵¹ *See* FinCEN Form 102 (Instructions, page 2).

⁵² *See The SAR Activity Review – Trends, Tips & Issues, Issue 10* (May 2006), Section 4, pages 35 – 36, *The SAR*

continuing nature of the activity, and serves as a reminder to the organization that it must continue to review the suspicious activity to determine if other actions may be appropriate.⁵³ This should continue even if a law enforcement agency has declined to investigate or there is knowledge that an investigation has begun, since the information contained in a SARC may be of interest to other law enforcement agencies as well as gaming regulatory agencies.

Question 16: What does the SAR non-disclosure provision mean to a casino or card club that has filed a SARC?

Answer 16: No financial institution, or director, officer, employee, or agent of any financial institution, who reports a suspicious transaction, may notify any person involved in the transaction that the transaction has been reported, including any person identified in the suspicious activity report. Moreover, a filed SARC, as well as information that would reveal the existence of a SARC (including any document, memorandum, record, log, or work papers that references a SARC) must be treated as confidential.⁵⁴ Therefore, any person subpoenaed or otherwise requested to disclose a SARC or the information that would reveal the existence of a SARC to a source that is not an appropriate law enforcement or regulatory agency, or FinCEN, shall decline to produce the SARC or to provide any information that would reveal the existence of a SARC.⁵⁵ If a casino or card club does receive a request for SARC information (except for those from an appropriate law enforcement or regulatory agency), it must decline the request and notify FinCEN's Office of Chief Counsel at (703) 905-3590.

Question 17: Can a domestic casino parent or headquarters corporation and its domestic casino affiliates, branches, or places of business consult with each other before filing a SARC?

Answer 17: Yes. Under the SAR non-disclosure provisions, there is nothing prohibiting a domestic casino parent or headquarters corporation and its domestic casino affiliates, branches, or places of business from consulting with each other *before* a SAR form is filed concerning customer accountholder activity that is occurring at more than one of its casinos as part of their parent-affiliate relationship. Also, this would include discussion or sharing any underlying information about a customer and transaction(s) before a SARC is filed.⁵⁶ However, a domestic parent or headquarters corporation and its domestic casino affiliates, branches, or places of

Activity Review – Trends, Tips & Issue, Issue 2 (June 2001), Section 6, page 35 and *The SAR Activity Review – Trends, Tips & Issues, Issue 2* (October 2000), Section 5, page 27.

⁵³ These may include, for example, when required by state, tribal or local gaming regulation, subsequently barring or banning a customer from future gambling and accountholder activity. *See* SARC, Item 22.

⁵⁴ *See* 31 U.S.C. § 5318(g)(2) and 31 C.F.R. § 103.21(e). FinCEN proposed amendments to 31 C.F.R. § 103.21 to expand and clarify the confidentiality that should be afforded SARCs and information that would reveal the existence of a SARC. *See* 74 F.R. 10148, 10157 – 10158 (Mar. 9, 2009). Readers of this guidance should consult that rule, when finalized, for more specific information regarding the appropriate parties to whom a SARC may be provided.

⁵⁵ For examples of appropriate law enforcement and regulatory agencies *see The SAR Activity Review, Trends Tips & Issues, Issue 9, October 2005* (pages 43 - 45).

⁵⁶ Also, there is nothing to prohibit a domestic casino parent or headquarters corporation and/or its domestic casino affiliates, branches, or places of business from consulting with affiliated casinos licensed in other countries *before* a SAR form is filed concerning customer accountholder activity that is occurring among them.

business cannot disclose to each other that a SAR form will be filed. Moreover, after filing, further disclosure of the fact that a SAR was filed is prohibited except as permitted under 31 U.S.C. § 5318(g)(2) and 31 C.F.R. § 103.21(e).

Question 18: What type of information may a casino or card club disclose in response to a subpoena, summons, or other process issued in civil litigation that involved suspicious activity contained on a filed SARC?

Answer 18: The BSA does not prohibit the disclosure of internal casino or card club records upon which a SARC is based in response to a subpoena, summons, or other process issued in civil litigation, with all the relevant information pertaining to a customer's gambling activity that occurred at a casino or card club. For example, the prohibition against disclosing a SARC (or information that would reveal the existence of a SARC) would not preclude a casino or card club from disclosing,⁵⁷ internal records such as check cashing account, credit account, deposit account, player rating account, slot club account, customer win/loss statements, monetary instrument logs, multiple transaction logs, audio or video tapes, CD-ROM discs, DVD discs, etc., to a private litigant. Similarly, the prohibition against disclosing SARCs would not prevent the disclosure of BSA records of transmittal of funds or negotiable instruments at or in excess of \$3,000. Therefore, whatever information is appropriate and already contained in internal casino or card club records or on other discoverable government records and forms mentioned above can be disclosed in response to a subpoena, summons, or other process issued in civil litigation, except for a SARC form itself or the information that would reveal the existence of the SARC (including any document, memorandum, record, log, or work papers that references a SARC). For assistance with specific requests, please contact FinCEN's Office of Chief Counsel at (703) 905-3590.

Question 19: Since a casino is not required to file a CTRC on slot jackpot or video lottery wins, is it required to file a SARC on slot jackpot or video lottery terminal wins that are suspicious?

Answer 19: Yes. If a casino knows, suspects or has reason to suspect that the transaction or pattern of transactions is both suspicious and involves \$5,000 or more (including slot jackpot or video lottery terminal winnings) it must report it as suspicious activity. This is applicable to suspicious activity involving a jackpot win from bingo, Caribbean stud poker, keno, or let it ride poker. The filing requirements pertaining to: (i) IRS Form W-2G, Certain Gambling Winnings; (ii) IRS Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding; or (iii) IRS Forms 1099-Misc, Miscellaneous Income (*e.g.*, pertaining to prizes or awards) are particularly relevant here. *See* 31 C.F.R. § 103.21(a)(2)(i), which states, among other things, that a transaction requires reporting as suspicious if it is “. . . to avoid any transaction reporting requirement under federal law or regulation.” For example, a casino may attempt to complete an IRS Form W-2G or an IRS Form 1042-S for a customer's slot jackpot or video lottery terminal win of \$5,000 or more and a customer may: (i) fail to provide customer identification; (ii) furnish a legitimate type of identification document that a casino believes is false or altered (*e.g.*, address changed, photograph substituted); (iii) furnish a legitimate type of identification

⁵⁷ This FAQ does not address the applicability of any other Federal, state, local, or tribal laws or regulations.

document in which the description of the individual does not match the customer's appearance (*e.g.*, different age, height, eye color, gender); (iv) present conflicting identification information (*e.g.*, different address or different spelling or numeration in address; different state driver's license number, or different Social Security Number).

Section D: 31 C.F.R. § 103.36 Casino Recordkeeping Requirements

Question 20: When recordkeeping requirements are similar, except for the dollar thresholds, for casinos as well as all financial institutions, which requirements apply to a casino or card club?

Answer 20: Our rules at 31 C.F.R. § 103.33 list certain records that must be made and retained by *all* financial institutions including casinos and card clubs. Rules implementing the BSA also include certain recordkeeping requirements specifically for casinos or card clubs. These are set forth in 31 C.F.R. § 103.36. Where the dollar threshold differs between the two provisions, a casino or card club must keep records based on the lower threshold. For example, 31 C.F.R. § 103.36(b)(4) requires casinos and card clubs to retain a record of each extension of credit in excess of \$2,500, including a customer's identification and the verification of that identification, despite the fact that the requirement regarding extensions of credit in 31 C.F.R. § 103.33(a) is tied to a threshold of more than \$10,000. Also, although the requirements in 31 C.F.R. § 103.33(f) apply to non-bank financial institutions for transmittals of funds in the amount of \$3,000 or more, please note that pursuant to 31 C.F.R. § 103.36(b)(5) casinos and card clubs must retain records for international wire transfers at any monetary value. Therefore, when a casino or card club complies with 31 C.F.R. § 103.36(b)(5),⁵⁸ it has satisfied the requirement for 31 C.F.R. § 103.33(f).

Question 21: If a casino scans or microfilms its player rating records, is it required also to keep the paper copy of the record?

Answer 21: No. The BSA requires the retention of the source records (either the originals or microfilm version, or other copies or reproductions of the documents) of all records required to be retained by 31 C.F.R. Part 103. This would include, among other customer records, records prepared or used to monitor a customer's gaming activity (*e.g.*, player rating records, multiple transaction logs). As a reminder, scanned or microfilmed player rating records must be retained for 5 years and filed or stored in such a way as to be accessible within a reasonable period of time.

Question 22: Does a casino or card club have to record a customer's permanent address for BSA recordkeeping requirements or is a P.O. Box number acceptable when it appears on a customer's state driver's license or identification card?

Answer 22: To comply with 31 C.F.R. §§ 103.33(f), 103.36(a), 103.36(b)(1), 103.36(b)(4), 103.36(b)(5), and 103.36(b)(9), casinos and card clubs are required to use due diligence

⁵⁸ Please note that there is no monetary threshold in 31 C.F.R. § 103.36(b)(5).

measures to obtain a customer's permanent address.⁵⁹ This means casinos and card clubs are required to obtain and record a customer's permanent address (*i.e.*, permanent street address, city, state name or two-letter state abbreviation used by the U.S. Postal Service, and ZIP code, including any apartment number or suite number and road or road number associated with a permanent address) to comply with these recordkeeping requirements. If a customer is from a foreign country, the state/territory name (or state/territory code) (*i.e.*, Canada and Mexico) and the appropriate country name (or two-letter country code) should be obtained. A casino or card club is required to use all reasonably available information or reasonable alternatives to obtain the needed information to be in compliance with the BSA and should not enter a P.O. Box number unless the customer has no street address. If a customer's state driver's license or identification card contains a P.O. Box number, casinos and card clubs would need to ask a customer for his/her permanent street address. If a customer states he/she has a permanent address, but refuses to provide it, and a casino and card club conducts the transaction, they would not be in compliance with these BSA recordkeeping requirements.⁶⁰ However, if a casino or card club uses due diligence to obtain a customer's permanent address⁶¹ and determines that a customer does not have a permanent address, then a casino can record a customer's P.O. Box number without concern of non-compliance with the above BSA recordkeeping requirements. Nonetheless, in the case when a reportable currency transaction occurs, a casino and card club must file a CTTC involving a cash in and/or cash out.

Section E: 31 C.F.R. § 103.64(a) Compliance Program Requirements

Question 23: Must a casino's anti-money laundering compliance officer limit his duties to BSA compliance matters?

Answer 23: No. Although the BSA requires financial institutions, including casinos or card clubs, to designate an individual or individuals (*e.g.*, a compliance officer and/or compliance committee) as responsible for ensuring that institution's day-to-day compliance with the BSA, the anti-money laundering program requirement permits flexibility by allowing each compliance program to address the characteristics of a particular casino or card club. Each casino and card club should conduct a risk-based analysis of its business (*e.g.*, type of products and services it

⁵⁹ See 31 C.F.R. § 103.64(a)(2)(v)(A), which requires the implementation of procedures for using all available information to determine, when required by the BSA, a customer's name, address, Social Security Number, and other identifying information and verification of the same. Therefore, since a casino records information on extensions of credit, for example, it must ensure that the records are complete pursuant to 31 C.F.R. § 103.36(b)(4).

⁶⁰ Also, such activity by a customer could be suspicious since it is designed to evade the BSA reporting requirement. See 31 C.F.R. § 103.21(a)(2)(ii).

⁶¹ FinCEN understands that some casinos use the following available information or alternatives to obtain the needed information such as: (i) Federal tax forms filed for certain customers' gambling transactions; (ii) other customer documents such as copies of negotiable instruments (*e.g.*, personal checks); (iii) a reporting agency that provides telephonic or on-line searching of customer identification information for those that applied for casino credit as well as have outstanding casino debts; (iv) public on-line database search engines that do not require a subscription; (v) organizations that provide subscription services to businesses and governmental agencies containing individuals' personal identification information from their commercial databases, or (vi) during subsequent trips when knowledge is obtained about customers' presence through the process of conducting new casino transactions.

offers, the locations it serves, and the nature of its customers) to determine, among other things, whether it needs a full-time BSA compliance officer.

Question 24: How can a casino’s compliance committee help to assure that a casino complies with the BSA?

Answer 24: Casinos and card clubs are not required under the BSA to establish compliance committees in all instances. Nonetheless, there may be instances in which the risk confronting a casino or a card club would require establishing a BSA compliance committee. FinCEN understands that casinos establish BSA compliance committees as an executive level safeguard to ensure that a casino complies with all applicable laws, regulations, and guidance in a reasonable manner.⁶²

Section F: Other Casino Issues

Question 25: What are the civil penalties for non-compliance with BSA recordkeeping and reporting requirements?

Answer 25: FinCEN may seek civil money penalties of \$25,000 a day per violation of any anti-money laundering compliance program requirement. Also, FinCEN may seek: (i) injunctive relief from a court against future violations of the BSA; (ii) civil money penalties of up to \$25,000 or more per reporting violation (not to exceed \$100,000); and (iii) other appropriate relief. In addition, FinCEN may seek civil money penalties (up to the amount of transaction) for structuring, attempting to structure, or assisting in structuring transactions. These civil sanctions are for willful violations⁶³ and may be applied to any casino or card club that is subject to the BSA, or to any partner, director, officer, or employee of such gaming operations.

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Questions or comments regarding the contents of this Guidance should be addressed to the FinCEN Regulatory Helpline at 800-949-2732.

⁶² A BSA compliance committee may be composed of all applicable casino departments such as accounting, cage operations, casino credit, finance, information technology, internal audit, marketing, slot operations, surveillance, and table games. A casino’s BSA compliance officer is usually a member of such a committee. In-house and/or external legal counsel may provide advice to a BSA compliance committee, but is not necessarily a member. A BSA compliance committee may need to schedule regular meetings to establish and monitor a risk-based approach to its business (e.g., type of products and services it offers, the locations it serves, and the nature of its customers).

⁶³ See 31 U.S.C. §§ 5320 - 5322, and 5324; and 31 C.F.R. §§ 103.57(c), (e), and (f), and 103.63.