

March 2014

Dear CU PolicyPro Clients,

Happy Spring! We are still working on the next content update, and should have that released by early next week.

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Content FAQs

Question: How should a credit union handle repeated or continued suspicious activity on an account of one member?

Answer: One of the purposes of filing SARs is to identify violations or potential violations of law to the appropriate law enforcement authorities for criminal investigation. This is accomplished by the filing of a SAR that identifies the activity of concern. Should this activity continue over a period of time, it is useful for such information to be made known to law enforcement (and the credit union supervisors). As a general rule of thumb, credit unions should report continuing suspicious activity with a report being filed at least every 90 days. This will serve the purposes of notifying law enforcement of the continuing nature of the activity, as well as provide a reminder to the credit union that it must continue to review the suspicious activity to determine if other actions may be appropriate, such as terminating its relationship with the member or employee that is the subject of the filing.

Question: Can a credit union close a member's share account after identifying suspicious activity and filing a suspicious activity report (SAR)?

Answer: According to the NCUA Examiner's Guide, the answer is "no." The credit union cannot close an account or even restrict services based solely on a SAR filing: "Since a credit union member has a fundamental right to maintain a share account and participate in elections, the credit union cannot deny someone credit union membership because it has identified suspicious activity. However, the credit union may wish to consider limiting access to certain services. To do so, the credit union must have established its policy in writing and notified its members of the policies in advance. The credit union should not consider the mere filing of a SAR as the basis for limiting services.

Similarly, the credit union may find it necessary to consider reassigning or terminating the services of an employee who is the subject of a SAR. The credit union should seek advice from counsel in these situations.

The credit union may not, by law, notify any person involved in an activity being reported on a SAR that the credit union has reported the activity, or that it has filed a SAR (31 U.S.C. 5318(g)(2)). However, this prohibition does not preclude a disclosure in an appropriate manner of the facts that serve as the basis of the

SAR, so long as the disclosure is not made in a way that indicates or implies that the credit union has filed a SAR, or that the SAR includes that information.”

Technical FAQ

Question: If I have “addendums” that I want to add to a policy such as sample letters, how do I do that and keep them in their original format?

Answer: The policy editor in CU PolicyPro is text based and there is no way to import an entire document. Here are the options for handling this type of content:

1. If it is a graphic file or image, the file can be uploaded and inserted into a policy.
2. Content can be copied/pasted or manually typed in the system – however, this can be time consuming and the end result may not look exactly the same as the original document, especially if it’s a heavily formatted document such as a form. Letterhead or special fonts or graphics on a sample letter may not translate properly.
3. If you need the document exactly as it is, it can be uploaded storage area, with a reference to the document in the policy in your manual. For instance the policy may say something like this: “A sample of the letter indicated in this policy can be found in the “Manager [or Employee] Resources” folder of CU PolicyPro.”
4. Another consideration is to determine whether that content should really part of the policy, or is reference or example material, or perhaps procedural in nature. Sample content may not need to be included in the policy.

For more frequently asked questions, visit [the CU PolicyPro FAQs page](#) which includes all FAQs featured in previous newsletters, as well as many others!

Update to Content Editor Toolbar

You may have noticed the toolbar in the content editor has gotten a facelift! Not only is the new editor a bit more colorful, but the coding behind the scenes is now updated and will be more stable in the newer Internet Explorer versions. We recommend using CU PolicyPro with Internet Explorer 10 or above, Firefox or Chrome. Some clients have reported that the formatting in the policies have been affected. Adjusting the formatting and saving the policy will correct the issue. If you have any questions, please feel free to contact the CU PolicyPro support staff at hrrsupport@cusolutionsgroup.com.

Monthly OPS Notes Release: BSA and Marijuana Related Business

In February 2014 the [Financial Crimes Enforcement Network \(FinCEN\) issued guidance](#) that provided clarity to industry questions on customer due diligence expectations and reporting requirements for financial institutions providing services to marijuana businesses. The guidance allows credit unions to provide services to marijuana-related businesses in a manner consistent with their obligations to “know your member” and to report possible criminal activity.

FinCEN Director Jennifer Shasky Calvery stated “now that some states have elected to legalize and regulate the marijuana trade, FinCEN seeks to move from the shadows the historically covert financial operations of marijuana businesses,” noted. “Our guidance provides financial institutions with clarity on what they must do if they are going to provide financial services to marijuana businesses and what reporting will assist law enforcement.”

Currently twenty states and Washington DC allow the sale of marijuana in some form; including:

Alaska
Arizona

Illinois
Maine

New Mexico
Oregon

California	Massachusetts	Rhode Island
Colorado	Michigan	Vermont
Connecticut	Montana	Washington
Delaware	Nevada	Washington DC
Hawaii	New Hampshire	

Five US states enacted laws that legalized medical marijuana with a physician's prescription:

Connecticut	New Hampshire	Wisconsin
Louisiana	Virginia	

Maryland also passed a law favorable to marijuana; however, it does not legalize its use.

Throughout the FinCEN guidance we are reminded that the Controlled Substances Act (CSA) makes it illegal under federal law to manufacture, distribute, or dispense marijuana. Additionally, the [Cole Memo](#) reiterates Congress's determination that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels.

The FinCEN guidance clarifies how credit unions can provide financial services to marijuana-related businesses while maintaining their BSA obligations. In general, the decision to open, close, or refuse any particular account or relationship should be made while considering a number of factors including the businesses objectives, an evaluation of the risks associated with offering a particular product or service, and its capacity to manage those risks effectively. FinCEN points out that thorough customer due diligence is a critical aspect of making this assessment.

In providing service to marijuana-related businesses the credit union is required to conduct member due diligence that includes:

- Verifying with the appropriate state authorities whether the business is duly licensed and registered;
- Reviewing the license application (and related documentation) submitted by the business for obtaining a state license to operate its marijuana-related business;
- Requesting from state licensing and enforcement authorities available information about the business and related parties;
- Developing an understanding of the normal and expected activity for the business, including the types of products to be sold and the type of customers to be served (e.g., medical versus recreational customers);
- Ongoing monitoring of publicly available sources for adverse information about the business and related parties;
- Ongoing monitoring for suspicious activity, including for any of the red flags described in this guidance; and
- Refreshing information obtained as part of customer due diligence on a periodic basis and commensurate with the risk.

As part of required Bank Secrecy Act (BSA) member due diligence, credit unions should consider whether the marijuana-related businesses violates one of the Cole Memo priorities or state law. The credit union should consider if the marijuana related business adheres to the following provisions of the Cole Memo priorities:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;

- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

The credit union needs to follow BSA reporting requirements in regards to the marijuana related business activity. The Credit Union must report currency transactions in connection with Marijuana-Related businesses the same as they would in any other context, consistent with existing regulations and with the same thresholds that apply.

The obligation to file a SAR is unaffected by any state law that legalizes marijuana-related activity. The credit union is required to file a SAR if, consistent with FinCEN regulations, it knows, suspects, or has reason to suspect that a transaction conducted or attempted by, at, or through the financial institution:

- Involves funds derived from illegal activity or is an attempt to disguise funds derived from illegal activity;
- Is designed to evade regulations promulgated under the BSA, or
- Lacks a business or apparent lawful purpose.

Because federal law prohibits the distribution and sale of marijuana, financial transactions involving a marijuana-related business would generally involve funds derived from illegal activity.

Therefore, the credit union is required to file a SAR on activity involving a marijuana-related business (including those duly licensed under state law), in accordance with the new guidance and FinCEN's suspicious activity reporting requirements and related thresholds.

Credit Unions are required to file SARs to assist law enforcement in monitoring their activity. There are new classifications of SARs that must be used when reporting marijuana-related activity:

- A. **Marijuana Limited SAR Filings.** A credit union providing financial services to a Marijuana-Related business that it reasonably believes, based on its member due diligence, does not implicate one of the Cole Memo priorities or violate state law will file a "Marijuana Limited" SAR. The content of this SAR should be limited to the following information:
 - i. Identifying information of the subject and related parties;
 - ii. Addresses of the subject and related parties;
 - iii. The fact that the filing institution is filing the SAR solely because the subject is engaged in a Marijuana-Related business; and
 - iv. The fact that no additional suspicious activity has been identified. Credit unions should use the term "MARIJUANA LIMITED" in the narrative section.
- B. **Marijuana Priority SAR Filings.** A financial institution filing a SAR on a Marijuana-Related business that it reasonably believes, based on its member due diligence, implicates one of the Cole Memo priorities or violates state law will file a "Marijuana Priority" SAR. The content of this SAR should include comprehensive detail in accordance with existing regulations and guidance. Details particularly relevant to law enforcement in this context include:
 - i. Identifying information of the subject and related parties;
 - ii. Addresses of the subject and related parties;
 - iii. Details regarding the enforcement priorities the financial institution believes have been implicated; and
 - iv. Dates, amounts, and other relevant details of financial transactions involved in the suspicious activity. Credit unions should use the term "MARIJUANA PRIORITY" in the narrative section to help law enforcement distinguish these SARs.
- C. **Marijuana Termination SAR Filings.** If a credit union deems it necessary to terminate a relationship with a Marijuana-Related business in order to maintain an effective anti-money laundering compliance program, it will file a SAR and note in the narrative the basis for the termination. The term "MARIJUANA TERMINATION" must be noted in the narrative section.

The FinCEN guidance provides red flags that the credit union should be aware of if they are providing service to marijuana related businesses.

This rule became effective on **February 14, 2014**.

This edition of OPS NOTES was prepared by the Michigan Credit Union League.

Questions?

If you have any questions regarding the CU PolicyPro content, or questions on how to use the system, please contact hrsupport@cusolutionsgroup.com.

If this information was forwarded to you, and you'd like to be on the distribution list to receive information and updates related to CU PolicyPro, contact hrsupport@cusolutionsgroup.com.

Thanks and have a great week!