

CASH TRANSACTION REPORTING

In October 1970, Congress enacted 31 C.F.R. § 103.11 - the Bank Secrecy Act ("BSA" or "Act"). Congress intended the Act to address money laundering by requiring banks to report cash transactions to the IRS. The U.S. Treasury Department ("Treasury") adopted regulations governing reporting requirements. Later, the scope of the BSA was expanded to include casinos. On May 7, 1985 casinos were required to comply with BSA reporting regulations. Still, the BSA allowed the Treasury to exempt "casinos in any state whose regulatory system substantially meets the reporting and recordkeeping requirements" of the BSA regulations. Several days later, Nevada casinos were exempted from the BSA because of Nevada's rigorous gaming regulatory regime.

From 1970 to June 30, 2007, Nevada casinos operated under a set of cash reporting guidelines that eventually became known as Regulation 6A, which provided reporting requirements for casino transactions in currency that were viewed by many as more rigorous than the federal requirements. As a result of the terrorist attacks of September 11, 2001 against the United States, Congress included language in the "USA PATRIOT" Act of 2001 that expanded the scope of the Bank Secrecy Act to intelligence or counter-intelligence activities to protect against terrorist activities. With new authority and reason to fear, the federal government revoked the exemption to the BSA enjoyed by the state's gaming industry. To give some insight to the then-prevailing mindset, consider Volume 72, No. 122 of the Federal Register, which states:

Casinos are cash-intensive businesses that also offer a broad array of financial services. these services include providing customer deposit or credit accounts, transmitting and receiving funds transfers directly from other financial institutions, check cashing, and currency exchanging. Consequently, casinos offer services that are similar to and may serve as substitutes for services ordinarily provided by depository insitutions and certain non-bank financial institutions. As such, casinos are vulnerable to abuse by money launderers, terrorist financiers, and tax evaders.

At its September 21, 2006 meeting, the Nevada Gaming Commission repealed NGC Regulation 6A effective June 30, 2007. The BSA became effective upon Nevada casino's immediately thereafter. Once repealed, Nevada casinos with annual gross gaming revenue in excess of \$1 million in a business year were required to comply with BSA cash transaction reporting requirements.

Among the most significant differences between the BSA and Nevada Gaming Regulation 6A is the fact that the BSA does not expressly prohibit any transaction, while 6A did:

Prohibited Transactions under Reg. 6A

Regulation 6A addressed three general types of transactions: prohibited transactions, reportable transactions and so-called "suspicious transactions." Prohibited transactions can be segregated into three categories:

- > A cash exchange between a casino and a patron where the exchange involves more than \$3,000 in U.S. currency. It does not matter whether this exchange is large denomination bills exchanged for small, or vice versa.¹
- > The issuance of a check or other negotiable instrument by a casino to a patron in exchange for the patron's cash, where the exchange involves more than \$3,000.²
- > The effecting of any transfer of funds by electronic, wire or other method to or on behalf of a patron, in exchange for cash in which the amount of the exchange exceeds \$3,000.³

In contrast, the BSA contains no such express prohibitions. Where Regulation 6A focused on preventing or prohibiting certain characteristic "laundering" transactions, the BSA focus on the reporting of these types of transactions.

Scope of the BSA

In a 2007 guide to BSA reporting guidelines as they apply to casinos, the Department of the Treasury, Financial Crimes Enforcement Network, explained BSA reporting requirements apply to casino or card clubs that have gross annual revenue in excess of \$1 million. If a casino meets this threshold amount, it is considered a "financial institution" under the BSA. The Guide

¹NGC Reg. 6A.020(1).

²NGC Reg. 6A.020(2).

³NGC Reg. 6A.020(3).

suggests that this definition applies not only to traditional land-based casinos, but also to riverboat operations and to gaming operations authorized under the Indian gaming Regulatory Act, in certain instances. Tribal gaming operations are subject to the BSA if they offer slot machines, video lottery terminals, or table games and have gross annual gaming revenue in excess of \$1 million. Tribal gaming businesses that offer only bingo and related games are not considered a "casino" under the BSA.

Race book and sports pool operators that operate under a nonrestricted Nevada gaming license are also subject to the BSA if they have gross revenues in excess of \$1 million.

Reportable Currency Transactions

The BSA applies to "transactions in currency," defining these as any transaction "involving the physical transfer of currency from one person to another." Casinos must report each transaction in currency involving "cash in" or "cash out" greater than \$10,000. These terms refer to the direction of the transaction, either to ("in") the casino, or from ("out"). Section 103.21 defines

"transaction in currency involving cash in to include:

- \$ Purchases of chips, tokens, and other gaming instruments;
- \$ Front money deposits;
- \$ Safekeeping deposits;
- \$ Payments on any form of credit, including markers and counter checks;
- \$ Bets of currency, including money plays;

- \$ Currency received by a casino for transmittal of funds through wire transfer for a customer;
- \$ Purchases of a casino's check;
- \$ Exchanges of currency for currency, including foreign currency, and
- \$ Bills inserted into electronic gaming devices.

The Act defines transactions in currency involving cash out to include:

- \$ Redemptions of chips, tokens, tickets, and other gaming instruments;
- \$ Front money withdrawals;
- \$ Safekeeping withdrawals;
- \$ Advances on any form of credit, including markers and counter checks;
- \$ Payment on bets;
- \$ Payments by a casino to a customer based on receipt of funds through wire transfers;
- \$ Cashing of checks or other negotiable instruments;
- \$ Exchanges of currency for currency, including foreign currency;
- \$ Travel and complimentary expenses and gaming incentives; and
- \$ Payment for tournament, contests, and other promotions.

As with all transactions to which the BSA applies, \$10,000 is the threshold for reporting. Many of the above currency transactions are traditionally limited to much smaller amounts. Thus, in practice, these reporting requirements are not as onerous as they may appear.

Aggregation of Transactions

The \$10,000 threshold need not be met all at once; where a party engages in multiple currency transactions, the casino must treat them as a single transaction ("aggregate" them) if the casino has knowledge that the transactions are conducted by or on behalf of the same person and result in cash in or out of more than \$10,000 in any gaming day. A casino has "knowledge" if any sole proprietor, partner, officer, director, or employee of the casino has knowledge that the multiple transactions meet the reporting threshold. The employee may learn of this either by observing the customer's activity directly or from examining the records. Thus, the Act imputes knowledge to the casino.

Furthermore, the threshold need not be met at a single location. If the casino operator provides gaming at multiple locations, for example, the requirement that the operator aggregate a customer's currency transactions for a gaming day applies to all of the casino properties.

Casinos often maintain branch offices in cities around the nation that primarily serve as marketing offices. Occasionally, these offices will accept currency for deposit to a customer's casino account or in payment of markers. The funds are often placed on deposit in the branch office's bank account and wire transferred to the casino. The BSA applies not only to the casino, but also to its branch offices and other places of business.

Reporting Exemptions

These lists are not exclusive. Casinos are, however, exempted from reporting obligations for currency transactions of the following types:

- \$ Transactions between a casino and a currency dealer or exchanger, or between a casino and a check cashier . . . so long as such transactions are conducted pursuant to a contractual or other arrangement with a casino covering the financial services in §§ 103.22(b)(2)(i)(H), 103.22(b)(2)(ii)(G), and 103.22(b)(2)(ii)(H);
- \$ Cash out transactions to the extent the currency is won in a money play [where a customer puts cash down on the table to wager, but the dealer does not collect the money or exchange it for chips] and is the same [**physical**] currency the customer wagered in the money play, or cash in transactions to the extent the currency is the same currency the customer previously wagered in a money play on the same table game without leaving the table;
- \$ Bills inserted into electronic gaming devices in multiple transactions unless the casino has knowledge of it, in which case this exemption would not apply; and
- \$ Jackpots from slot machines or video lottery terminals.

Jackpots from slot machines and video lottery terminals are exempted from being counted as reportable cash out transactions because a customer who wins more than \$10,000 at a slot machine or video lottery machine will generally have won those funds solely by chance, as determined by the machine's random number generator.

Reporting Requirements

When a casino becomes aware of a currency transaction exceeding \$10,000, it must file **within 15 days** a Fin CEN Form 103 "Currency Transaction Report by Casinos" for each qualifying transaction containing all of the information requested on the form. The 15 day period begins with the day following the day on which the reportable transaction occurred. The form may be filed electronically using the E-filing system at <http://bsae filing.fincen.treas.gov/index.jsp>. The form requires the name or names of individuals on whose behalf the transaction was conducted, information on the individual conducting the transaction on behalf of the casino, detailed disclosure relating to the amount and type of the transactions, information about the casino reporting the transaction, and additional information where the transaction in question involved multiple persons or agents.

When considering reporting requirements, it is important to note the distinction between a "suspicious" transaction and a "reportable" transaction. Section 103.21 defines "suspicious transaction" as:

[O]ne that is conducted or attempted by, at, or through a casino, and involves or aggregates at least \$5,000 in funds or other assets, and casino knows, suspects, or has reason to suspect that the transaction (or pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal

activity (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;

(ii) is designed, whether through structuring or other means, to evade any requirements of this part or of any other regulations promulgated under the BSA . . .

(iii) 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 casino knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

(iv) Involves use of the casino to facilitate criminal activity.

If the casino finds a suspicious transaction, it must complete FinCEN form 102, "Suspicious Activity Report" ("SAR") with the Department of the Treasury, FinCEN.

A transaction may be both "suspicious" and greater than \$10,000, requiring the casino to file a Form 102 and Form 103. If the transaction involves \$10,000 or less, the casino should use Form 102 to file a SARC. When a situation involves suspicious transactions that require immediate attention, the casino should notify the appropriate law enforcement agency.

Required Recordkeeping

Under Section 103.38(b), casinos must prepare supporting documentation as required under 31 CFR § 103.36 and keep them for five years. The statute lists the following as records that must be retained:

- \$ Records of each receipt of funds by the casino for the account of any person. The record shall include the name, address, social security number of the person, and the date. If the person doesn't have a social security number, the casino must retain a record of his or her passport number or other similar government document.
- \$ Record of each bookkeeping entry comprising a debit or credit to a customer's account;
- \$ Every statement, ledger card or other record of each deposit account or credit account with the casino, showing each transaction;
- \$ A record of each extension of credit in excess of \$2,500, including the terms and conditions of the grant, with repayment terms.
- \$ A record of each advice, request or instruction received or given by the casino for itself or another person with respect to a transaction involving a person, account or place outside the United States;
- \$ Records prepared or received by the casino in the ordinary course of business which would be needed to reconstruct a person's deposit account or credit account with the casino or to trace a check deposited with the casino;

\$ All records required by state or local law;

\$ All records used to monitor a customer's gaming activity;

\$ A separate record containing a list of each transaction between the casino and its customers involving the following types of instruments having a face value of \$3,000 or more:

1. Personal checks;
2. Business checks;
3. Cashier's checks;
4. Third-party checks;
5. Promissory notes;
6. Traveler's checks; and
7. Money orders.

A casino that inputs, stores, or retains, in whole or in part, any record required to be maintained by 31 CFR §§ 103.33 or 103.36(a) and (b) on computer disk, tape, or other machine readable media must maintain the records in such media for five years.

Compliance Programs

The casino must also keep a copy of the compliance program required under Section 103.64(a). Casinos must develop and implement the program to assure compliance with 31 U.S.C. chapter 53 and the BSA. Each compliance program must provide for:

\$ A system of internal controls to assure ongoing compliance;

- \$ Internal and/or external independent testing for compliance.
- \$ Training for casino personnel, including training in the identification of unusual or suspicious transactions.
- \$ At least one person responsible for day-to-day compliance;
- \$ Procedures for gathering the following customer information:
 1. When required, the name, address, social security number or passport number of a person;
 2. The occurrence of any transactions or patterns of such; and
 3. Protocol for determining which records must be made and retained.

Foreign Currency

31 CFR 103.23(a) requires that each person who transports, mails, or ships, or causes to be transported, mailed, or shipped, or attempts to cause to be transported, mailed, or shipped, currency or other monetary instruments exceeding \$10,000 in the aggregate at one time from the United States to any place outside the United States must report the act. Under this section, a person is deemed to have caused such transportation, mailing, or shipping when he aids, abets, counsels, commands, procures, or requests it to be done by a financial institution or any other person.

Section 103.23(b) requires that any person who receives in the U.S. currency or other monetary instruments exceeding \$10,000 at one time which have been transported, mailed, or shipped to

the person from any person outside of the U.S. to report the amount, the date of receipt, the form of the currency or monetary instruments, and the person who sent it.

Neither of these two instances require reporting if the transfer of funds occurs through normal banking procedures that does not involve the physical transportation of currency or monetary instruments. Furthermore, if a report of the transfer has been filed under another provision of the BSA, another report need not be filed.