

SUBJECT: Organization Accounts

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INTRODUCTION

This release applies to all credit unions, state and federal. It explains how organizations qualify for credit union membership, how to open organization accounts, and how to handle organization account transactions.

EXECUTIVE SUMMARY

In this release, the term “organization” refers to anything other than a natural person, including:

- Trusts,
- Probate estates,
- Government entities,
- Corporations,
- Partnerships,
- Limited liability companies,
- Sole proprietors,
- Cooperatives,
- Unincorporated associations,
- Religious societies,
- Fraternal societies and veterans groups,
- Other credit unions, and
- Foreign organizations.

Sole proprietorships are something of an individual/organization hybrid. Many of the same rules that apply to organizations apply to sole proprietorships, so the League recommends that these be handled as organization, not individual, accounts. This release includes an exhibit describing the characteristics of each type of organization.

This release outlines five steps for properly opening an organization account:

- **Step One: Find out if the organization is eligible to join the credit union, and complete a Membership Application Card.** The credit union can establish accounts for an organization only after a Membership Application Card (WCUL form #81056) is completed and the credit union has determined that an organization may become a member. For state-chartered credit unions, an organization can join a credit union if either 1) a majority of its directors, owners or members are eligible for membership, or 2) the organization has a business location within any geographic limits of the credit union's field of membership.

Under the 2017 Model Bylaws (as well as the 2005 version) for state-chartered credit unions, "any trust may become a member of the Credit Union if a majority of the persons who are settlor(s), trustee(s) and beneficiary(ies) are eligible for membership in the Credit Union." It is unclear under Wisconsin law whether successor trustees and contingent trust beneficiaries must be counted. When opening an account for a trust, the credit union must take some preliminary steps to help verify that the trust was created, who the parties are, and whether it's eligible to join the credit union. The credit union may insist on receiving a current "certification of trust" before opening any accounts or otherwise dealing with a trust for the first time. The certification will verify important information, such as the identity of the current trustee and the trustee's powers. Having a certification helps to protect the credit union, which can rely on it in good faith to establish accounts for trusts. The credit union must be careful, however, not to let the trustee exceed the powers that the certification describes.
- **Step Two: Get a completed Depository Resolution or Trust-Credit Union Agreement.** The Depository Declaration and Agreement (WCUL form #81075) designates exactly who is authorized to transact business for the organization. It spells out the powers of each person authorized to transact business on the organization's accounts, and it provides specimen signatures. A credit union takes on significant risk if it pays a check or permits any other withdrawal from an organization's account other than as authorized by a current Depository Declaration and Agreement. Even sole proprietors must complete a Depository Declaration and Agreement to open an account. If the business wants to add or change names and/or titles of people who are authorized to transact business on the account, a new Depository Declaration and Agreement must be completed. If the member is a trust, the League's Trust – Credit Union Agreement (WCUL form #82021) identifies the trustee(s) authorized to transact business on the trust's accounts.
- **Step Three: Comply with Customer Identification Program rules, conduct Customer Due Diligence and complete a Customer Identification Card.** Under U.S. Treasury Department and NCUA rules, every credit union must have a Customer Identification Program (CIP). The CIP rules require you to collect certain information from anyone who wants to open a credit union account, including organizations. You must also take steps to verify the new member's identity. Your credit union will have written policies and procedures that tell you exactly what you must do to comply with the CIP rules. If you are unfamiliar with your credit union's CIP procedures, review them before proceeding. The League's Customer Identification Card (WCUL form #81080) is designed to simplify the CIP process. It provides fill-in-the-blanks for recording required information and checkboxes to indicate the methods you use to verify identities. Credit unions must also comply with Customer Due Diligence (CDD) rules under the Bank Secrecy Act, as of May 11, 2018. CDD helps credit unions understand the nature and purpose of member/customer relationships to develop a risk profile, monitor for suspicious transactions, and conduct "enhanced due diligence" on higher-risk members/customers. The CDD rules also require credit unions to have written procedures to identify "beneficial owners" – the people who own and control "legal entity customers" – organizations opening credit union accounts. Credit unions then must verify the identities of those beneficial owners and retain CDD records. For business accounts, credit unions also need to determine whether a business that is asking to open an account may be involved in Internet gambling. If so, steps should be taken to verify that the business is lawful, and appropriate responses should be made if it is not.
- **Step Four: Complete a Business/Organization Account Ownership Agreement.** The Business/Organization Account Ownership Agreement (WCUL form #81057) designates the organization as the owner of the account, certifies the organization's Taxpayer Identification Number (TIN), and records the various disclosures given to the organization when the account is opened. A separate agreement is needed for each sub-account. Organizations should be the sole owners of their accounts. It is inappropriate to use POD, IRA, joint account or any other right of survivorship features on organization accounts (although sole proprietorships can name POD beneficiaries). This is because organizations do not experience "death." All account documents should reflect the organization's legal name. This release includes an exhibit that describes the terms that various organizations are required to use in their names, such as "Inc." or "LLC." An organization, when opening an account, will have to certify that it has provided the credit union with its correct TIN. This release includes an exhibit that lists the type of TINs (either a Social Security Number (SSN) or Employer Identification Number (EIN)) that various types of organizations are required to use.

- **Step Five: Provide the Account Agreement Brochure and Disclosures.** Certain disclosures must be given to organizations when they open credit union accounts. Before the Business/Organization Account Ownership Agreement card is signed (even for a sub-account), a credit union may provide the League brochure entitled “Your Account Agreement”

(WCUL form #82004) or a comparable form from a compliance-oriented vendor, to serve as the contract for all types of accounts. A Funds Availability Disclosure is generally required for demand deposit, share draft, checking or NOW accounts. The League offers a Funds Transfer Agreement & Notice (WCUL form #81043), which covers transfers of funds by wire transfers, automated clearinghouse transactions, etc. Finally, the credit union’s schedule of rates and fees is routinely provided. Other disclosures may be provided at the credit union’s option.

General Considerations

Great care should be taken not to make representations to members about share insurance coverage. It may be best to simply give members the informative NCUA pamphlet “Your Insured Funds” rather than to provide specific advice or interpretations. Generally, however, sole proprietor’s accounts are insured as individual accounts.

A new Business/Organization Account Ownership Agreement is needed if an organization changes its name or restructures (e.g., if a partnership decides to incorporate). In that case, a new Depository Agreement and Declaration will be needed, as well.

Organizations can open share draft accounts. Normally the organization’s name appear on the face of its checks and authorized persons indicate both their name and title when signing checks.

Finally, a credit union should follow these basic rules when presented with checks that are payable to an organization:

- Checks payable to an organization should be deposited, in full, into the organization’s account.
- Cash back should not be allowed on split deposits of checks payable to an organization.
- Checks payable to an organization should not be cashed over the counter.
- Checks payable to an organization should not be deposited into personal accounts.
- Organization checks endorsed over to a third party, sole owner or partner, should not be accepted.

This release includes, as Exhibit A, a Loss Prevention Checklist, which summarizes the main points of this release and lists other suggestions for fraud prevention. Exhibit B summarizes the types of organizations that credit unions are most likely to encounter. Exhibit C describes the terms that various organizations are required to use in their names, such as “Inc.” or “LLC.” Exhibit D is a summary of the forms needed to open organization accounts. Exhibit E lists the types of Taxpayer ID Numbers that various types of organizations are required to use.

FIVE STEPS TO OPENING AN ORGANIZATION ACCOUNT

Organization accounts differ from individual accounts, and so some special steps are taken before a credit union opens an account for an organization. Exhibit D provides a summary of the forms needed to open organization accounts.

Here is a preliminary listing of the checklist contents, followed by discussion of each of the points:

- Step One: Find Out If the Organization is Eligible to Join the Credit Union, and Complete a Membership Application Card
- Step Two: Get a Completed Depository Declaration or Trust-CU Agreement
- Step Three: Comply with Customer Identification Program Rules, Conduct Customer Due Diligence and Complete a Customer Identification Card
- Step Four: Complete an Business/Organization Account Ownership Agreement (WCUL form #81057)
- Step Five: Provide the Account Agreement Brochure and Disclosures

Step One: Find Out If the Organization is Eligible to Join the Credit Union, and Complete a Membership Application Card

Like individuals, organization cannot join a credit union unless they are within its field of membership. Furthermore, the credit union's bylaws must provide that organizations can join. Most bylaws do provide for organizations to join, but if you are unfamiliar with your credit union's bylaws or its field of membership limits, check your credit union's bylaws before proceeding. (*For detailed information on membership eligibility, see ii Release 0001, "Membership."*)

For state-chartered credit unions, an organization can join a credit union if either 1) a majority of its directors, owners or members are eligible for membership, or 2) the organization has a business location within any geographic limits of the credit union's field of membership. This does not need to be the organization's main office, just a business location.

In federal credit unions, an organization must be composed exclusively of persons within the field of membership unless the credit union's bylaws specifically say that the organization is within the field of membership.

Use a Membership Application Card (WCUL #81056) to document that the organization applied for membership and that you checked into the organization's eligibility. Check the box to show whether the application was approved or denied. The card needs to be completed only once, when the organization initially applies for membership. The card is not an account agreement. An account agreement brochure and a separate account ownership agreement card must also be used. Those documents are discussed later.

Probate Estates

Wisconsin law does not address the membership requirements for establishing a probate estate account. However, in a 1992 legal opinion letter (92-0434), the NCUA explained that federal credit unions may open such an account if either the decedent or the beneficiary (or all the beneficiaries, if there is more than one) are credit union members. The membership of the personal representative is irrelevant to establishing an estate account, the NCUA said.

In 2021, The League confirmed with the Wisconsin Office of Credit Unions that they take a similar stance for state-chartered credit unions.

Public Depositors and Other Credit Unions

State and federal credit unions that qualify under Wis. Stats. §34.09 may serve as public depositories. They may accept deposits from Wisconsin's state and local government units and their agencies, without the government body qualifying as a member of the credit union.

State-chartered credit unions can accept deposits from other credit unions (federal or state), without the other credit union qualifying as a member. Wis. Stats. §186.13(23). Likewise, federal credit union may offer share accounts, share drafts accounts and share certificates to other credit unions, without the other credit union qualifying as a member. Federal Credit Union Act §1757(7).

For more information, see *ii Release No. 0001, Membership*.

Unincorporated Non-Profit Associations

Sunshine clubs and bowling leagues are typical examples of informal groups formed by individuals, who join together for a certain non-profit objective. Often they have little or no formal organization. However, according to an opinion letter issued by the Wisconsin Attorney General, such organizations must have sufficient legal structure to qualify for membership in a credit union, such as articles of incorporation, bylaws, etc. 65 Op. Att'y Gen. 77 (1976).

Furthermore, as explained in the next section of this release, the credit union should have the unincorporated association provide a resolution that names the credit union as its depository and that names the representatives authorized to transact business for the association.

Without these safeguards, there is a risk that no one is properly authorized to act on the behalf of the group's other members.

Trusts

When opening an account for a trust, the credit union must take some preliminary steps to help verify that the trust was created, who the parties are, and whether it's eligible to join the credit union.

Previously, to verify that a trust was authentic, a credit union would typically ask to examine the trust instrument and keep copies of certain key pages. Under the Wisconsin Trust Code, credit unions can face liability for demanding a copy of the trust. Instead, they may insist on receiving a current "certification of trust" before opening any accounts or otherwise dealing with a trust for the first time. The certification will verify important information, such as the identity of the current trustee and the trustee's powers. Having a certification helps to protect the credit union, which can rely on it in good faith to establish accounts for trusts. The credit union must be careful, however, not to let the trustee exceed the powers that the certification describes.

For federal credit unions, the NCUA has taken the position that all parties to the trust (settlor, trustee, and beneficiaries) must be within the credit union's field of membership. Beneficiaries include contingent beneficiaries. This makes it difficult for some trusts to qualify for membership in a federal credit union.

Under the 2017 Model Bylaws (as well as the 2005 version) for state-chartered credit unions, "any trust may become a member of the Credit Union if a majority of the persons who are settlor(s), trustee(s) and beneficiary(ies) are eligible for membership in the Credit Union." It is unclear under Wisconsin law whether successor trustees and contingent trust beneficiaries must be counted.

An irrevocable trust is one that the settlor cannot revoke after creating it. A revocable living trust typically becomes irrevocable when the settlor passes away. Another common type of irrevocable trust is a trust created according to the terms in the will of the settlor. These trusts are known as testamentary trusts (as in "last will and testament"). If an irrevocable trust is a testamentary trust, its creation can only be authorized by a probate court, which issues what are called "letters of trust."

Credit unions should keep some special issues in mind when asked to open accounts for irrevocable trusts:

- Typically (but not always), the trustee of an irrevocable trust is not the same person as the beneficiary or settlor. (In many revocable living trusts, the same person(s) may often be the settlor, the trustee and a beneficiary.)
- A trust with different parties as the trustee and/or beneficiary(ies) presents increased risks for the credit union, because the beneficiary might later claim that the third-party trustee mishandled the funds and that the credit union should have known or should have prevented the misuse.
- The credit union can normally open the account using the same documentation that it would use for an ordinarily revocable living trust, such as a Business/Organization Account Ownership Agreement. We believe that credit unions can use The League's Trust – Credit Union Agreement form (WCUL form #82021) for an irrevocable trust.
- The share deposit insurance rules for trusts are found in NCUA Rules and Regulations Part 745. Do not make representations about the amount of share insurance available on a trust's account(s). Instead, give the member the NCUA pamphlet "*Your Insured Funds*," which explains the rules. You may also direct the member to the NCUA's *E-Calculator, the Electronic Share Insurance Calculator*.

Step Two: Get a Completed Depository Declaration or Trust-CU Agreement

Before an organization can join the credit union, you must have proof that those who run the organization have authorized the opening of credit union accounts. This is done using either a Depository Declaration and Agreement (WCUL form #81075) or, if the organization is a trust, the League's Trust – Credit Union Agreement (WCUL form #82021). It is unacceptable, and an invitation to fraud, to allow a person claiming to be an organization official to open an organization account on their own "say so." As a general rule, the only way to be sure that a person claiming to represent an organization is authorized to transact business at the credit union is to require one of these two documents. Never open an organization account without getting one of them.

The Depository Declaration and Agreement

It designates exactly who has the right to open an account and to make transactions on that account. It authorizes certain named individuals to do things like signing share certificates, endorsing checks, and transferring funds. It also provides specimen signatures for each authorized person. A credit union should not open an account without this form. (Please note that different types of resolutions are needed to transact other kinds of business, for example, to authorize borrowing.) Even sole proprietorships (in which a single owner operates the business, which is not a separate legal entity) must provide a completed Depository Declaration and Agreement to certify who owns the business. The completed Depository Declaration and Agreement would typically be recorded in the member organization's minute book, like any other resolution.

Criminals may forge depository resolutions in order to open accounts for bona fide businesses they are not actually authorized to represent. Therefore, it is important to confirm that the person opening the account has adequate identification. In addition you may want to verify the identities of an organization's officers, members or managers with a telephone reference.

Note that sometimes, an organization's Depository Declaration and Agreement will require more than one signature to open an account. Credit unions should take care not to accept a Depository Declaration and Agreement requiring more than one authorized signatures unless the credit union is capable of monitoring all transactions in that regard. Typically, it is impossible for a credit union to police such a requirement for checks, internet banking, debit cards, or other remote transactions. Even teller transactions have some risk of the credit union failing to enforce a dual signature requirement, and thus facing liability for an unauthorized transaction.

The League's Trust – Credit Union Agreement

If the party is a trust, this agreement identifies the trustee(s) authorized to transact business for the trust. *It is an agreement between the credit union and the trust.* It is not the same as the declaration of trust, which is the legal document that created the trust in the first place.

If the member does not have the information to fill out the Trust-Credit Union Agreement form, ask the member to have the member's lawyer complete it and return it to the credit union. Do not establish an account relationship with the trust until the form has been completed and signed. (*For more information about opening accounts for trusts, see ii Release No. 0116, "Living Trusts."*)

Have the member provide you with the names of the trustee(s), successor trustee(s), and beneficiary(ies). The names of the beneficiaries are requested to verify eligibility for membership. State law no longer requires the credit union to obtain the names of the beneficiaries. If the member does not have the information, ask the member to have the member's lawyer complete the form and return it to the credit union. Do not establish an account relationship with the trust until the form has been completed and signed.

Organizations as Trustees

Sometimes, an organization, such as a trust company, is designated as the trustee or successor trustee. This is acceptable, but special precautions need to be taken.

The credit union needs to know who, specifically, from that organization should be allowed to access the trust's accounts. Ask the organization for a corporate resolution or similar document, designating the individuals who can act for the organization and providing their specimen signatures. Otherwise, for example, any employee might ask to withdraw money from the trust's account, and the credit union could not verify if that person was really authorized to do so.

Government Entities

The Depository Declaration and Agreement is not used by government entities. The governing board of each public depositor is required to designate, by resolution, one or more qualifying financial institutions as public depositories in which the treasurer must deposit nearly all public monies. (*For more information see ii Release No. 0134, "Public Deposits."*)

Probate Estates

The Depository Declaration and Agreement is not used by probate estates. Generally, an estate is probated by a personal representative. The Probate Court or Register in Probate appoints the personal representative with a document called "domiciliary letters." The personal representative is the person authorized to transact business for the estate and to open the account.

Step Three: Comply with Customer Identification Program Rules, Conduct Customer Due Diligence and Complete a Customer Identification Card

Under U.S. Treasury Department and NCUA rules, every credit union must have a Customer Identification Program (CIP). The CIP rules require you to collect certain information from anyone who wants to open a credit union account, including organizations. You must also take steps to verify the new member's identity. Your credit union should have written policies and procedures that tell you exactly what you must do to comply with the CIP rules. If you are unfamiliar with your credit union's CIP procedures, review them before proceeding. (*For detailed information on CIP requirements, see ii Release No. 0159.*)

The League's Customer Identification Card (WCUL form #81080) is designed to simplify the CIP process. It provides fill-in-the-blanks for recording required information and checkboxes to indicate the methods you use to verify identities.

Collecting Information

CIP rules require you to collect three pieces of information when an organization asks to join the credit union:

1. The full legal name of the organization opening the account, even if the member is opening an account "doing business as" another name.
2. The street address (not Post Office box) of the principal place of business, local office or other physical location. (You must have the street address on record for CIP purposes, but you can use a P.O. Box for mailing, if that's what the organization prefers.)
3. An identification number. If the organization was established under the laws of the United States, or any one of the states, ask for a U.S. TIN, which is either a Social Security Number, an Individual Taxpayer Identification Number, or an Employer Identification Number. For foreign organizations, contact the League for additional assistance. Please note: The organization will also have to verify its TIN on the Business/Organization Account Ownership Agreement, as described below.

Verifying Identities

CIP rules require that you verify the identity of the organization, so that you have a reasonable belief that you know its true identity, before opening the account. For unincorporated associations and sole proprietors, it is necessary to verify the identity of the individual opening the account.

In fact, it may be a good idea to do CIP on authorized signers for all organization accounts. According to America's Credit Unions, "It would be a good best practice for the credit union to collect information from business account signatories since they have access to the funds in the account. ... In most cases, it has become customary for a financial institution to obtain information ... about individuals with control or authority over the business account (even signatories)."

To verify an organization's identity, you may ask to see documents showing the existence of the organization, such as certified articles of incorporation or a government-issued business license. Corporations, limited liability companies, cooperatives, religious societies, fraternal societies, veterans groups, limited partnerships and limited liability partnerships are all established by filing certain documents with the Wisconsin Department of Financial Institutions (DFI). You can check with the DFI to help verify the identities of any of these kinds of organizations.

The DFI will answer inquiries about an organization's status over the phone, from its general number: 608-261-7577. You may also determine the status online at <https://apps.dfi.wi.gov/apps/corpsearch/search.aspx> which connects you to the DFI's free Corporate Registration Information System.

If you want written confirmation of a corporation's status, request a "certificate of status" from the DFI. This certificate is sometimes referred to as a "certificate of existence" or "certificate of good standing" and is available for a nominal sum. To make the request, visit the DFI website at <https://apps.dfi.wi.gov/apps/ccs> and follow the links to fill out a Form SP-48. Credit card payments are accepted for this service. The same form can be used to request certified copies of articles of incorporation/organization and other documents from the DFI online.

You may obtain a copy of an entity's annual report by submitting a letter request. (Not all organizations are required to file annual reports with DFI, however.) Check with the DFI for current service fees. Address the request to

Department of Financial Institutions
Division of Corporate & Consumer Services
P.O. Box 7846
Madison Wisconsin 53707-7846

Identification documents, including those issued by the government, may be obtained illegally and may be fraudulent. So, credit unions are encouraged to verify an organization's identity in other ways, even when a customer has provided original documents. For example: by contacting a member/customer at their place of business; by comparing information the organization gives you with information obtained from a consumer reporting agency, public database, or other source; by checking references with other financial institutions; and by obtaining a financial statement.

Probate estates & CIP

As for any organization, the credit union would normally conduct CIP on the probate estate itself, to verify that it actually exists. The credit union may verify a Wisconsin probate estate's existence by obtaining (from the personal representative) a copy of the estate's "domiciliary letters," file-stamped by the probate court. (The probate court or

Register in Probate appoints the personal representative with a document called “domiciliary letters.” This document gives the personal representative official authority to perform his or her duties.)

Probate estates will not appear on the DFI Corporate Registration Information System, mentioned earlier in this release. Instead, to help verify the authenticity of the domiciliary letters, search for the estate by name or by case number on the *Circuit Court Access Program (CCAP)*; however, not all counties list probate cases on CCAP. If you have questions about the existence of the probate estate case, whether the personal representative’s appointment has been revoked, etc., contact the Clerk of the Probate Court in the appropriate county.

The credit union may perform CIP on the personal representative, as well as the probate estate itself. CIP may be prudent for any authorized signer on an organization account. Only the personal representative is authorized to make transactions for a probate estate. He/she cannot delegate that authority to other authorized signers who are not court-appointed.

Marijuana-related businesses

If the credit union serves marijuana-related businesses, see the special guidance from FinCEN in *FIN-2014-G001 BSA Expectations Regarding Marijuana-Related Businesses (February 14, 2014)*. A portion of that guidance is reprinted in *Exhibit A - Filing suspicious activity reports on marijuana-related businesses* in ii Release No. 0109. *FIN-2014-G001* also includes FinCEN’s due diligence considerations and red flags for financial institutions serving marijuana-related businesses. The special guidance is necessary because production, sale, and possession of marijuana, even medical marijuana is a crime under federal law, regardless of whether it is legal under state law.

Make no mistake: marijuana is currently illegal under Wisconsin law - including medical marijuana.

Hemp and CBD can be legal - if the current requirements under state and federal law are met. If the credit union services hemp or CBD businesses, it is advisable to be prepared (policies, training, and procedures) to comply with FinCEN’s marijuana-related business guidance. The credit union could encounter products that don’t qualify as legal hemp or CBD, so are viewed as marijuana under state and/or federal laws. Due diligence is required.

FIN-2014-G001 includes this guidance on due diligence:

Providing Financial Services to Marijuana-Related Businesses

This FinCEN guidance clarifies how financial institutions can provide services to marijuana-related businesses consistent with their BSA obligations. In general, the decision to open, close, or refuse any particular account or relationship should be made by each financial institution based on a number of factors specific to that institution. These factors may include its particular business objectives, an evaluation of the risks associated with offering a particular product or service, and its capacity to manage those risks effectively. Thorough customer due diligence is a critical aspect of making this assessment.

In assessing the risk of providing services to a marijuana-related business, a financial institution should conduct customer due diligence that includes: (i) verifying with the appropriate state authorities whether the business is duly licensed and registered; (ii) reviewing the license application (and related documentation) submitted by the business for obtaining a state license to operate its marijuana-related business; (iii) requesting from state licensing and enforcement authorities available information about the business and related parties; (iv) 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); (v) ongoing monitoring of publicly available sources for adverse information about the business and related parties; (vi) ongoing monitoring for suspicious activity, including for any of the red flags described in this guidance; and (vii) refreshing information obtained as part of customer due diligence on a periodic basis and commensurate with the risk. With respect to information regarding state licensure obtained in connection with such customer due diligence, a financial institution may reasonably rely on the accuracy of information provided by state licensing authorities, where states make such information available.

As part of its customer due diligence, a financial institution should consider whether a marijuana-related business implicates one of the Cole Memo priorities or violates state law. This is a particularly important factor for a financial institution to consider when assessing the risk of providing financial services to a marijuana-related business. Considering this factor also enables the financial institution to provide information in BSA reports pertinent to law enforcement’s priorities. A financial institution that decides to provide financial services to a marijuana-related business would be required to file suspicious activity reports (“SARs”) as described below.

Please see the full text of *FIN-2014-G001 BSA Expectations Regarding Marijuana-Related Businesses* for additional guidance on such topics as:

- Marijuana laws and law enforcement priorities (the "Cole Memo" priorities);
- Filing suspicious activity reports on marijuana-related businesses, and red flags to distinguish priority SARs; and
- Currency Transaction Reports.

Customer Due Diligence

FinCEN's Bank Secrecy Act / Anti-Money Laundering regulations require credit unions and other covered institutions (including banks) to have written, risk-based Customer Due Diligence (CDD) procedures as part of their BSA/AML compliance programs. Compliance is mandatory as of May 11, 2018.

For complete details on the CDD requirements, please see The League's *ii Release No. 0159*.

There are two aspects to the FinCEN's CDD requirements:

One aspect of the CDD rules requires risk-based procedures for conducting ongoing CDD 1) to understand the nature and purpose of member/customer relationships to develop a member/customer risk profile; and 2) to conduct ongoing monitoring for suspicious transactions and, on a risk adjusted basis, maintain and update member/customer information. This applied to organization accounts, as any other accounts.

Another aspect of the CDD rules requires credit unions to have written procedures to identify "beneficial owners" – the people who own and control "legal entity customers" – organizations opening credit union accounts. Credit unions then must verify the identities of those beneficial owners. Additionally, credit unions must establish procedures for making and maintaining a record of all of the identification and verification information collected. These steps are crucial for opening organization accounts.

CDD beneficial ownership rules

These CDD rules only apply to "legal entity customers," a term that is defined to mean "a corporation, limited liability company, or other entity that is created by the filing of a public document with the Secretary of State or similar office, a general partnership, and any similar entity formed under the laws of a foreign jurisdiction that opens an account." In other words, the CDD beneficial owner rules apply to most organizations.

However, the definition does not include sole proprietorships, unincorporated associations (such as, scout troops and youth sports leagues), or natural persons opening accounts on their own behalf. The definition also exempts certain types of organizations, such as departments or agencies of federal, state or local government, or businesses whose common stock is listed on one of the stock exchanges. See The League's *ii Release No. 0159* for details on which organizations these CDD rules cover, including when they may apply to certain kinds of trusts.

Whenever a "legal entity customer" opens an account – including a new sub-account if the organization is an existing member – the credit union must identify the organization's "beneficial owners." The CDD rules have a two-pronged definition of "beneficial owner," with an ownership prong and a control prong. The same person(s) may be identified under both prongs.

A credit union can identify the beneficial owners of an organization in several ways. Most credit unions will ask the person signing the account to provide a "Certification of Beneficial Owner(s) – a standard form that is included in the CDD rules. A copy of that form, with FinCEN's instructions, is attached as an exhibit to The League's *ii Release No. 0159*.

After identifying an organization's "beneficial owners," the credit union must verify each of their identities. Generally, this means that the credit union must subject each beneficial owner to CIP. However, a credit union's CDD procedures for verifying the identities of beneficial owners do not have to be identical to its CIP procedures. For example, the credit union can obtain personally identifying information about each beneficial owner from the organization (not necessarily from the owners directly) as long as it has no reason to doubt that the information is reliable. Also, the credit union can use photocopies or other reproductions of the documents.

Credit unions must have procedures for making and maintaining a record of all of the identification and verification information collected in the CDD process, and the records must be retained for certain lengths of time.

Unlawful Internet Gambling diligence requirements

The Federal Reserve's Reg. GG implements the federal Unlawful Internet Gambling Enforcement Act (UIGEA). It calls for some extra due diligence to determine whether a business asking to open an account may be involved in Internet gambling. If so, steps are to be taken to verify that the business is lawful, and appropriate responses should be made if it is not. Stopping unlawful Internet gambling businesses from opening accounts in the first place prevents them from engaging in unlawful transactions.

Credit unions should incorporate Reg. GG material into their procedures for account opening. For details on Reg. GG compliance, see The League's *ii Release No. 0177*, which includes sample Reg. GG due diligence procedures.

Extra Precautions

It is less simple to verify the identities of certain types of organizations. Because of the risk of fraud, you should take extra precautions with these types of organizations:

Sole Proprietorships and Unincorporated Associations: Fraud is a major concern when these types of organizations open accounts, but often they have no documentary evidence of their existence. Sole proprietors are not required to register with the DFI. Unincorporated associations may (but do not have to) file papers with the DFI to appoint agents for accepting service of legal process. They may also record "statements of authority" with the local register of deeds to participate in real estate transactions. CIP rules require you to verify the identity of the individual opening the account and anyone else with the authority or control over the account. The credit union also should try to verify the existence of the business by:

- Calling the telephone number for the business;
- Calling city or state offices to verify licenses or permits;
- Checking other banking and credit references; or
- Consulting city directories.
- *General Partnerships:* Verify the existence of a general partnership by seeing the partnership agreement (though written agreements are not required to create a general partnership) or in the same manner you verify the existence of a sole proprietorship. General partnerships are not required to register with the DFI. If there are no documents or non-documentary methods that will establish the identity of the partnership, obtain information about the identity of any individual with authority or control over the partnership account, in order to verify the partnership's identity

Step Four: Complete an Business/Organization Account Ownership Agreement (WCUL form #81057)

An Business/Organization Account Ownership Agreement does several things. It designates the organization as the owner of the account, certifies the organization's TIN, and records the various disclosures given to the organization when the account is opened. (Note: If a member organization opens multiple accounts, a separate account ownership agreement card must be used for each separate "sub-account.")

Sole Owner, Without Survivorship Features

An organization will have to open its accounts under its own name – not the name of its individual owner(s). However, for sole proprietors, the account ownership agreement must show the member/owner's individual name, not business name.

Any organization may also indicate that it is doing business under an assumed name. For example, a sole proprietor might open an account as "John Doe, d/b/a Expert Roofing" or a corporation might indicate "ABC Corp., d/b/a Quick Lube." Never use the trade name alone to identify the organization on credit union documents. An organization may (but does not have to) file a statement with the county Register of Deeds regarding use of an assumed business name, or it can register a trade name with the Wisconsin Secretary of State. Simply registering the name, however, is not the same as forming a corporation or other type of organization.

The organization's legal name is shown on its charter, articles of incorporation, or other legal documents that created the organization. (Please refer to the previous section of this release for information on how to obtain these documents from the DFI.) Credit unions may want to retain copies of the documents in their files. Wisconsin law requires some types of organizations to have certain terms in their names, and these should be included on account documents. These terms are listed in Exhibit C.

Be careful to name the organization, and only the organization, as the account's sole owner. Rarely would an organization actually want to title an account jointly with another party. Unless the organization specifically requests otherwise, name only the organization as the account's sole owner on the Business/Organization Account Ownership Agreement.

It is inappropriate to use POD, IRA, joint account or any other right of survivorship features on an organization account. This is because organizations, including trusts, are not living people. They are separate entities, legally distinct from their owners, and they do not experience “death.”

There is one exception to this rule: Sole proprietorships may designate POD beneficiaries. This is allowed because sole proprietorships, unlike other organizations, are not separate legal entities. In a sole proprietorship, the owner is the business. Sole proprietorships terminate when the owner dies. If a POD form of Ownership box was checked on the front of the sole proprietorship’s Business/Organization Account Ownership Agreement card, then insert the full legal name(s) of the POD beneficiary(ies) on the back of the card. For each beneficiary, identify the beneficiary’s relationship to the sole proprietor. Remember that a POD beneficiary is not an account owner and has no rights in regard to the account until the sole proprietor dies. (*See ii Releases 0002 and 0004 for more information on POD beneficiaries.*) The form cautions account holders to “consult an attorney before naming minors as P.O.D. beneficiaries.” See *ii Release No. 0004* for more information about minors as POD beneficiaries, including suggested language that might be used on a credit union-created addendum page to the Account Ownership Agreement to name a custodian for the minor’s funds under the Wisconsin Uniform Transfers to Minors Act.

An organization identifies the people who are authorized to transact business on the account by completing either a Depository Declaration and Agreement or a Trust – Credit Union Agreement. Misunderstanding this, some credit unions list the names of an organization’s authorized agents as joint owners on account agreements. This should never be done; it would give those individuals personal ownership rights in the account, and that is not something an organization ordinarily intends to do. In addition, this would require the account to be closed and a new account opened every time the authorized agents changed. Instead, name the organization as the sole owner on the Business/Organization Account Ownership Agreement. If the organization later wants to add or change the names and/or titles of people who are authorized to transact business on the account, have it complete a new Depository Declaration and Agreement at that time.

Probate Estates: A personal representative may wish to open an estate account (a checking account, savings account, or both) at the credit union. The estate should be treated like an organization, with the account held in the estate’s name. It should be titled similar to:

Estate of John A. Doe
Jane P. Doe, Personal Representative

The exact language used in the first line must match the precise name in which the estate obtained its Employer Identification Number from the IRS.

Trusts: Trusts are organizations and are legally separate from the individuals who open accounts for the trust or who will be the trust’s beneficiaries or trustees. Therefore, trust accounts are held in the name of the trust, not the name of any individual member. (*For more information, see ii Release No. 0116, “Living Trusts.”*) If an attorney helped your member establish the trust, the attorney ordinarily will provide instructions on how the account should be titled.

Certifying Taxpayer Identification Numbers

You have probably already obtained the organization’s TIN as part of your CIP procedures. However, an organization, when opening an account, will also have to certify that it has provided the credit union with its correct TIN. The League’s Business/Organization Account Ownership Agreement contains the required certification. In the alternative, IRS form W-9 may be used. The organization’s TIN will be either a SSN or an EIN. For information on which numbers various types of TINs that organizations use, see Exhibit E.

Saver’s Sweepstakes accounts

Saver’s Sweepstakes is The League’s prize-linked savings program. Only individuals may hold Saver’s Sweepstakes accounts. Businesses, estates, trusts, organizations, any other public or private entities, unincorporated associations, and/or others holding the account primarily for non-consumer purposes (including sole proprietors), are not eligible to participate in Saver’s Sweepstakes, either as primary account holders or as joint account holders. This limitation is spelled out in the Saver’s Sweepstakes Account Agreement. For details, see *The League’s ii Release No. 0184 – “Saver’s Sweepstakes™ Compliance FAQs.”*

Step Five: Provide the Account Agreement Brochure and Disclosures

Various regulations require that disclosures be given to organizations when they open credit union accounts. The following must be given out before the Business/Organization Account Ownership Agreement card is signed. They are for the account owner to keep.

The League provides credit unions with the choice of two brochures: *Your Account Agreement, with Arbitration Agreement* (#83005) or *Your Account Agreement*, (#83006, replacing #82004). Either one serves as the contract for all types of accounts. It must be provided whenever a Business/Organization Account Ownership Agreement card is signed, even if the card is only for a sub-account. If the credit union has developed its own supplement to provide for any special terms, that must be provided to the organization, as well.

A Funds Availability Disclosure is generally required for all demand deposit, share draft, checking or NOW accounts, whether held by individual consumers or organizations. For organization accounts, the credit union can use the same funds availability policy it provides for personal accounts, or it can develop a separate policy -- provided it complies with funds availability regulations. (See ii Release No. 100 for more information about Funds Availability Disclosures.)

The League provides a Funds Transfer Agreement and Notice (WCUL form #81043), which covers certain transfers of funds by wire transfers, automated clearinghouse transactions, etc. (See ii Release No. 0127 for more information about the Funds Transfers Agreement & Notice.)

The credit union's schedule of rates and fees should be provided. If your fee and rate schedule incorporates other disclosures, such as Truth in Savings, giving the organization these disclosures may bind you to certain practices and procedures that would not apply to a business account ordinarily (as explained below).

Consumer Disclosures

Certain regulations, including Reg. E (Electronic Funds Transfers) and CFPB privacy rules (12 CFR 1016) apply only to individual consumers, not to business accounts. So Truth In Savings (TIS), Electronic Funds Transfers (EFT) and privacy disclosures are not required for organization accounts. Giving the organization these disclosures may bind you to certain practices and procedures that would not apply to a business account ordinarily. However, depending upon your credit union's policies and business practices, you may still wish to provide these disclosures. Or, the credit union can develop and use a substitute contract agreed upon by the organization.

Accounts held by sole proprietors, trusts, probate estates, and unincorporated groups can bear a strong resemblance to individual accounts, but most consumer protection laws do not apply to these accounts because they are not owned by a "natural person" or because they are used for business and not consumer purposes. Accordingly, NCUA staff says that Truth in Savings does not apply to sole proprietors, trusts opened under a formal written trust agreement, probate estates, and unincorporated non-business associations. (NCUA Rules and Regs., Appendix C, §707.2.)

Explain transfer limits

Disclose any transfer limitations at account opening. For example, Reg. D previously imposed limits on the number of transfers permitted from a savings or money market account, and this included business accounts. In 2020, the Federal Reserve Board issued an interim final rule to amend the regulation, deleting the six-per-month limit on convenient transfers from the "savings deposit" definition. The interim final rule permits depository institutions to suspend enforcement of the six-transfer limit, but it does not require depository institutions to do so. If the credit union chooses to continue restricting certain convenient transfers, its business account disclosures must address this.

TRUST ACCOUNTS FOR ATTORNEYS, REAL ESTATE BROKERS, AND COLLECTION AGENCIES

Wisconsin statutes allow credit unions to maintain real estate broker trust accounts (under Wis. Stats. § 452.13) for brokers who are eligible for membership in the credit union; attorney trust accounts (under Wis. Stats. § 757.293) for attorneys who are eligible for membership in the credit union; and collection agency trust accounts (under Wis. Stats. § 218.04 (9g)) for persons who are eligible for membership in the credit union.

IOLTA "and other similar escrow accounts" have federal share insurance coverage through the National Credit Union Share Insurance Fund "if the attorney administering the IOLTA or the escrow agent administering the escrow account is a member of the insured credit union in which the funds are held." For details, see The League's ii Release No. 0176 – "Client Trust Accounts for Attorneys and Others."

SHARE CERTIFICATES

The WCUL share certificate may be issued to an organization. You should modify and complete the certificate in the following manner:

- Where the certificate asks for the name of the account owner, include the full legal name of the organization.

- The member's signature line should include both the name of the organization and the signature of a person authorized to sign on its behalf. For example, "ABC Corp. by John Smith, President."
- Check the box to indicate the certificate is solely owned. It is inappropriate to use POD or other survivorship features, since an organization is not a natural person and does not "die." (Sole proprietors are an exception.)

SHARE INSURANCE

Great care should be taken not to make representations to members about share insurance coverage. Do not make representations about the amount of share insurance available on a trust's account(s). Instead, give the member the NCUA pamphlet "*Your Insured Funds*," which explains the rules. You may also direct the member to the NCUA's *E-Calculator, the Electronic Share Insurance Calculator*.

SHARE DRAFT ACCOUNTS

An organization can hold a share draft account, and credit unions can pay dividends on checking accounts of member organizations. The name of the organization, not any individual owner, is normally imprinted on the share drafts. The law does not require that the name of the depositor as it appears in the title of the account also appear on the face of the check. However, virtually all checks used today are in personalized form that identifies the person (or organization) on whose account the check is drawn. This is standard practice. Credit unions can simplify their jobs by insisting that the same proper name appear consistently on all of an organization's account documents, even checks.

In fact, the people who are authorized to sign checks for an organization may have been advised by their attorney to insist that the checks show the organization's name. Otherwise, an individual signing a company check could be personally liable for that check. Under the Uniform Commercial Code, an organization's agent will not be personally liable for a check (s)he signs, even if (s)he forgets to add a title or other indication that (s)he is the organization's agent (e.g., "John Smith, Treasurer"), if the check shows the name of the organization. Wis. Stats. §403.402(3). Organizations might consider having their name printed above the signature line, having the signature line preceded with the printed word "by," and having words such as "authorized signature" printed immediately underneath the signature line. Alternatively, signers can note their title and sign in their capacity as authorized persons. For example, "John Smith, Trustee, Smith Family Trust" or "Jane Smith, General Partner, ABC Limited Partnership."

Only people authorized by the Depository Declaration and Agreement or the Trust – Credit Union Agreement can sign checks on the organization's behalf. A credit union faces possible liability if it pays a check that is signed by an unauthorized person or is otherwise signed in excess of the authority given the signer. Therefore, think twice before accepting any special restrictions on the authorizations contained in the Depository Declaration and Agreement. For example, an organization may want to require two or more signatures on checks, or it may ask that multiple signatures be required on checks of more than a certain dollar amount. You can, and usually should, deny such requests. Otherwise, the credit union is contractually bound to honor the requirement, a task that has become increasingly difficult with highly automated check-processing systems.

Trusts

Members who are transferring assets to trusts often balk at the suggestion that they have checks imprinted with the trust's name or that they sign checks "as trustee." As explained above, there is no legal requirement that the name of the depositor as it appears in the title of the account also appear on the face of the check. But there are reasons a credit union will want the trust name imprinted on checks and will want the trustee to sign checks "as trustee."

First, this provides the credit union with some liability protection. Wis. Stats. §112.01(8) provides that a when a trustee deposits money into a trust account (as opposed to the trustee's personal account), if the credit union pays those funds out "upon the check of the [trustee] signed with the name in which such deposit is entered" – in other words, signed by the trustee in his capacity as trustee – then the credit union will not be liable to the trust unless it pays the check with actual knowledge that the trustee is committing a breach of his obligation or with knowledge of such facts that its action in paying the check amounts to bad faith. There is no similar protection under Chapter 112 for the credit union if it pays the amount of the deposit upon a check of the trustee which is not signed with the name in which the deposit was entered.

Second, drafts imprinted with only the name of the trustee, as opposed to the name of the trust, may expose the credit union to risk if the trustee resigns or amends the trust agreement and fails to inform the credit union of the change.

Finally, credit unions can simplify their jobs by insisting that the same proper name appear consistently on all of the trust's account documents, even checks.

If the credit union grants the trustee's request not to include the name of the trust or title of the trustee on the check, the credit union should at least consider requesting an indemnification and hold-harmless agreement from the settlor(s) and/or trustee(s) in their individual capacities.

TRANSACTIONS ON TRUST ACCOUNTS

The most basic rule for handling trust accounts is this: Only the named trustees (or a successor trustee) – who should be identified on the current certification of trust – can transact business on an account owned by a trust. For that reason, credit unions must be careful about how trust accounts are accessed. Credit unions may want to flag trust accounts (revocable or irrevocable) or use other safeguards, such as supervisor lockouts, to help ensure that only the authorized trustee can make transactions on the account.

As explained earlier in this release, a credit union acting in good faith may presume that the trustee is acting within his/her authority – as long as it has no knowledge that the trustee is exceeding or improperly exercising the trustee's powers. Wis. Stats. §701.1012. If the credit union has obtained a certification of trust, it should not allow the trustee to exceed the powers listed.

For more detailed guidance on trusts, see The League's *ii Release No. 0116*. That release also covers the issues that can arise when a trust is involved in credit union lending – both when a credit union has existing loans and when a trustee applies for a new loan. That release also addresses how creditors may (or may not) be able to access trust assets to collect on debts owed by trust settlors, beneficiaries, trustees, and trust parties who pass away.

ADDING AUTHORIZED SIGNERS; HANDLING NAME CHANGES

There are a few important points to keep in mind whenever an organization wants to add authorized signers to its accounts, or when an organization changes its name:

- If the organization changes its name or restructures as a different type of entity (e.g., if a partnership decides to incorporate) then a new Business/Organization Account Ownership Agreement must be completed, because the ownership of the account has changed. A new Depository Agreement and Declaration must be completed, as well, so the new organization can designate who it is authorizing to transact business on its accounts.
- If the organization wants to add or change names and/or titles of people who are authorized to transact business on the account, the normal procedure is to complete a new Depository Declaration and Agreement. The authorized person provision – like a power of attorney – can be revoked by the organization at any time. The organization may delete a name or title from the list of Authorized Persons simply by providing written notice to the credit union, but the organization should complete a new Depository Declaration and Agreement as soon as possible. Be careful to document any revocation of an authorized person's authority, and be aware that the signer might still have checks even though (s)he is no longer authorized to sign them.
- When changing Authorized Persons with a new Depository Declaration and Agreement, you would normally prepare a new Business/Organization Account Ownership Agreement card, as well.
- Consider whether the changes to authorized signers indicates a possible change in the ownership or control of the organization. If so, this may require the credit union to update its Customer Due Diligence (CDD) "beneficial owner" information. We explain the CDD rules in The League's *ii Release No. 0159*. The Release includes this quote from the supplementary information that accompanied the publication of the CDD rules:

When a financial institution detects information (including a change in beneficial ownership information) about the customer in the course of its normal monitoring that is relevant to assessing or reevaluating the risk posed by the customer, it must update the customer information, including beneficial ownership information. Such information could include, e.g., ... information indicating a possible change in the customer's beneficial ownership, because such information could also be relevant to assessing the risk posed by the customer.

This provision does not impose a categorical requirement that financial institutions must update customer information, including beneficial ownership information, on a continuous or periodic basis. Rather, the updating requirement is event driven, and occurs as a result of normal monitoring.

- Attach all Depository Declaration and Agreement forms to the Membership Application card and the Business/Organization Account Ownership Agreement. It may be prudent to archive old versions of the organization's Depository Declaration and Agreement as new ones are completed. In this way you will maintain a history of who has been authorized to transact business on the account.

- As a general rule, it is risky to allow anyone to transact business for an organization based only upon a power of attorney. Instead, the organization should fill out a new Depository Declaration and Agreement, appointing the additional person as an authorized signer. Subject to some limits, a general POA (which authorizes the POA agent to anything the principal could do) gives the agent general authority “with respect to operation of an entity of business.” The agent could do things like sell the principal’s ownership interest in the business. (Wis. Stats. §244.49.) However, it is doubtful that this gives a POA agent the right to access an organization’s account, even if the POA principal is an authorized signer on that account.
- If the POA principal was the sole owner of the business, the Wisconsin POA statutes (Wis. Stats. §244.49(7)) give the POA agent additional authority, including the right to “demand and receive money due or claimed by the principal or on the principal’s behalf in the operation of the entity or business...” Credit unions may consult with their own attorneys if a POA agent claims that the POA authorizes him to access the accounts of a business that was solely owned by the POA principal.

LOSS PREVENTION AND ORGANIZATION CHECKS

Fraud and embezzlement are major concerns anytime a check made payable to an organization is presented to the credit union. It is not uncommon for unscrupulous employees to forge endorsements, attempt to cash company checks, or divert organization funds to their own personal accounts. These basic rules are commonly followed at financial institutions to reduce the risk of liability when presented with checks that are payable to an organization:

- Checks payable to an organization should be deposited, in full, into the organization’s account.
 - *No split deposits; no endorsements to third parties (not even owners).*
- Cash back should not be allowed on split deposits of checks payable to an organization.
- Checks payable to an organization should not be cashed over the counter.
- Checks payable to an organization should not be deposited into personal accounts.

These rules would apply whether or not the person presenting the check is authorized to transact business on the organization’s account. A person’s authority to endorse checks for an organization does not mean they have authority to cash checks or to deposit checks to their own personal accounts.

These rules apply even to sole proprietors doing business under a trade name. If the member provides a Depository Declaration and Agreement for the sole proprietorship, an account can be titled with both the individual’s and the business’ name – for example, “Sue Smith, d/b/a Candle Creations.” Then, checks payable to the business can be deposited into the account. But without the Depository Declaration and Agreement, the credit union has only the member’s verbal assurance that he/she is, indeed, the business’ sole owner, and may not overcome the risk involved.

If an authorized signer on the account wants to cash the check, a deposit and separate withdrawal may be permitted, subject to the credit union’s funds availability policy. Withdrawals would be allowed only by authorized persons listed on the organization’s most recent Depository Declaration and Agreement.

By requiring checks to be run through the organization’s account, unauthorized activity is much more likely to come to the attention of the organization’s accountants and management. If fraud does occur, the procedures may help to shift liability away from the credit union.

Such practices are required by standard banking procedures. The Uniform Commercial Code provides that a depository bank is not liable for conversion, except for proceeds remaining in its hands, when it pays an instrument with a forged endorsement if it has acted in good faith and in accordance with reasonable commercial standards. Wis. Stat. 403.419. Thus, standard banking practices are taken into consideration by the courts when determining liability for account fraud.

The majority of courts have held that a depository bank fails to cash a check in accordance with reasonable commercial standards when it permits, without an inquiry, an individual to cash a check made payable to a corporate payee and then to deposit the money into his personal account. (*For more information, see ii Release 0133, “Check Fraud – a Guide to Avoiding Losses.”*)

In conclusion, credit unions may adopt a policy for tellers similar to the following:

- Checks made payable to corporations and other organizations must be deposited to the organization payee’s account.
- They may not be cashed.
- They may not be deposited to personal accounts, even with what appears to be a proper endorsement.

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League publications are designed to provide accurate information with regard to the subject matter covered, with the understanding that The League does not render legal services. If you have general questions regarding this release, please call The League at (608) 640-4050 if local or (800) 242-0833. For specific legal advice, please consult your credit union's attorney.

Legal Affairs Department

PEG/jb

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EXHIBIT A - LOSS PREVENTION CHECKLIST FOR ORGANIZATION ACCOUNTS

Membership

- ☐ Verify an organization's eligibility for membership in the credit union.
- ☐ Complete a Membership Application Card (WCUL form #81056).

Verifying Identities

- ☐ Follow your credit union's Customer Identification procedures. You will have to gather certain information to identify the organization opening the account. You will also have to verify the organization's identity by reviewing documents or through non-documentary means. Use the League's Customer Identification Card (WCUL form #81080) to record CIP information.
- ☐ Ask for references to the extent necessary to confirm the legitimacy of the organization, and/or check past banking relationships, clients, vendors, and drawers of checks payable to the organization.
- ☐ Verify that the organization is at the address provided. Check telephone or city directories, drive by the building, mail a welcome letter to the address and see if it is returned, etc. Watch out for mail-drop addresses.

Opening Accounts

- ☐ Open organization accounts using a Business/Organization Account Ownership Agreement (WCUL form # 81057) and either a Depository Declaration and Agreement (WCUL form #81075) or, if the organization is a trust, the League's Trust – Credit Union Agreement (WCUL form #82021).
- ☐ Do not use payable on death or other survivorship features on accounts, except for sole proprietorships.
- ☐ Identify the organization, by its proper legal name, as the sole owner of its accounts.
- ☐ Watch for discrepancies in an organization's name; especially on new accounts. It may be an innocent error; or it may be an indicator of fraud, such as a legitimate check payable to "First Wisconsin" being fraudulently deposited into an account titled "First Wisconsin Homes."

Disclosures

- ☐ When opening accounts, including sub-accounts, provide the League's brochure "Your Account Ownership Agreement," (WCUL form #82004) and all required disclosures.
- ☐ Provide consumer disclosures per credit union policy.
- ☐ Provide the NCUA pamphlet "Your Insured Funds" on request.
- ☐ Insist upon, or at least strongly encourage, all organizations, including living trusts, to have their organization's proper name imprinted on its checks. If not, ask them to indemnify the credit union.

Depository Declarations

- ☐ Require a new Depository Declaration and Agreement when asked to add or replace a name on the list of authorized representatives, unless the Depository Declaration and Agreement authorizes signers only by title. In that case, the organization's secretary must certify changes in personnel.
- ☐ When changing Authorized Persons with a new Depository Declaration and Agreement, you should prepare a new Business/Organization Account Ownership Agreement card, as well.
- ☐ As a general rule, do not allow the use of power of attorney as authorization for anyone to transact business on an organization account.
- ☐ Require a new Business/Organization Account Ownership Agreement and a new Depository Declaration and Agreement when an organization changes names or restructures (e.g., if a partnership decides to incorporate).
- ☐ Do not allow anyone not authorized on the most recent Depository Declaration and Agreement or Trust – Credit Union Agreement to transact business for an organization.

Handling Checks

- ☐ Never cash checks payable to an organization over the counter.
- ☐ Require deposit, in full, into the organization account, then permit a separate withdrawal.
- ☐ Do not allow cash back on split deposits.
- ☐ Do not accept checks payable to an organization but endorsed over to a third party, sole owner or partner.

EXHIBIT B - TYPES OF ORGANIZATIONS

The following section summarizes the characteristics of the organizations that credit unions are most likely to encounter.

Business Corporations

As the name implies, business corporations typically are for-profit businesses. They are owned by shareholders, who invest in the corporation by buying stock. Large, publicly traded companies can be owned by shareholders from around the world. But many corporations are privately owned. A corporation might have just one shareholder or a small group of shareholders, such as a family. Regardless of the number of owners, corporations are separate legal entities, distinct from their owners. Shareholders generally are not liable for the corporation's debts or liabilities; the debts and obligations of the business can only be paid from its income and assets.

Wisconsin corporations are formed by filing articles of incorporation with the DFI. Corporations must file annual reports, as well.

A board of directors directs the affairs of the corporation. The corporation's officers manage day-to-day operations, subject to the board's supervision. Corporate officers can bind the corporation when exercising the authority granted to them by the bylaws of the corporation or by resolution of the board. A Wisconsin corporation must have at least one director. Wisconsin does not require a corporation to have specific officers, but most corporations have at least a president and a secretary. A person may hold more than one office. A corporation cannot "die;" its existence is perpetual. (Wis. Stats. Chap. 180.)

There are certain special categories of business corporations:

- A "statutory close corporation" has 50 or fewer shareholders and is subject to certain special statutes designed to simplify its operations. For example, it may choose not to have a board of directors. (Wis. Stats. §180.1801.)
- A "service corporation" may be organized and owned only by people who are licensed, certified or registered in the same profession under Wisconsin Statutes, such as health care professionals. In general, a shareholder, director, officer or employee of a service corporation is not personally liable for the debts or other liabilities of the service corporation, though (s)he remains liable for his/her own negligence or malpractice. (Wis. Stats. §180.1901.)
- The terms "C corporation" or "S corporation" refer to subsections of the Internal Revenue Code signifying the federal tax status of a business corporation.

Non-Stock Corporations

Wisconsin's non-stock corporation law (Wis. Stats. Chap. 181) parallels the law for business corporations. The difference is that a non-stock corporation has no shareholders. It may or may not have members. (If it does, then they have membership rights in accordance with its articles of incorporation or bylaws.) It must have directors. Non-stock corporations are the preferred form of incorporation for non-profit entities – from small volunteer groups to large hospitals – and other organizations where individual ownership is not desired. Members generally are not liable for the corporation's debts or liabilities. The Wisconsin statutes also protect directors, officers, and volunteers of non-stock corporations from liability. A Wisconsin non-stock corporation is formed by filing articles of incorporation with the DFI.

General Partnerships

There are several types of partnerships. The most common is a general partnership. (Two other types – limited partnerships and limited liability partnerships – are discussed below.) Under Wisconsin statutes, a partnership is an association of two or more partners (which can be people or other organizations) to carry on as co-owners a business for profit. (Wis. Stats. Chap. 178.) No DFI filing is required to form a general partnership. Partnerships may have written agreements to spell out partners' rights and duties.

A partnership is a separate legal entity, distinct from its owners. However, each partner generally has unlimited personal liability for all the debts and obligations of the business. Each partner is an agent of the partnership for the purpose of its business, meaning that an act of a partner, including the signing of a document in the partnership's name, for apparently carrying on in the ordinary course the partnership's business, binds the partnership (unless the party the partner was dealing with knew or had notice that the partner lacked authority). A partnership may file a statement of authority with DFI that identifies which positions or specific people can bind the partnership. This statement also can identify the limitations of authority of certain positions or specific people within the partnership. Also, each partner can participate in the control of the business. General partnerships have great flexibility in how they allocate the rights and responsibilities of the partners (including management and control).

Limited Partnerships

A limited partnership is formed by filing a certificate of limited partnership with the DFI. It must have two or more partners (which can be people or other organizations). At least one partner will be a general partner, and at least one partner will be a limited partner. General partners manage and control the business of the limited partnership, and they have unlimited personal liability for its debts and liabilities. Limited partners, on the other hand, are not liable for the debts and liabilities of the limited partnership beyond the amount that they have contributed to it – even if they participate in the management and control of the limited partnership.

Each general partner is an agent of the limited partnership for the purposes of its activities and affairs, meaning that an act of a general partner, including the signing of a document in the partnership’s name, for apparently carrying on in the ordinary course the partnership’s activities and affairs binds the partnership (unless the party the partner was dealing with knew or had notice that the partner lacked authority).

If the limited partnership agreement provides for it, limited partners can have certain limited management and control rights, such as the right to approve specific kinds of transactions. (Wis. Stats. Chap. 179.)

Limited Liability Partnerships (LLPs)

An LLP is a type of general partnership, but it substantially limits the partners’ personal liability. Each partner is liable only for the debts and obligations arising from his/her own acts or omissions or those of individuals acting under his/her supervision. The debts and obligations of the business can only be paid from its income and assets. A limited liability partnership is formed by filing a “statement of qualification” with the DFI. Once organized, there is no requirement that an LLP have a written partnership agreement. (Wis. Stats. Chap. 178.)

As with general partnerships, each partner in an LLP is an agent of the partnership for the purpose of its business, meaning that an act of a partner, including the signing of a document in the partnership’s name, for apparently carrying on in the ordinary course the partnership’s business, binds the partnership (unless the party the partner was dealing with knew or had notice that the partner lacked authority). An LLP may file a statement of authority with DFI that identifies which positions or specific people can bind the LLP. This statement also can identify the limitations of authority of certain positions or specific people within the LLP.

Limited Liability Companies (LLCs)

LLCs are formed by filing articles of organization with the DFI. An LLC combines features of a partnership and a corporation. It has members, not owners. The members have limited liability for the LLC’s debts and liabilities, similar to that enjoyed by shareholders of a corporation; the debts and obligations of the business can only be paid from its income and assets. LLC members sign an operating agreement, which sets out their rights to share the profits and losses of the company, to receive distributions of assets, and to participate in the LLC’s management.

Wisconsin revised its LLC laws as of Jan 1, 2023. The revised law applies to all LLCs formed on or after that date. It governs existing LLCs unless they filed a “statement of nonapplicability” with the Wisconsin DFI by Dec. 31, 2022, to opt out and remain under the old law.

The amendments changed who can act on the LLC’s behalf, and which documents credit unions should examine to verify someone’s authority to act for the LLC:

- Previously, state law required the articles of organization to specify whether the LLC is managed by its members or by a manager. The law no longer requires management to be stated in the articles of organization. Instead, the operating agreement may state whether the LLC is member-managed or manager-managed. If the operating agreement does not specify the management, the LLC is member-managed. As a result, third parties (including credit unions) dealing with LLCs can no longer look to the publicly available articles of organization to determine who manages an LLC. Instead, they need to look at the operating agreement, which is not a public document.
- Previously, state law said that LLC managers were the agents of an LLC, meaning their actions could bind the company in transactions. When an LLC was member-managed, subject to certain exceptions, each member was an agent with the ability to bind the LLC. Although the scope of a manager or member’s authority could be stated and limited in the operating agreement, third parties could often rely upon the “apparent” authority of a manager or member even if their acts are not authorized.
- Now, Wisconsin law does not treat LLC members as having authority to bind the LLC simply because they are LLC members. Accordingly, a third party (including a credit union) may not be entitled to assume a member has the authority to act for the LLC. Instead, an LLC may file a statement of authority with DFI that identifies which positions or specific people can

bind the LLC. This statement also can identify the limitations of authority of certain positions or specific people within an LLC.

(Wis. Stats. Chap. 183.)

Sole Proprietorships

Unlike corporations, these are not separate legal entities. In a sole proprietorship, the owner is the business. No legal formalities are required to form a sole proprietorship; nothing needs to be filed with the state. Sole proprietorships have one owner, who manages all of the affairs of the business. If two people (even a husband and wife) operate the business it may be a partnership, but it is not a sole proprietorship. Sole proprietorships require no formal system of management. The owner is personally liable for all debts and other liabilities of the sole proprietorship. Sole proprietorships lack “perpetual life.” They terminate when the owner dies.

However, sole proprietorship accounts are used for business and not consumer purposes, and they may even report income under their own Employer Identification Number. Therefore, sole proprietorships are something of an individual/organization hybrid. Many of the same rules that apply to organizations also apply to sole proprietorships, so these are usually handled as organization, not individual, accounts.

Cooperatives

A cooperative is voluntarily owned and controlled by its members, who operate it on a non-profit or cost basis. A cooperative is formed by filing articles of incorporation with the DFI. Cooperatives have members and may have one or more classes of members. Cooperatives may have capital stock, although capital stock is not required. Five or more adults, one of whom must be a resident of Wisconsin, may organize a cooperative under Wisconsin statutes. Members, stockholders and patrons are not liable for the cooperative’s obligations. (Wis. Stats. Chap. 185.)

Unincorporated Non-Profit Associations

This name applies to groups formed by individuals who join together for a certain non-profit objective. Sunshine clubs and bowling leagues are typical examples. If three or more individuals join together by mutual consent for a common non-profit purpose, then the members may have limited liability protections under Chapter 184 of the Wisconsin Statutes, which provides that unincorporated non-profit associations are legal entities separate from their owners. Unincorporated associations can resemble corporations, but they are not formally organized. Some have a constitution or a charter, but they are not required to file anything with the DFI. If they choose, they can file papers with the DFI to appoint agents for accepting service of legal process, and they record a “statement of authority” with the local register of deeds to participate in real estate transactions. Wisconsin Statutes give unincorporated associations the power to sue and be sued in their own name.

Religious Societies

Religious societies and missionary groups can operate as unincorporated associations (as discussed above). But they may also incorporate under special provisions in Wis. Stats. Chap. 187, which grants them status as non-stock corporations. Upon recording a certificate with the register of deeds, religious societies and missionary groups become corporations, with the same powers and privileges as a non-stock corporation (discussed above). Boards of trustees manage the affairs of these groups, which are required to have a clerk or secretary and a treasurer. Religious associations other than churches, like diocesan counsels and synods, may also incorporate under Chap. 187, though they are required to file a certificate with the DFI.

Fraternal Societies and Veterans Groups

Chap. 188 of the Wisconsin Statutes contains several special provisions for fraternal societies (such as Mason’s lodges) and veterans’ groups (such as American Legion posts). Generally, these are granted corporate powers upon filing certain required certificates or statements with the DFI.

Trusts

A *trust* is an agreement under which a trustee holds property for the benefit of a beneficiary. Trusts can differ greatly in how they are created, what terms govern their operations, and so on. For example, a trust may be revocable or irrevocable. A trust can be created during someone’s life (often called a “living trust”) or after someone’s death under the terms of their last will and testament (called a “testamentary trust”). Trusts can have special provisions to protect assets from a beneficiary’s creditors (called a “spendthrift trust.”) Sometimes, trusts are created for special business purposes. Credit unions should note that the Wisconsin Trust Code does not apply to business trusts.

The *settlor* (also called the *grantor*) is the person who establishes a trust by giving real or personal property “in trust” to a trustee for the benefit of a beneficiary.

A *trustee* is the person who holds legal title to property “in trust” for the benefit of a beneficiary.

The *beneficiary* is the person for whose benefit property is held in trust.

A *living trust* is a trust that is created during the settlor’s lifetime. It can be either revocable or irrevocable.

The term *revocable living trust* generally refers to a trust that is created during the settlor’s lifetime and can be revoked during the settlor’s lifetime.

- Living trusts are most often established to avoid the time delays and costs associated with probate or to provide asset management for the settlor. These are the most common types of trusts credit unions are likely to deal with.
- Often, the settlor, trustee, and beneficiary of a living trust will be the same person. The living trust generally will provide that the trust’s principal and income may be paid to the settlor during his/her lifetime (the life beneficiary of the living trust) and upon the settlor’s death, the trust property is to be transferred to the death beneficiaries named in the trust. A husband and wife may form a joint living trust that pays principal and income to the husband and the wife while both are living and then continues for the benefit of the surviving spouse following the death of the first spouse.
- The State Bar of Wisconsin publishes a pamphlet entitled “*Answering Your Legal Questions About Revocable Living Trusts.*” Members (and credit union staff) can check this pamphlet for basic information and answers to several common questions.

An *irrevocable trust* is one that the settlor cannot revoke after creating it.

- A revocable living trust typically becomes irrevocable when the settlor passes away.
- Another common type of irrevocable trust is a trust created according to the terms in the will of the settlor. These trusts are known as *testamentary trusts* (as in “last will and testament”). If an irrevocable trust is a testamentary trust, its creation can only be authorized by a probate court, which issues what are called “letters of trust.”
- Irrevocable trusts are sometimes created during the settlor’s lifetime for tax and estate planning reasons. An example of such an irrevocable trust is an irrevocable life insurance trust that is set up to exclude the proceeds of life insurance on the life of the settlor from the estate of the settlor for estate tax purposes.

A *common law trust*, also called a business trust, is a trust created for the purpose of making profit and usually characterized by some kind of commercial activity and transferable certificates of interest. A common law trust is organized by creating a declaration of trust. In order to have authority to conduct business in Wisconsin, it must file an application with the DFI, accompanied by an original or certified copy of its declaration of trust. (Wis. Stats. Chap. 226.14.)

Probate Estates

Generally, an estate is probated by a personal representative. The Probate Court or Register in Probate appoints the personal representative with a document called “domiciliary letters.” This document gives the personal representative official authority to perform his or her duties. Unless the decedent’s will contains certain restrictions, the personal representative has all the powers granted by Wisconsin statute, including authority to open and close bank accounts; endorse, deposit and write checks; and other things necessary to complete the probate process. (Wis. Stats. Chap. 857 et seq.)

Government Entities

State and federal credit unions which qualify under Wis. Stats. § 34.09 may serve as public depositories for state and local government units and their agencies. (*For more information, see ii Release 0134, “Public Deposits.”*)

Foreign Organizations

An organization does not have to be formed under Wisconsin law to operate in this state or to join a credit union here. For example, it is not uncommon to form a corporation by filing articles of incorporation in another state, such as Delaware, even if the corporation will operate exclusively in Wisconsin. (Of course, any organization must be within the credit union’s field of membership in order to join, as explained earlier in this release.)

The Wisconsin Statutes contain general provisions that say a foreign (out-of-state) corporation, non-stock corporation, limited partnership, LLC, cooperative association, or limited liability partnership, shall not transact business in this state until it has obtained a certificate of authority or registration from the Wisconsin DFI. However, not all activities are considered to be

“transacting business” for the purposes of this licensing requirement. One of the exceptions is maintaining bank accounts. (The DFI’s *“Out of State Organizations” webpage* lists other exceptions.) This means that a business organized under the laws of another state does not have to register with the DFI and obtain a certificate of authority before it can join a Wisconsin credit union and open accounts. It’s up to the organization to determine whether its other Wisconsin activities require it to register with the DFI.

EXHIBIT C - CORRECT NAMES

Wisconsin law requires some types of organizations to have certain terms in their names, and these should be included on account documents:

- A corporation's name contains the word "corporation," "incorporated," "company," "limited" or the abbreviation of one of these words.
- An unincorporated non-profit association's contains the words "unincorporated association" or the abbreviation "UA."
- A service corporation's name ends with the word "chartered" or "limited" or the words "service corporation," or the abbreviation "Ltd." or "S.C."
- An LLP's name contains the words "registered limited liability partnership" or "limited liability partnership" or the abbreviation "L.L.P." or "LLP" as the last words or letters of its name.
- A limited partnership's name contains, without abbreviation, the words "limited partnership."
- An LLC's name contains the words "limited liability company" or "limited liability co." or ends with the abbreviation "L.L.C." or "LLC."

EXHIBIT D - WCUL ORGANIZATION ACCOUNT FORMS & THEIR USAGE

Form Description	Form #	Form Usage
Customer Identification Card	81080	Simplifies compliance with Customer Identification Program requirements, by providing fill-in-the-blanks for recording required information and checkboxes to indicate the methods used to verify identities.
Depository Declaration and Agreement	81075	Designates who is authorized to transact business for the organization, spells out the powers of each authorized person, and provides specimen signatures.
Funds Transfer Agreement and Notice	81043	Governs transfers of funds by wire transfers, automated clearinghouse transactions, etc.
Membership Application Card	81056	Documents an organization's application for credit union membership, the basis of its eligibility to join, and whether the application was approved or denied.
Business/Organization Account Ownership Agreement	81057	Designates the organization as the owner of the account, certifies the organization's TIN, and records the various disclosures given to the organization when the account is opened.
Trust – Credit Union Agreement	82021	Identifies the trustee(s) authorized to transact business for the trust.
Your Account Agreement, with Arbitration Agreement	83005	Serves as the contract for all types of accounts.
Your Account Agreement	83006	Serves as the contract for all types of accounts.

EXHIBIT E - TAXPAYER IDENTIFICATION NUMBER

The following material generally describes which TIN to use; but please refer to the instructions for IRS form W-9 for specific information.

Trusts

A revocable living trust must have a TIN. This may either be the SSN of a grantor/trustee, or it may be an EIN.

The credit union should not advise the trustee about whether an SSN or EIN can or should be used. The account holder is responsible for certifying the correct number. If there is confusion, advise the trustee to ask the attorney who drafted the trust. Preferably, the attorney can provide written instructions, including the proper name and TIN to use for the account.

A living trust's TIN can be the grantor's SSN where the settlor is the sole trustee or co-trustee, or where a husband and wife are the sole grantors, one or both are trustees (even if a co-trustee with another person) and they file a joint tax return. If one spouse dies, the credit union may continue to use the surviving spouse's SSN, provided the surviving spouse is also a trustee of the trust. If this is not the case, dividends through the date of the spouse's death should be reported under the decedent's SSN and thereafter under the trust's EIN.

In most other cases, a revocable living trust's TIN will be an EIN. However, it appears that if a grantor still has power over the trust, such as the power to revoke it or to change beneficiaries, then that person's SSN might still be used, even if he/she is no longer acting as trustee.

Sole Proprietors

Use either the member's SSN or the sole proprietorship's EIN (if it has one). The credit union should use whatever taxpayer ID number the sole proprietor certifies for use on his/her account. (The sole proprietor certifies that number by signing either an IRS W-9 form or the TIN certification section of the Business/Organization Account Ownership Agreement).

According to a set of *online IRS "frequently asked questions" about EINs*:

- A sole proprietor without employees and who doesn't file any excise or pension plan tax returns doesn't need an employer identification number (EIN) (but can get one if he or she wants to). In this instance, the sole proprietor uses his or her social security number (instead of an EIN) as the taxpayer identification number. However, at any time the sole proprietor hires an employee or has to file an excise or pension plan tax return, the sole proprietor will need an EIN for the business and can't use his or her social security number.
- If you have an existing EIN as a sole proprietor and become a sole owner of an LLC (Limited Liability Company) that has employees, you need to get a separate EIN for the LLC to file employment taxes.

Limited Liability Companies

In most cases, simply use the LLC's EIN. However, the IRS might not regard a single-member LLCs as being an entity separate from its owner. If the owner is unsure whether the IRS regards the LLC as being an entity separate from its owner, ask the owner to consult the LLC's attorney. If the IRS does disregard an LLC as being a separate legal entity, then enter the owner's TIN, which will be one of the following: 1) If the owner is an individual, use that person's SSN; 2) if the LLC's owner is another organization, such as a corporation, use that entity's EIN.

Partnerships, Corporations, Unincorporated Associations, and Other Organizations

Use the organization's EIN. Some national sponsoring organizations may provide an EIN for a local groups (such as scout troops) to use.

Probate Estates

A probate estate is a separate taxable entity which exists from the date of death of an individual until the final distribution of assets to all beneficiaries. It will have its own EIN.

Corporation Numbers

The DFI assigns a unique file number to an entity when its organizational instrument is filed. The DFI applies the number to the lower right hand corner of the organizational instrument at the time it is filed. This file number is not the same as the entity's TIN, which the IRS issues.