

**Compliance
Essentials**

Opening Accounts for Non-US Citizens

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Introduction



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Introduction

Opening Accounts for non-US citizens can be confusing. Credit Union questions regarding these accounts typically concern the following issues:

- Membership Eligibility
- Customer Identification
- Tax reporting
- Enhanced Customer Due Diligence
- Fair Lending

Introduction

- Credit union employees frequently get caught in the weeds when opening accounts and providing services to non-US persons.
- Today, we will try to distill the relevant issues and provide some easy rules to follow.
- Tip – consider a potential member’s immigration status separately for CIP, tax reporting and loan underwriting (different rules and risks apply!)

Membership Eligibility



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Membership Eligibility

1. Is it legal to open an account for a person who doesn't have legal US immigration status?
2. Is a non-US person eligible for membership in the credit union?

Membership Eligibility

Credit unions can open accounts for any person that:

- Meets membership eligibility requirements
- Passes the Credit Union's CIP

Restricting accounts based on immigration status may be acceptable under certain conditions.

Customer Identification



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CIP

Credit Unions must have a written Customer Identification Program (CIP) that contains procedures to:

- Verify the identity of any person seeking to open an account, to the extent reasonable and practicable.
- Maintain records of the information used to verify the person's identity.
- Determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency.
- Provide the customer opening a new account with notice of the collection requirement.

CIP

- The CIP procedures must enable the credit union to form a reasonable belief that it knows the true identity of the accountholder.
- The CIP should be based on risk according to the credit union's size, location and membership base.
- The credit union's CIP must be met or a membership cannot be opened.
- Identification documents are required.

CIP

Credit unions must obtain at least four pieces of identifying information from each new member/customer:

1. Name
2. Date of birth (for an individual)
3. Address: the address must be a residential or business street address. P.O. Boxes are not acceptable for CIP purposes. Other acceptable addresses include:
 - Address of a friend or relative
 - Army or Fleet Post Office Box
4. Identification Number

CIP - Identification Number

Type of Member	Acceptable Identification Number
U.S. Person	Social Security Number (SSN)
U.S. Businesses or Entities	Employer Identification Number
Non-U.S. Person	<ul style="list-style-type: none"> • SSN • Individual taxpayer identification number (ITIN) • Passport number and the country of issuance • Alien identification card number • Number and country of issuance of any other foreign government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard
U.S. Persons or Businesses that have applied for a TIN	The credit union can open the account as long as a TIN application was filed before the member/customer opens an account, AND the credit union get the TIN within a reasonable period of time after the account is opened.

CIP - Identification Number

Common identification documents for non-US persons:

1. **Passport:** A valid passport is usually the most widely accepted identification document for non-US persons. It provides proof of identity and nationality.
2. **National ID card:** Some countries issue national identification cards, which can serve as an acceptable form of identification for banking purposes.
3. **Driver's license:** In certain cases, a valid driver's license issued by a government authority may be accepted, particularly if it includes a photograph and other security features.
4. **Residence permit:** Non-US persons residing in a country may be required to provide a valid residence permit or visa, which verifies their legal status in that country.
5. **Alien registration card:** In some countries, non-US persons may hold an alien registration card or similar document, which demonstrates their permission to reside or work in the country.
6. **Consular identification card:** Some individuals may possess a consular identification card issued by their home country's embassy or consulate.

CIP

Verifying Identity

- The credit union must verify the identity of a customer enough to establish a reasonable belief that it knows the true identity of the person.
- Credit unions may determine when verification will be done and what methods it will use. Methods used to verify identity should be based on the type of account being opened and the type of documentation available to verify identity.
- Regardless of what methods a credit union chooses to use to verify identity, it must list all acceptable methods of identification in its CIP procedures and any restrictions on the methods used.

CIP - Verifying Identity

Methods of Identification

- **Review of Documents:** Documents are generally any unexpired government-issued identification document evidencing nationality or residence and bearing a photograph or similar safeguard. For instance, a driver's license or passport.
- **Nondocumentary Methods:** Nondocumentary methods can be things like independently verifying the member's identity by comparing information provided by the member/customer with information obtained from:
 - Consumer reporting agencies
 - Public databases
 - Checking references from other financial institutions
 - Obtaining a financial statement

CIP

Record Retention

Credit unions are required to retain the following CIP information:

- All identifying information
- A description or copy of any document the credit union relied on to verify identity including:
 - Type of document
 - Any identification number in the document
 - The place the document was issued
 - The date of issuance and expiration, if any.
 - A description of the methods and the results of any measures that were taken to verify the member's identity and a description of the resolution of any substantive discrepancy that was discovered when verifying the information.
- All records must be kept for five years

Tax Reporting



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Tax Reporting

Resident Alien and NonResident Alien for Tax Reporting Purposes

- **Nonresident Aliens:** If your account holder is an alien (not a U.S. citizen), he or she is considered a nonresident alien unless the account holder meets one of the two tests described next under Resident Aliens.
- **Resident Aliens:** Your account holder is a resident alien of the United States for tax purposes if he/she meets either
 - The green card test OR
 - The substantial presence test for calendar year 2023 (January 1 to December 31).
 - **Even if he/she does not meet either of these tests, he/she may be able to choose to be treated as a U.S. resident for part of the year.

Tax Reporting

Substantial Presence Test

You will be considered a U.S. resident for tax purposes if you meet the substantial presence test for calendar year 2023. To meet this test, you must be physically present in the United States on at least:

- 31 days during 2023, and
- 183 days during the 3-year period that includes 2023, 2022, and 2021, counting:
 - All the days you were present in 2023, and
 - $\frac{1}{2}$ of the days you were present in 2022, and
 - $\frac{1}{3}$ of the days you were present in 2021.

Tax Reporting

Types of Tax Identification Numbers

- Social Security Numbers (SSN) – issued to:
 - US Citizens
 - Resident Aliens
 - Nonresident Aliens
 - **Any individual who is eligible to be legally employed in the United States must have an SSN.
- Employer Identification Numbers (EIN) – issued to:
 - Estates
 - Nonprofits
 - Businesses

Tax Reporting

Types of Tax Identification Numbers

- Individual Tax Identification Numbers (ITIN) – issued to:
 - US Citizens
 - Resident Aliens
 - Nonresident Aliens
- Account holder is not eligible for a social security number but has a “tax purpose” for needing a tax identification number.
- To get an ITIN the account holder may have to be turned down for a SSN first and then apply for the ITIN.
- The ITIN is for tax purposes only and does not entitle the accountholder to benefits, does not indicate immigration status or the right to work in the US

Tax Reporting

TIN Certification

When a member opens a new account at a credit union, the account will not be subject to backup withholding if the member certifies, under penalty of perjury that:

- The TIN provided by the member is correct;
- The member is not subject to backup withholding; and
- The member is a U.S. person (including a U.S. resident alien).

****Note:** Members with an ITIN also use Form W-9 Certification.



Tax Reporting

FATCA

- Under the Foreign Account Tax Compliance Act (FATCA), enacted by the United States in 2010, banks and other financial institutions have certain tax reporting obligations.
- FATCA aims to combat tax evasion by requiring financial institutions to identify and report accounts held by U.S. persons, including U.S. citizens and residents, regardless of their location.
- We also report more countries on 1042-S now and give that info to their governments.
- It is basically a tax exchange program.

Tax Reporting

W-8BEN

Do NOT use this form if:	Instead, use Form:
• You are NOT an individual	W-8BEN-E
• You are a U.S. citizen or other U.S. person, including a resident alien individual	W-9
• You are a beneficial owner claiming that income is effectively connected with the conduct of trade or business within the United States (other than personal services)	W-8ECI
• You are a beneficial owner who is receiving compensation for personal services performed in the United States	8233 or W-4
• You are a person acting as an intermediary	W-8IMY

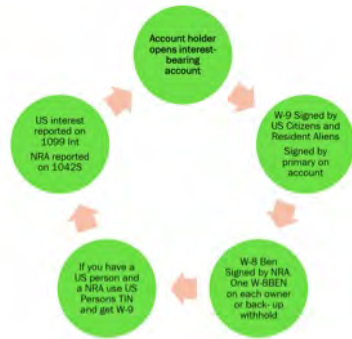


Tax Reporting

W-8BEN

- In some cases, credit unions may be serving members that are not U.S. citizens that do not have resident alien status in the U.S. and may not even have a tax identification number.
- These members can claim an exemption from tax withholding by completing Internal Revenue Service (IRS) Form W-8BEN, "Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding."
- This form allows nonresident aliens to certify their foreign status and is used in place of a Form W-9 TIN certification.
- The credit union would request the member to complete Parts I and III of the Certificate.
- The form must be retained by the credit union but is not required to be sent to the IRS, and it is valid for three calendar years after the year it was signed.
- In other words, if it is signed in September 2000, it expires on Dec. 31, 2003, and if the member still maintains an account at the credit union, a new form would be requested prior to that date.

Tax Reporting



Tax Reporting

Some Tips

- The member is responsible for knowing their tax status and filling out the W9 or W-8BEN
- Don't give members tax advice!
- You can always provide the member with a non-interest bearing primary share account, or you can backup withhold

Enhanced Customer Due Diligence



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EDD

The BSA/AML Examination Manual Defines Nonresident Aliens using IRS definitions:

- NRA is a non-U.S. citizen who:
 - is not a lawful permanent resident of the United States during the calendar year and who does not meet the substantial presence test,
 - has not been issued an alien registration receipt card, also known as a green card
- “Resident Aliens” for BSA purposes, pose less risk risk
- Unless you have evidence to indicate otherwise, Resident Aliens can be evaluated for BSA risk like other US consumers

EDD

NRAs can pose more risk, including:

- Difficult verifying and authenticating identification, source of funds, and source of wealth
- The NRA's home country may also heighten the account risk, depending on the secrecy laws of that country.
- Because the NRA is expected to reside outside of the United States, funds transfers or the use of foreign automated teller machines (ATM) may be more frequent.
- The BSA/AML risk may be further heightened if the NRA is a politically exposed person (PEP).

EDD

Risk Mitigation

Banks should establish policies, procedures, and processes that provide for sound due diligence and verification practices, adequate risk assessment of NRA accounts, and ongoing monitoring and reporting of unusual or suspicious activities. The following factors are to be considered when determining the risk level of an NRA account:

- Account holder's home country.
- Types of products and services used.
- Forms of identification.
- Source of wealth and funds.
- Unusual account activity.

Fair Lending



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Fair Lending

- Regulation B prohibits discrimination in lending based on 9 prohibited bases including national origin.
- A creditor is prohibited from inquiring about a member's national origin.
- A creditor may inquire about the permanent residency and immigration status of an applicant or any other person in connection with a credit transaction.
- Immigration status is determined by the US Citizenship and Immigration Services (USCIS) and is different than tax status which is determined by the IRS.

Fair Lending

- The applicant's immigration status and ties to the community (such as employment and continued residence in the area) could have a bearing on a creditor's ability to obtain repayment.
- Accordingly, the creditor may consider immigration status and differentiate, for example, between a noncitizen who is a long-time resident with permanent resident status and a noncitizen who is temporarily in this country on a student visa.

Fair Lending

Non-US citizens who are legally able to work in the US will have the following documents:

- Passport from their home country
- Visa allowing them to work in the US
- A social security number

Putting it All Together



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Summary

Are they a US Citizen? No? Then:

1. Do they qualify for membership? (use normal rules)
2. Can we identify them? (must have a current, government issued ID, bearing a photograph or similar safeguard)
3. What is their tax status? (IRS resident alien or NRA, use IRS rules)
4. Do they require EDD? (NRAs (use IRS definition) need additional questions at account opening and may need on-going monitoring)
5. For loans: are they legally allowed to work in the US (determine immigration status for loan underwriting (use USCIS status)?

Questions?

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Coming Soon

- **Compliance Essentials Class #8: Fair Lending**
- August, 17 2023, 10:00 AM – 12:00 PM
- [Register here](#)

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