

## **SUMMONS OR SUBPOENA OF FOREIGN BANK RECORDS; TERMINATION OF CORRESPONDENT RELATIONSHIP; RECORDS CONCERNING OWNERS OF FOREIGN BANKS AND AGENTS FOR SERVICE OF LEGAL PROCESS**

**Objective:** *Assess the bank's compliance with the Bank Secrecy Act (BSA) regulatory requirements regarding summons or subpoena of foreign bank records and, if applicable, termination of a correspondent relationship. Assess the bank's compliance with BSA regulatory requirements concerning records of owners of foreign banks and agents for service of legal process.*

### **Regulatory Requirements**

This section outlines the regulatory requirements for banks in 31 CFR Chapter X regarding summons or subpoena of foreign bank<sup>1</sup> records, termination of a correspondent relationship, and records concerning owners of foreign banks and agents for service of legal process. Specifically, this section covers:

- [31 CFR 1010.605](#) (Definitions)
- [31 CFR 1010.670](#)
- [31 CFR 1010.630](#)

### **Issuance of Summons or Subpoena to Foreign Banks that Maintain Correspondent Accounts in the United States**

The Secretary of the Treasury or the U.S. Attorney General may issue a summons or subpoena to any foreign bank that maintains a correspondent account in the United States and request any records relating to the correspondent account or any account at the foreign bank that is the subject of (1) any investigation of a violation of a criminal law of the United States; (2) any investigation of a violation of 31 USC Chapter 53, Subchapter II; (3) a civil forfeiture action; or (4) an investigation pursuant to 31 USC 5318A.<sup>2</sup> This includes records maintained outside of the United States relating to the deposit of funds into the foreign bank. The summons or subpoena may be served on the foreign bank in the United States in person or by mail or fax if the foreign bank has a representative in the United States or in a foreign country pursuant to any mutual legal assistance treaty, multilateral agreement, or other request for international law enforcement assistance.<sup>3</sup>

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<sup>1</sup> [31 CFR 1010.100\(u\)](#).

<sup>2</sup> 31 CFR 1010.670; [31 USC 5318\(k\)\(3\)\(A\)\(i\)](#), as amended by [Section 6308 of the AML Act of 2020](#).

<sup>3</sup> [31 CFR 1010.670\(b\)](#). Section 6308 of the AML Act of 2020 amended the methods of service to include in person and by mail or fax in the United States. [31 USC 5318\(k\)\(3\)\(A\)\(iii\)](#).

## Termination Upon Receipt of Notice of Failure to Comply with Summons or Subpoena

A U.S. bank must terminate any correspondent relationship with a foreign bank not later than 10 business days after receipt of written notice from the Secretary of the Treasury or the U.S. Attorney General (in each case, after consultation with the other) that the foreign bank has failed to comply with a summons or subpoena or failed to prevail in proceedings in a U.S. court to challenge the summons or subpoena.<sup>4</sup>

## Failure to Terminate Relationship

A U.S. bank that fails to terminate a correspondent relationship in accordance with 31 USC 5318(k)(3) may be liable for a civil penalty of up to \$25,000 per day until the correspondent relationship is terminated.

## Records Concerning Owners of Foreign Banks and Agents for Service of Legal Process

Banks that maintain correspondent accounts in the United States for foreign banks must maintain records in the United States identifying the owners<sup>5</sup> of each such foreign bank whose shares are not publicly traded.<sup>6</sup> Banks must also record the name and street address of a person who resides in the United States and who is authorized and has agreed to be an agent to accept service of legal process for records regarding such an account.

## Safe Harbor

Banks are “deemed in compliance” with the requirement to maintain records of owners of foreign banks and agents for service of legal process if the bank obtains a certification or recertification from the foreign bank.<sup>7</sup> The certification or recertification must be provided at least once every three years, on or before the three-year anniversary of the initial or previous certification. A bank may satisfy the safe harbor provision by obtaining a copy of a foreign bank’s certification or recertification either directly from the foreign bank or indirectly, such as from a central database or from another financial institution, providing that the form and content of the certification are sufficient and reliable.<sup>8</sup> The U.S. Department of the Treasury, working

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<sup>4</sup> Under [31 CFR 1010.670\(e\)](#), a U.S. bank is not liable to any person in any court or arbitration proceeding for terminating a correspondent relationship in accordance with [31 CFR 1010.670\(d\)](#). Section 6308 of the AML Act of 2020 amended [31 USC 5318\(k\)\(3\)\(E\)\(i\)](#) replacing the terms “initiates” with “prevail in” and “contest” with “challenge.”

<sup>5</sup> For purposes of this requirement, “owner” means any person who, directly or indirectly, owns, controls, or has the power to vote 25 percent or more of any class of voting securities or other voting interests of a foreign bank, or controls in any manner the election of a majority of the foreign bank’s directors (or individuals exercising similar functions). [31 CFR 1010.605\(j\)](#). Section 6308 of the AML Act of 2020 amended [31 USC 5318\(k\)\(3\)\(B\)\(i\)](#) to state that the term “owner” includes the owners of record and the beneficial owners of the foreign bank.

<sup>6</sup> [31 CFR 1010.630\(a\)\(2\)\(ii\)](#). A bank need not maintain records of the owners of any foreign bank that is required to file a form FR Y-7 (*Annual Report of Foreign Banking Organizations*) with the Federal Reserve Board.

<sup>7</sup> [31 CFR 1010.630\(b\)](#).

<sup>8</sup> FinCEN (February 3, 2006), FIN-2006-G003 “[Frequently Asked Questions, Foreign Bank Recertifications under 31 CFR 103.177.](#)”

with the financial industry and federal banking and law enforcement agencies, developed a certification process to assist banks in complying with these recordkeeping provisions. This process includes certification and recertification forms.<sup>9</sup> While banks are not required to use these forms, the forms are designed to provide a means of complying with the requirements.

### **Interim Verification**

Banks are responsible for reviewing certifications for reasonableness and accuracy. If at any time a bank knows, suspects, or has reason to suspect that any information contained in a certification (or recertification) provided by a foreign bank, or any other information the bank relied on is no longer correct, the bank must request that the foreign bank verify or correct such information or take other appropriate measures to determine the accuracy of the information or to obtain correct information.<sup>10</sup>

### **Closure of Correspondent Accounts when Unable to Obtain Certification Information**

The regulation contains specific provisions as to when banks must close correspondent accounts.<sup>11</sup> If the bank is unable to obtain the required certification (or recertification) or is unable to obtain documentation of the required information within 30 calendar days after the date the account is established, and at least once every three years thereafter, the bank shall close all correspondent accounts with that foreign bank. The closure must be within a commercially reasonable time, and the bank must not permit the foreign bank to establish any new positions or execute any transaction through the account, other than transactions necessary to close the account.<sup>12</sup>

When conducting an interim verification, if the bank has not received the requested information within 90 calendar days, the bank shall close all correspondent accounts with that foreign bank. The closure must be within a commercially reasonable time, and the bank must not permit that foreign bank to establish any new positions or execute any transaction through the account, other than those transactions necessary to close the account.<sup>13</sup>

A bank may not reestablish any account closed or establish any other correspondent account for that foreign bank, until it obtains the required certification or recertification information, as appropriate.<sup>14</sup>

### **Recordkeeping Requirements**

A bank must retain the original of any documents provided by a foreign bank, and the original or copy of any document otherwise relied on for the purposes of this regulation, for at least five

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<sup>9</sup> [Certification Regarding Correspondent Accounts for Foreign Banks](#) and [Recertification Regarding Correspondent Accounts for Foreign Banks](#) (OMB Control Number 1506-0043).

<sup>10</sup> [31 CFR 1010.630\(c\)](#).

<sup>11</sup> [31 CFR 1010.630\(d\)](#).

<sup>12</sup> [31 CFR 1010.630\(d\)\(2\)](#).

<sup>13</sup> [31 CFR 1010.630\(d\)\(3\)](#).

<sup>14</sup> [31 CFR 1010.630\(d\)\(4\)](#).

years after the date that a bank no longer maintains any correspondent account for that foreign bank.<sup>15</sup>

### **Issuance to U.S. Banks**

Upon receipt of a written request from a federal law enforcement officer for information required to be maintained by a bank under 31 CFR 1010.630, the bank must provide the information to the requesting officer not later than seven days after receipt of the request.<sup>16</sup>

### **Requests for AML Records by Federal Regulator**

Upon request by the U.S. bank's federal regulator, the U.S. bank must provide or make available records related to anti-money laundering (AML) compliance of the U.S. bank

or any customer of the U.S. bank, within 120 hours from the time of the request. Documentation that must be made available includes information and account documentation for any account opened, maintained, administered, or managed in the United States by the bank.<sup>17</sup>

### **Examiner Assessment of Compliance with Requirements Regarding Summons or Subpoena of Foreign Bank Records**

Examiners should assess the adequacy of the bank's policies, procedures, and processes related to regulatory requirements for summons or subpoena of foreign bank records; associated requirements to terminate correspondent accounts, if appropriate; and requirements concerning records of owners of foreign banks and agents to accept service of legal process. Examiners may review information, such as independent testing or audit reports, to aid in their assessment of the bank's compliance with these obligations. Refer to the [Assessing the BSA/AML Compliance Program - BSA/AML Internal Controls](#) section of this Manual for more information.

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<sup>15</sup> [31 CFR 1010.630\(e\).](#)

<sup>16</sup> [31 CFR 1010.670\(c\).](#)

<sup>17</sup> [31 USC 5318\(k\)\(2\).](#)

## **SUMMONS OR SUBPOENA OF FOREIGN BANK RECORDS; TERMINATION OF CORRESPONDENT RELATIONSHIP; RECORDS CONCERNING OWNERS OF FOREIGN BANKS AND AGENTS FOR SERVICE OF LEGAL PROCESS EXAMINATION AND TESTING PROCEDURES**

**Objective:** *Assess the bank's compliance with the Bank Secrecy Act (BSA) regulatory requirements regarding summons or subpoena of foreign bank records and, if applicable, termination of correspondent relationship. Assess the bank's compliance with BSA regulatory requirements concerning records of owners of foreign banks and agents for service of legal process.*

1. Review the bank's policies, procedures, and processes related to summons or subpoena of foreign bank records. Determine whether the bank's policies, procedures, and processes provide for:
  - Maintaining records in the United States identifying the owners of each foreign bank whose shares are not publicly traded and the name and street address of a person who resides in the United States and is authorized, and has agreed to be, an agent to accept service of legal process.
  - Obtaining, when the correspondent account is established and at least once every three years, a certification or recertification from the foreign bank with current information required on the bank, the owners, and the process agents.
  - Reviewing reports of owners and agents (certifications or recertifications) for reasonableness and accuracy, including steps to request that the foreign bank verify or correct information, should the bank know, suspect, or have reason to suspect that any information is no longer correct.
  - Closing correspondent accounts within a commercially reasonable time when the bank is unable to obtain a certification or recertification within 30 calendar days after the date the account is established, and at least once every three years thereafter.
  - Closing correspondent accounts within a commercially reasonable time when the bank has not obtained verification of the information or corrected information within 90 calendar days after the date of undertaking the verification.
  - Prohibiting the bank from reestablishing any correspondent account closed or establishing any other correspondent account for such foreign bank until it obtains the required information.
  - Retaining the original or copy of any document relied upon for at least five years after the date that the bank no longer maintains any foreign correspondent account for such foreign bank.
  - Responding to a written request from a federal law enforcement officer for information required to be maintained by a U.S. bank under 31 CFR 1010.630(a)(2). If the bank

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received a written request from a federal law enforcement officer, verify that the bank responded not later than seven days after receipt of the request.

- Terminating any correspondent relationship with a foreign bank within 10 business days after receipt of written notice from the Secretary of the Treasury or the U.S. Attorney General (in each case, after consultation with the other) that the foreign bank has failed to comply with a summons or subpoena or failed to prevail in proceedings in a U.S. court to challenge the summons or subpoena.
2. On the basis of a risk assessment, prior examination reports, and a review of the bank's audit findings, select a sample of foreign correspondent bank accounts. From the sample selected determine the following:
- Whether certifications and information on the accounts are complete and reasonable.
  - For account closures, whether closures were made within a commercially reasonable time period and that the relationship was not re-established without sufficient reason.
  - Whether there are any federal law enforcement requests for information regarding foreign correspondent accounts. If so, ascertain that requests were met in a timely manner.
  - Whether the bank received any official notifications to terminate a correspondent relationship with a foreign bank.<sup>18</sup> If so, ascertain that the accounts were closed within 10 business days.
  - Whether the bank retains the original of any document provided by a foreign financial institution, as well as the original or a copy of any document relied on, for at least five years after the date the bank no longer maintains any foreign correspondent account for such foreign bank.
3. On the basis of examination and testing procedures completed, form a conclusion about the adequacy of policies, procedures, and processes the bank has developed to meet Bank Secrecy Act (BSA) regulatory requirements associated with summons or subpoenas of foreign bank records; terminating a correspondent account, if applicable; and maintaining records of owners of foreign banks and agents for service of legal process.

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<sup>18</sup> Official notifications to close a foreign financial institution's account must be signed by either the Secretary of the Treasury or the U.S. Attorney General.