

Bank Secrecy Act Examination Manual



Second Printing, September 1997

Inquiries or comments relating to the contents of this manual should be addressed to:

Director, Division of Banking Supervision
and Regulation

Board of Governors of the Federal Reserve System
Washington, D.C. 20551

Copies of this manual may be obtained from:

Publications Services

Division of Support Services

Board of Governors of the Federal Reserve System
Washington, D.C. 20551

The price is \$20.00 per copy. Remittance should be payable to the Board of Governors of the Federal Reserve System by check or money order, drawn on a U.S. bank; or by VISA or Master Charge. Updates are available at an additional charge. For information about updates or to order by credit card, call 202-452-3244.

Bank Secrecy Act Manual

Supplement 1—September 1997

The following is a summary of the revisions and/or additions that have been made to the Federal Reserve's Bank Secrecy Act Examination Manual since its initial distribution in January, 1995. You may replace the entire contents according to Tabs.

TAB 100—WORKPROGRAM

Anti-Money Laundering Procedures

The examination workprogram has been revised and is now entitled the "Financial Recordkeeping and Reporting Regulations Anti-Money Laundering Examination Workprogram." The changes were made as a result of the Money Laundering Suppression Act of 1994 that requires the examination procedures of bank regulators to be enhanced to determine whether money laundering schemes are being utilized at the financial institutions being examined. Specific examination procedures lead the examiner to determine whether the institution maintains adequate policies and procedures to identify and where appropriate, to report suspicious transactions related to possible money laundering activities.

Exemptions

The Treasury's interim exemption rules and associated examination procedures are detailed in the Workprogram.

Funds Transfer Rules

The Workprogram incorporates the examination procedures regarding the recordkeeping rules issued jointly by the Federal Reserve and the Treasury effective May 28, 1996. Procedures for examining the Treasury's travel rule, effective May 28, 1996, are also included.

Monetary Instruments

Effective October 17, 1994, the Treasury no longer requires the maintenance of a "monetary instrument log" for certain cash sales/purchases

of monetary instruments. The examination procedures have been revised to reflect the changes.

Office of Foreign Assets Control

The Treasury's Office of Foreign Assets Control ("OFAC") administers laws that impose economic sanctions against, including the restriction of transactions with, certain foreign countries, their nationals, or "specifically designated nationals." The Workprogram includes examination procedures to determine whether institutions are complying with the OFAC requirements.

TAB 200—BANK SECRECY ACT

Regulation

The manual reflects the changes and/or amendments made to the Bank Secrecy Act through August 31, 1997.

TAB 400—REPORTING FORMS

Currency Transaction Report

The revised Currency Transaction Report ("CTR"), effective October, 1995, has been included to replace the rescinded CTR.

Report of International Transportation of Currency or Monetary Instruments

The revised Report of International Transportation of Currency or Monetary Instruments ("CMIR") effective September, 1997, has been included to replace the rescinded CMIR.

Suspicious Activity Report

The new Suspicious Activity Report ("SAR"), effective April, 1996, is included in the Manual.

TAB 500—EXEMPTIONS

Interim Exemption Requirements

The Treasury's "interim exemption rule," effective May, 1996, but not yet finalized, is included.

TAB 900—DATABASES

Currency and Banking Reports System

Changes made effecting the Internal Revenue Service's Currency and Banking Reports System are included.

Suspicious Activity Report System

Information pertaining to the access by regulatory staff of the Suspicious Activity Report System is included.

TAB 1000—SUSPICIOUS ACTIVITIES

Suspicious Activity Reporting

The rules regarding the reporting of suspicious activity or fraud related matters using the rescinded Criminal Referral Form have been replaced by the new Suspicious Activity Report rules, effective April, 1996.

TAB 1100—PAYABLE THROUGH ACCOUNTS

Information and examination procedures previously unavailable at the January, 1995 printing of the *Manual*, is now included in this version.

TAB 1200—FOREIGN ACCOUNTS

U.S. Overseas Offices

Examination procedures for reviewing the operations of U.S. overseas offices for anti-money laundering compliance are included.

TAB 1300—PRIVATE BANKING

A new section detailing sound practices in private banking has been added to this manual.

TAB 1400—SUPERVISORY DIRECTIVES

Private Banking

A new directive regarding private banking issues has been added.

TAB 1500—OTHER INFORMATIONAL AREAS

Financial Action Task Force Recommendations

Effective November, 1996, the Financial Action Task Force ("FATF") revised the 40 recommendations. The revised document is included.

Currency Transaction Report Questions and Answers

The Treasury's document utilized to answer certain questions related to the revised CTR form, effective October, 1995, is included.

Funds Transfer Rules Questions and Answers

The Federal Reserve's/Treasury's document utilized to answer certain questions related to the new funds transfer recordkeeping and travel rules, effective May, 1996, is included.

Office of Foreign Assets Control

Information regarding the Office of Foreign Asset Control is included.

Interim Exemption Rule Questions and Answers

The Treasury's comments regarding the interim exemption rule are included.

Table of Contents

<i>Section</i>	<i>Section</i>		
000	INTRODUCTION	405	Report of Foreign Bank and Financial Accounts (90-22.1)
001	Introduction	406	Suspicious Activity Report
100	WORKPROGRAM	500	EXEMPTION HANDBOOK
101	Workprogram for Financial Recordkeeping and Reporting of Currency and Foreign Transactions Examinations (Cover Page)	501	Currency and Foreign Transactions Reporting Act—Exemption Handbook
102	Financial Recordkeeping and Reporting of Currency and Foreign Transactions Examination (Summary of Findings)	502	Interim Exemption Rule
103	Financial Recordkeeping and Reporting Regulations Examination Workprogram	600	KNOW YOUR CUSTOMER
200	BANK SECRECY ACT AND RELATED MATERIALS	601	Know Your Customer
201	Bank Secrecy Act	700	WIRE TRANSFERS
300	ADMINISTRATIVE RULINGS	701	Operations
301	Administrative Ruling 88-1	800	REGULATION H
302	Administrative Ruling 88-2	801	Amendment to Regulation H—Procedures for Monitoring Bank Secrecy Act Compliance
303	Administrative Ruling 88-3	802	Internal Compliance Program
304	Administrative Ruling 88-4	900	DATABASES
305	Administrative Ruling 88-5	901	Internal Revenue Service Currency and Banking Retrieval System
306	Administrative Ruling 89-1	902	Suspicious Activity Report Database
307	Administrative Ruling 89-2	903	Federal Reserve Enforcement Actions
308	89-3 Rescinded	904	FinCEN Advisories
309	89-4 Rescinded	1000	SUSPICIOUS ACTIVITIES
310	Administrative Ruling 89-5	1001	Check List to Identify Potential Abuses
311	Administrative Ruling 92-1	1002	SAR Regulation
312	Administrative Ruling 92-2	1100	PAYABLE THROUGH ACCOUNTS
400	REPORTING FORMS	1101	Introduction
401	Currency Transaction Report (4789)	1102	Examination Procedures
402	Report of International Transportation of Currency or Monetary Instruments (4790)		
403	Report of Cash Payments Over \$10,000 Received in Trade or Business (8300)		
404	Currency Transaction Report by Casinos (8362)		

<i>Section</i>		<i>Section</i>	
1200	FOREIGN ACCOUNTS	1500	OTHER INFORMATIONAL AREAS
1201	Report of Foreign Bank and Financial Accounts	1501	Basle Committee Statement of Principles
1202	Bank Secrecy Act Review for U.S. Overseas Examination Procedures	1502	Financial Action Task Force 40 Recommendations
1300	PRIVATE BANKING	1503	Currency Transaction Report Guidance
1301	Sound Practices Paper	1504	Funds Transfer Questions/Answers
1400	SUPERVISORY DIRECTIVES	1505	Office of Foreign Asset Control (OFAC)
1401	AD 93-56 (FIS) Treasury Rulings	1506	Interim Exemption Questions/Answers
1402	SR 95-10 (FIS) Payable Through Accounts	1600	WORKPAPERS
1403	SR 97-19 (SUP) Private Banking Activities	1601	Workpaper Content and Retention

Federal Reserve System personnel prepared the Bank Secrecy Act Examination Manual. The manual contains Federal Reserve policies and procedures designed to assist Federal Reserve Bank examiners in the review of financial recordkeeping practices and procedures of state member banks and foreign financial institutions operating within the United States.

The manual reflects amendments to the Bank Secrecy Act through 1997. Periodically, the

manual will be updated to reflect changes in supervisory policies and procedures. Accordingly, we solicit the input and contributions of all supervisory staff and others in refining and modifying its contents. Please address all correspondence to: Director, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

Workprogram for Financial Recordkeeping and Reporting of Currency and Foreign Transactions Examinations Section 101.0

Financial Institution _____

Location _____

Date of Examination _____

Bank Secrecy Act Examiner _____

Assisting Examiner(s) _____

Examination Opened _____

Examination Closed _____

Bank Secrecy Act Examiner _____
Signature Date

Examiner-In-Charge _____
Signature Date

Financial Recordkeeping and Reporting of Currency
and Foreign Transactions Examination
Summary of Findings

Section 102.0

Work Program

Procedure Number

Findings

Institution Response

Findings Discussed With: _____ Date: _____

Examiner Present: _____

Introduction

The Workprogram serves as a guide for the examination of compliance with the Bank Secrecy Act (31 USC 5311, et seq. and 31 CFR Part 103, et. seq. (“BSA”)); Regulation H, Section 208.14;¹ and other related rules and regulations. In addition to ensuring that the institution is in compliance with applicable laws, rules, and regulations, an examiner should be cognizant of any unusual or suspicious activities. Activities of this nature, such as illegal acts or transactions conducted by employees or customers, may be an indication of general non-compliance in the institution.

The Money Laundering Suppression Act of 1994 requires regulatory authorities to develop examination procedures to determine whether money laundering schemes are being conducted at the financial institutions being examined. The Workprogram serves as a tool to determine whether financial institutions not only are in compliance with the technical reporting and recordkeeping requirements of the BSA, but that the institutions have developed policies and procedures to detect, deter and report unusual or suspicious activities related to money laundering.²

While the Workprogram is designed to maximize the efficiency of the review process (by using a sampling or by requiring the institution to perform an analysis), it is not designed to be all inclusive; therefore, specific situations or problems identified while conducting examinations may require additional procedures that would not otherwise be required.

The Workprogram includes examination procedures applicable to most situations that examiners encounter during a BSA and Regulation H, Section 208.14 compliance review. It is designed to lead an examiner through the compliance

review; therefore, the procedures must be followed numerically. Many procedures in the Workprogram need to be performed only if an examiner discovers problems or internal control weaknesses. Consequently, if the Workprogram procedures are not completed in numerical order, an examiner may perform more work than is necessary to adequately assess an institution’s overall compliance.

Several procedures in the Workprogram require sampling, which is either completed by an examiner or by an institution at the direction of the examiner. Because the Workprogram was developed for use in examinations of various sizes and types of banking organizations under Federal Reserve supervision, the time-frame of the sampling period varies depending on factors such as the type and size of the institution, the number of transactions the institution typically performs in the normal course of business, whether there have been previous compliance problems or problems are suspected, the strength of internal controls and the audit function, and whether the institution or its branches are located in an area known for money laundering activities. The sample should be large enough that the examiner can adequately answer the Workprogram procedure. For example, in a large institution that handles a considerable number of transactions, a short sample time-frame that includes numerous transactions may be sufficient to answer the Workprogram procedure. Likewise, in a small community bank, a longer sample period may be necessary to find a sufficient number of transactions to sample. The examiner should document in the workpapers the sampling time-frame along with support on how it was determined.

In the column on the right hand side of the Workprogram, provide a “yes,” “no,” or “not applicable” response. Some instances may require that you assign a “not reviewed” response. Additional space is also available in the column to provide comments. Comments are typically required to provide additional information about the deficiency when a “no” response is given. Providing a “no” answer in the column does not necessarily signify that a violation must be cited. However, numerous “no” responses may be indicative of internal control weaknesses or other problems that may evidence noncompliance with the BSA and/or Regulation H, Section

1. On March 31, 1997, the Board published in the *Federal Register* a notice of proposed rulemaking relating to Regulation H (see 62 FR 15272, 15280). In the proposal, the existing numbering of 208.14 is to be renumbered to 208.63. As the proposal is not final, 208.14 will be used throughout this manual.

2. The Department of Treasury’s Financial Crimes Enforcement Network (“FinCEN”), is providing to regulatory authorities and the financial community alike, periodic circulars regarding patterns and trends involving money laundering schemes. The FinCEN advisories are available via the Internet at the following address:
<http://www.ustreas.gov/treasury/bureaus/fincen/advis.html>

208.14. Numerous “no” responses should be discussed with the examiner in charge to determine an appropriate course of action.

Regulation H, Section 208.14 requires all banks to develop a written compliance program that must be formally approved by an institution’s board of directors. The compliance program must (1) establish a system of internal controls to ensure compliance with the BSA; (2) provide for independent compliance testing; (3) identify individual(s) responsible for coordinating and monitoring day-to-day compliance; and (4) provide training for appropriate personnel. Numerous “no” answers in the Workprogram may indicate noncompliance with one or more of the Regulation H, Section 208.14 requirements. For example, if numerous large currency transactions are discovered that were not reported as required, it may indicate that the institution does not have effective internal controls, an effective compliance testing program, or an adequate training program. Violations of Regulation H, Section 208.14, in most instances, will necessitate that formal supervisory action including Cease and Desist Orders and civil money penalties, be initiated against the institution as required by 12 U.S.C., Section 1818(s).

In situations where the institution has failed to take corrective action for deficiencies cited in previous examinations, formal supervisory action may also be warranted. All instances of “repeat” deficiencies or noncompliance with Regulation H, Section 208.14 compliance procedures should be discussed with an appropriate Officer at the Federal Reserve Bank after consultation with the examiner in charge.

The first section of the Workprogram involves off-site planning. The remaining sections of the Workprogram involve on-site examination procedures.

Off-Site Examination Planning

The purpose of the Examination Planning Section is to determine if the subject institution exhibits a risk profile suggestive of: 1) noncompliance with the BSA; 2) ineffective internal compliance procedures (Regulation H, Section 208.14); or, 3) engaging in possible money laundering activities. Identifying institutions with such profiles should enable the examiner to use resources more effectively.

	<i>Y</i>	<i>N</i>	<i>Comments</i>
1. Do the findings in the previous examination report indicate a general compliance with the BSA or Regulation H, Section 208.14? If not, briefly identify the deficiencies.			
2. If violations or serious deficiencies were noted, does correspondence indicate that corrective action was taken? If, because of previously noted deficiencies, the institution was required to perform analyses of: (a) currency flows and the reporting of large cash transactions; (b) exemption limits; (c) sales of monetary instruments; (d) funds transfers; or (e) suspicious activities, were such analyses adequately performed and documented? Be sure to review documentation.			
3. Do the findings in the previous examination report, in areas other than BSA compliance, indicate adequate internal controls and audit procedures? (If not, this may be indicative of deficiencies in the BSA compliance program).			

	<i>Y</i>	<i>N</i>	<i>Comments</i>
4. Does a check of the Suspicious Activity Report database reveal that there is suspicious or alleged illegal activity surrounding this institution? If not, determine whether such information should alter the scope of the BSA examination. (Refer to <i>BSA Manual—Databases</i>).			
5. Does a listing of Currency Transaction Reports (CTRs) obtained from the Internal Revenue Service (IRS) database indicate that the institution or any branch had a significant change in the total volume of CTR filings compared to the previous examination? (Refer to <i>BSA Manual—Databases</i>).			
6. If cash services are provided to the institution by the Reserve Bank, are Cash Flow Reports and/or Intelligence Analysis available? If so, do the reports reveal unusual trends in volume and/or composition of cash shipments to and from the Federal Reserve Bank? (Refer to <i>BSA Manual—Databases</i>).			

Internal Compliance Programs and Procedures

Regulation H, Section 208.14, requires that financial institutions establish and maintain adequate internal procedures to assure and monitor compliance with the BSA (Refer to *BSA Manual*—Regulation H).

Advisory #1

You should be aware that, even if an institution maintains in books and documents what appears to be a viable internal compliance program, the internal compliance program is, possibly, not followed by the institution. Specific violations of the BSA, as may be discovered during the course of this compliance review, may evidence a lack, or the complete omission, of adequate internal compliance procedures.

Advisory #2

The sophistication and comprehensiveness of

the institution's internal compliance program should be gauged by the type of activities engaged in by the institution and the quantity of transactions subject to the BSA and related rules and regulations. As an example, a "wholesale" institution that conducts no cash transactions needs only to have an internal compliance program that ensures that should a covered transaction be presented to the institution, the institution's employees will have sufficient education to understand that the transaction may be subject to Bank Secrecy Act requirements and the employee has the means to obtain additional instructions from manuals or employees at other branches of the institution. As an alternative, an institution that conducts a retail operation needs to have specific and comprehensive internal compliance procedures. It is your responsibility to determine the appropriateness of the internal compliance program based on the institution's activities. Keep in mind that all institutions, throughout the organization, should maintain a program to detect, and where necessary, report unusual or suspicious activities possibly related to money laundering.

	<i>Y</i>	<i>N</i>	<i>Comments</i>
7. As of the previous examination, had the institution established adequate internal compliance programs and procedures as required by Regulation H, Section 208.14? If not, list the violations cited or deficiencies noted.			
8. Has the institution developed a written compliance program as required by Regulation H—Section 208.14?			
9. If applicable, does the written BSA compliance program, as required by Regulation H, provide for the following: <ul style="list-style-type: none"> a. A system of internal controls to ensure ongoing compliance (Section 208.14(c)(1)). b. Independent testing for compliance to be conducted by either bank personnel or an outside party. List person(s) designated to conduct independent testing (Section 208.14(c)(2)). 			

	Y	N	Comments
<p>c. Designation of a qualified individual(s) responsible for coordinating and monitoring day-to-day compliance. List individual(s) responsible for compliance and the appropriateness of qualifications (i.e. training, experience) (Section 208.14(c)(3)).</p> <p>d. Training for appropriate personnel (Section 208.14(c)(4)).</p> <p>10. Was the compliance program approved by the institution's board of directors and approval noted in the minutes? If a foreign institution, was the compliance program approved at the highest level of United States management as well as by the home office board of directors?</p>			
<p>11. Does the institution's written compliance program include procedural guidelines for the detection, prevention and reporting of suspicious transactions related to money laundering activities?</p>			
<p>12. Does the institution's compliance program include written procedural guidelines for meeting the reporting and recordkeeping requirements of the BSA regulations and provide for the following, as applicable?</p> <p>a. The filing of a report of each deposit, withdrawal, exchange of currency or other payment or transfer, by, through or to the financial institution, which involves a transaction in currency of more than \$10,000 (CTR, IRS Form 4789) (31 CFR 103.22(a)(1)).</p> <p>b. The maintenance of a centralized list containing each exemption granted, with the supporting information prescribed in 31 CFR 103.22(f). Each exemption granted after October 27, 1986, shall be accompanied by the required statement and attendant language in 31 CFR 103.22(d) (31 CFR 103.22(b)(2)). (Refer to Advisory #5 for further information regarding exemptions.)</p>			

	<i>Y</i>	<i>N</i>	<i>Comments</i>
<p>c. The filing of a report (U.S. Customs Form 4790) of each shipment of currency or other monetary instrument(s) in excess of \$10,000 out of the United States or into the United States on behalf of the institution (not its customers), except via common carrier, by, or to the institution, (31 CFR 103.23(a)). In most cases, this refers to the institution's cash shipments. (Refer to <i>BSA Manual—Administrative Ruling 88-2</i>).</p> <p>d. The filing of an annual report, Report of Foreign Bank Financial Accounts, (Treasury Form 90-22.1) by the institution, where the institution has a financial interest in, or signature authority over, bank, securities or other financial accounts in a foreign country prior to April 8, 1987. (Settlement between branches and affiliates via Due To/Due From ("Nostro") accounts are exempt from filing 90-22.1) (Section 103.24). (Refer to <i>BSA Manual—Foreign Activities</i>.)</p> <p>e. The maintenance of required records for each monetary instrument purchase/sale for currency in amounts between \$3,000 and \$10,000 inclusive, with the supporting information prescribed in 31 CFR 103.29 (31 CFR 103.29(a)).</p>			
<p>13. Do the procedural guidelines include provisions for the retention of either the original, microfilm, copy or other reproduction of the items listed below, and is each item retained for a period of at least five years:</p> <p>a. Each Currency Transaction Report (CTR, IRS Form 4789).</p> <p>b. Documentation to support each exemption and a requirement to retain such documentation for a period of five years from the date it was discontinued (31 CFR 103.22(d)).</p> <p>c. Each extension of credit in an amount over \$10,000, except when the extension is secured by an interest in real property (31 CFR 103.33(a)).</p>			

	<i>Y</i>	<i>N</i>	<i>Comments</i>
<p>d. Each advice, request, or instruction received regarding a transaction which results in the transfer of funds, currency, checks, investment securities, other monetary instruments or credit, of more than \$10,000, to a person, account or place outside the United States (31 CFR 103.33(b)).</p> <p>e. Each advice, request, or instruction given to another financial institution or other person located within or outside the United States, regarding a transaction intended to result in a transfer of funds, currency, checks, investment securities, other monetary instruments or credit, of more than \$10,000, to a person, account or place outside the United States (31 CFR 103.33(c)).</p> <p>f. Each payment order that a financial institution accepts as an originator's, intermediary, or beneficiary's bank with respect to a funds transfer in the amount of \$3,000 or more (31 CFR 103.33(e)).</p> <p>g. A list of each individual, including the name, address and account number, who holds a deposit account for which the bank has been unable to secure a taxpayer identification number from that person after making a reasonable effort to obtain the number (31 CFR 103.34(a)(1)(ii)).</p> <p>h. Each document granting signature authority over each deposit account (31 CFR 103.34(b)(1)).</p> <p>i. Each statement, ledger card or other record of each deposit account showing each transaction involving the account, excepting those items listed in 31 CFR 103.34(b)(3) (31 CFR 103.34(b)(2), (3) and (4)).</p> <p>j. Each document relating to a transaction of more than \$10,000 remitted or transferred to a person, account or place outside the United States (31 CFR 103.34(b)(5) and (6)).</p> <p>k. Each check or draft in an amount in excess of \$10,000 drawn on or issued by a foreign bank which the domestic bank has paid or presented to a nonbank drawee for payment (31 CFR 103.34 (b)(7)).</p>			

	<i>Y</i>	<i>N</i>	<i>Comments</i>
<p>l. Each item relating to any transaction of more than \$10,000 received on any one occasion directly and not through a domestic financial institution, from a bank, broker or dealer in foreign exchange outside the United States (31 CFR 103.34(b)(8) and (9)).</p> <p>m. Records prepared or received by a bank in the ordinary course of business which would be needed to reconstruct a demand deposit account and to trace a check in excess of \$100 deposited in such demand deposit account (31 CFR 103.34(b)(10)).</p> <p>n. A record containing the name, address and taxpayer identification number, if available, of any person presenting a certificate of deposit for payment, as well as a description of the instrument and the date of the transaction (31 CFR 103.34(b)(12)).</p> <p>o. Each deposit slip or credit ticket reflecting a transaction in excess of \$100 or the equivalent record for direct deposit or other wire transfer deposit transactions. The slip or ticket shall record the amount of any currency involved (31 CFR 103.34(b)(13)).</p>			

Internal Audit/Independent Review

testing for BSA compliance to be conducted by bank personnel or an outside party (Refer to *BSA Manual*—Regulation H).

Regulation H, Section 208.14, requires that financial institutions provide for independent

	<i>Y</i>	<i>N</i>	<i>Comments</i>
<p>14. Review the institution’s written internal audit/independent review procedures and determine that the internal audit function provides for review for compliance with the BSA and related anti-money laundering laws and regulations. If the institution does not have an internal audit function, determine that a program of management reviews or self audits has been established which include the requirements of the BSA. Do the audit procedures/independent reviews:</p> <ul style="list-style-type: none"> a. confirm the integrity and accuracy of the systems for the reporting of large currency transactions? b. include a review of tellers’ work and Forms 4789 and 4790? c. confirm the integrity and accuracy of the institution’s recordkeeping activities, as detailed in Workprogram procedure 12? d. encompass a test of adherence to the in-house record retention schedule, as detailed in Workprogram procedure 13? e. include steps necessary to ascertain that the institution is maintaining documentation of exempt customers as required by the regulations? f. provide a test of the reasonableness of the exemptions granted? (non-interim) g. include steps necessary to ascertain that the institution is conducting an ongoing training program? h. require the auditor to ascertain that the institution has filed a Report of Foreign Bank Financial Accounts, (Treasury Form 90-22.1) declaring interests in foreign financial accounts? 			

	<i>Y</i>	<i>N</i>	<i>Comments</i>
i. include steps necessary to ascertain that the institution has procedures in place for obtaining and maintaining required information for the sale/purchase of monetary instruments for cash in amounts between \$3,000 and \$10,000 inclusive, and that appropriate customer identification measures are in place?			
15. If there were any violations or deficiencies noted from the previous examination, has your review determined that the violations or deficiencies have been corrected?			

Advisory #3

Evidence of violations of, or noncompliance with, specific provisions of the BSA may be indicative of a systemic failure of the internal audit program. As you complete the following examination procedures, you must determine whether apparent violations were caused by misinterpretations, oversight, or technical matters rather than by an inadequate compliance program. If you feel the institution’s compliance program is inadequate, you may want to enhance

your BSA examination (i.e. use a larger sampling of transactions).

Education

Regulation H, Section 208.14 requires that financial institutions provide BSA training for appropriate personnel, including, but not limited to, tellers, customer service representatives, lending officers, private and personal banking officers and all other customer contact personnel (Refer to *BSA Manual*—Regulation H).

	<i>Y</i>	<i>N</i>	<i>Comments</i>
16. Review the institution’s program for educating appropriate employees regarding the BSA to determine if the established program includes the following: a. Reporting of large currency transactions. b. Exemptions from large currency transaction reporting. c. Identifying and reporting of suspicious activity or alleged criminal conduct. d. Record retention requirements. e. Sale/purchase of monetary instruments. f. Review of internal policies/procedures.			

	<i>Y</i>	<i>N</i>	<i>Comments</i>
<p>g. Examples of money laundering cases and the methods in which activities can be detected/resolved/reported.</p> <p>h. Overview of the different forms that money laundering can take (deposit accounts, wire transfer loans, etc.).</p> <p>i. Wire (fund) transfer activity.</p> <p>j. “Know Your Customer” procedures.</p>			
<p>17. Review the scope and frequency of training meetings to determine what importance management places in ongoing education and training. In reviewing the institution’s policies and procedures, determine the:</p> <p>a. Appropriateness of the scope and frequency.</p> <p>b. Level of compliance.</p>			
<p>18. Question the BSA compliance individual(s) and other operations personnel (i.e., tellers, platform officers, branch managers) to determine whether they are sufficiently knowledgeable concerning the BSA and operating procedures to assure compliance. Does this training address money laundering schemes?</p>			
<p>19. Interview personnel from other areas of the institution which deal in currency such as trust, loan and international departments, private banking units, discount brokerage units, cash control centers and specialized foreign exchange units to determine that they are knowledgeable regarding the BSA requirements, possible money laundering schemes, and the identification of suspicious or unusual activities. List in the “Comments” section of this page the personnel interviewed in both Workprogram procedures number 18 and 19, and document their level of knowledge of BSA-related issues and how they acquired this knowledge.</p>			
<p>20. If there were any violations or deficiencies regarding education noted during the previous examination, has your review determined that the violations or deficiencies have been corrected?</p>			

Anti-Money Laundering Program

Advisory #4

A financial institution’s compliance with the BSA should include a thorough understanding of money laundering and its implication on the

institution. In the review of the BSA compliance program, the examiner should determine whether written policies and procedures have been implemented covering the detection and prevention of money laundering activities. If no such policies and procedures exist, make reference to this in the report of examination.

	<i>Y</i>	<i>N</i>	<i>Comments</i>
21. If applicable, do the anti-money laundering policies address the following: <ul style="list-style-type: none"> a. define money laundering in its different forms (e.g. placement, layering, integration). b. provide compliance with BSA and related anti-money laundering laws and regulations. c. establish a “Know Your Customer” program. d. identify high risk activities, businesses and foreign countries (those commonly associated with money laundering). 			
22. If applicable, do the anti-money laundering policies extend to the following institution operations: <ul style="list-style-type: none"> a. retail operations. b. trust department. c. loan department. d. private banking operation. (Refer to <i>BSA Manual—Private Banking</i>.) e. sale of monetary instruments. f. wire transfer room. g. teller and currency operations. h. safe deposit box activity. i. international department. j. correspondent banking area. k. discount brokerage department. l. subsidiary activities (i.e. money transmitter/check cashier). m. section 20 operations. 			

	<i>Y</i>	<i>N</i>	<i>Comments</i>
<p>23. Determine whether management has implemented a high level of internal controls to minimize the risk of money laundering. These controls should include, but not be limited to, the following:</p> <ul style="list-style-type: none"> a. money laundering detection procedures b. identification and monitoring of non-bank financial institutions that are depositors of the institution and that engage in a high volume of cash activity (i.e. money transmitters and check cashing businesses). c. periodic account activity monitoring. d. internal investigations, monitoring and reporting of suspicious transactions. 			

Exemptions

Advisory #5

Effective May 1, 1996, financial institutions may choose to exempt currency transactions in excess of \$10,000 with certain classes of “exempt persons” as defined in the “interim exemption rule” located at section 502.0 of the *BSA Examination Manual*. If the institution

maintains such classes of “exempt persons,” the examiner should proceed through steps 24–27. If the institution continues to utilize only the “existing” exemption procedures as established by the Internal Revenue Service (refer to *BSA Manual—Exemption Handbook*), the examiner should proceed to step 28. Finally, if the institution does not exempt applicable accounts, the examiner may proceed to the next section.

	<i>Y</i>	<i>N</i>	<i>Comments</i>
<p>24. Has the bank determined whether applicable “exempt person” accounts (i.e. banks, departments and agencies of the U.S. and their political subdivisions, listed corporations, and consolidated subsidiaries of listed corporations) exist and are eligible for exemption under the interim exemption rule?</p>			
<p>25. For each “exempt person” account, has the bank properly filed a single currency transaction form 4789 with the Internal Revenue Service (31 CFR 103.22(h)(3))?</p>			

	<i>Y</i>	<i>N</i>	<i>Comments</i>
26. Has the institution performed ongoing reasonable due diligence in determining whether a customer is eligible for designation as an “exempt person” and properly documented that determination (i.e. stock quotes from newspapers; consolidated returns) (31 CFR 103.22(h)(4)(i)?			
27. Does the institution monitor “exempt person” accounts for unusual or suspicious activity (31 CFR 103.22(h)(7)?			
28. Obtain a copy of the institution’s list of exempt customers and review the institution’s correspondence with the Internal Revenue Service and Department of the Treasury regarding exemptions.			
29. Is the exemption list centralized in one location for the institution as a whole (31 CFR 103.22(f)?			
30. Does the list include the following required information on each exempt customer? a. Name of business. b. Local street address. c. Type of business. d. Taxpayer identification number. e. Account number. f. Reason for exemption. g. Indication as to whether exemption is for deposits, withdrawals or both. h. Dollar limit for each exemption type (deposit or withdrawal).			
31. Does the bank perform a review of currency transaction activity on at least an annual basis in support of the established limits, including seasonal and “Monday-only” accounts (Refer to <i>BSA Manual—Exemption Handbook</i>)?			
32. Does the bank have written documentation to support the established dollar limits?			

	<i>Y</i>	<i>N</i>	<i>Comments</i>
33. Does the documentation reflect that the exemptions appear commensurate with the customary conduct of the customer's business activity and frequency of large cash transactions?			
34. Does the bank exempt any customers which do not meet the immediate eligibility requirements of the exemption procedures, and thereby require special exemptions? If so, are the special exemptions documented in written correspondence from the Internal Revenue Service or the Department of the Treasury? Obtain copies of the documents.			
35. Does the bank exempt customers which cannot be exempted under the exemption procedures?			
36. If the institution has exempted a customer(s) since October 27, 1986, has the institution obtained a signed statement from the customer(s) attesting to the accuracy of the information supporting the exemption(s)?			
37. If the institution ships currency to or receives currency from a correspondent bank, savings and loan association, credit union, etc., are the names and addresses of the institutions included on the exemption list?			
38. Are all exempted accounts of a commercial type and not the personal accounts of a customer?			
39. Has the institution, in granting exemptions, adhered to its established policy?			

Advisory #6

If the answers to Workprogram procedures 24 through 39 are substantially unsatisfactory, you (or you may direct the institution to do so) should perform Workprogram procedures 40 to 42. As an alternative, you may wish to perform

a sampling of the Workprogram procedures 40 to 42 and then instruct the institution to complete the remainder of the review for these two Workprogram procedures. If answers to 24 through 39 are generally satisfactory, you may proceed to the Know Your Customer section.

	<i>Y</i>	<i>N</i>	<i>Comments</i>
<p>40. Review of Statements of Accounts</p> <p>a. Obtain customer statements of account for a sixty day period for all exempted customers.</p> <p>b. Review customer statements of account to determine whether any daily deposit or withdrawal amounts (either individual amounts or aggregated amounts) exceed \$10,000. (The amounts on the statements of account may include cash and/or checks).</p>			

Advisory #7

If a customer’s cash deposit or withdrawal amounts on the statements of account do not exceed \$10,000 on a regular and frequent basis (refer to *BSA Manual—Exemption Handbook* for meaning of “regular and frequent”) the customer does not qualify for an exemption

status. (Note that the \$10,000 limitation refers to cash only. The information may not be readily available when reviewing the statement of account). Discuss the customer’s status with institution management. Workprogram procedures 41 and 42 regarding Review of Deposits and Withdrawals is not required for these ineligible customers.

	<i>Y</i>	<i>N</i>	<i>Comments</i>
<p>41. Review of Deposits</p> <ul style="list-style-type: none"> a. Obtain a hard copy of deposit tickets for customer accounts to be tested. Actual deposit tickets may be available if the institution does not mail the deposit tickets back to the customer. If actual deposit tickets are not available, request that the institution print a hard copy of deposit tickets from microfilm or microfiche. b. Determine whether the cash portion of the deposits is sufficient to qualify the customer for an exemption based upon the Internal Revenue Service’s “regular and frequent” requirement for a deposit exemption. c. Determine whether established dollar limits are reasonable by reviewing the customer’s cash deposit activity. Discuss any unreasonable dollar limits with institution management. 			

Advisory #8

Exemption procedures permit unilateral exemption withdrawals for payroll purposes from an existing account by an established depositor who is a United States resident and operates a firm that regularly withdraws more than \$10,000

in order to pay its employees in currency. The exemption is limited to withdrawals by employers that actually pay employees with the currency withdrawn. The exemption is not available to employers who pay employees by check and then offer a check cashing service to the employees.

	Y	N	Comments
<p>42. a. Determine the method used by exempt customers to withdraw currency in excess of \$10,000.</p> <ul style="list-style-type: none"> • If checks payable to “cash” are used, review canceled checks cleared during the current statement cycle and identify those items and amounts. • If counter currency withdrawal tickets or counter checks are used, review tickets or checks and identify those items and amounts. 			
<p>b. Determine whether the cash portion of the withdrawals is sufficient to qualify the customer for an exemption based upon Treasury’s “regular and frequent” requirement for a withdrawal exemption.</p> <p>c. Determine whether established dollar limits are reasonable by reviewing the customer’s cash withdrawal activity. Discuss any unreasonable dollar limits with institution management.</p>			

Advisory #9

Department of the Treasury Administrative Ruling 88-3 states that banks may not exempt “cash back” transactions (transactions involving the deposit of checks where a portion of the deposit is remitted in cash) from the CTR reporting requirements. Therefore, cash received by the customer on “cash-back” transactions should not be included in the exemption limit review. (Refer to *BSA Manual—Administrative Rulings*).

Know Your Customer Policy

Advisory #10

While “Know Your Customer” policies and procedures are not currently required by regulation, institutions should strongly be encouraged to develop and maintain such policies and procedures (Refer to *BSA Manual—Know Your Customer Policy Standards*).

	Y	N	Comments
43. Does the bank have policies and procedures which require that “reasonable efforts” be made to ascertain the true identity of individual customers and/or the stated business purpose of each commercial enterprise with whom the bank conducts business (Refer to <i>BSA Manual—Know Your Customer Policy Standards</i>)?			
44. Does the institution’s “Know Your Customer” policy include the following, when opening an account: <i>Personal Accounts</i> a. Procurement of proper identification (e.g., driver’s license with photograph, U.S. passport, etc.)? b. Consideration of customer’s residence or place of business? c. Consideration of source of funds/wealth used to open the account? d. Check with service bureau, if applicable, for undesirable situations involving customer (kiting, NSF, etc.)? <i>Business Accounts</i> e. Verification of legal status of business (i.e., sole proprietorship, partnership, etc.)? f. Verification of name of business, if applicable, with a reporting agency? g. Verification that business exists and is conducting the stated business?			

	<i>Y</i>	<i>N</i>	<i>Comments</i>
<p>h. For foreign business accounts, is there proof that the business is registered in the country of origin (e.g. articles of incorporation, etc.)?</p> <p>i. Procurement of the following information for large commercial accounts:</p> <ul style="list-style-type: none"> • Financial statement? • Description of customer's principal line of business? • Description of business operations, i.e., retail vs. wholesale? 			
45. Does the bank's employee education training program provide detailed instruction in the identification and reporting of "suspicious" transactions? A no answer may indicate a training deficiency and should be so noted in question #16 (Refer to <i>BSA Manual—Suspicious Activities</i>).			
46. Does the bank have adequate ongoing monitoring systems in place to identify "suspicious" transactions (structuring, concentration accounts, transactions inconsistent with the nature of a customer's stated business purpose, unusual wire transfer activities)?			
47. Does the bank have adequate testing of its systems to identify suspicious transactions?			
48. If the institution uses fictitious names for customers on the general ledger or other institution documents, does the institution maintain files containing the customers' real names and other identifying information and does the institution have knowledge of these customers' activities (The use of fictitious names is customarily found in private or foreign banking)?			

Currency Flows and Reporting of Large Cash Transactions

	Y	N	Comments
49. Review the cash totals shipped to and received from the Federal Reserve Bank, correspondent banks, or between branch offices for a reasonable period of time (generally no less than three months). You should determine, through discussion with management, the cause of any unusual activity noted (i.e. material variance in totals of currency shipped or received or large denomination currency exchanged). You should also determine if the volume of CTR filings during the period is consistent with any changes in the patterns of cash activity. (Refer to <i>BSA Manual—Databases</i>).			

Advisory #11

The sample size of CTRs you should review will depend upon several factors such as the size and location of the institution, the detail and accuracy of reports, and your comfort level

with the institution's internal control procedures. If the institution has an automated system for identifying large currency transactions, you should proceed to Workprogram procedure 50. If not, proceed to Workprogram procedure 51.

	Y	N	Comments
50. Ascertain whether the bank has an automated system in place to capture cash transactions (individual and/or multiple transactions) in excess of \$10,000 on the same business day by or on behalf of the same individual, or by account. Determine whether the internal audit/independent review has adequately tested the accuracy and validity of the automated large transaction identification system and that the system is comprehensive with regard to all points of cash entry and exit. Determine whether the discount brokerage, private banking, trust, or any other departments within the bank engage in currency transactions subject to the regulations, and if so, that aggregation systems cover such activities. If the system has not been verified, proceed to ADVISORY #13. You should also perform the procedures contained in Workprogram procedures 52 and 53.			

	<i>Y</i>	<i>N</i>	<i>Comments</i>
51. If the bank does not make use of an automated large transaction identification or aggregation system, does the internal audit program or other independent review include a sample test check of tellers' cash proof sheets or tapes to determine if large cash transactions are being reported? If not, proceed to ADVISORY #13. You should also perform the procedures contained in Workprogram procedures 52 and 53.			
52. Review a sample of completed CTRs, whether hard copy or from computer generated filings, to determine that: <ul style="list-style-type: none"> a. CTRs are properly completed in accordance with Internal Revenue Service instructions. b. Transaction amounts are consistent with the type and nature of business or occupation of the customer. c. CTRs are filed for large cash transactions identified by tellers' proof sheets, automated large currency transaction system, or other type of aggregation system, unless an exemption exists for the customer. However, CTRs must be filed for customers who exceed their exemption limits. d. CTRs are filed within 15 calendar days after the date of the transaction (25 days if magnetically filed). 			
53. Review any correspondence received from the Internal Revenue Service relating to incorrect or incomplete CTRs and determine whether the institution has taken appropriate corrective action.			

Advisory #12

If the review of the bank’s handling of currency flows and large cash transactions is satisfactory, proceed to the funds transfer section of the Workprogram. If the review was not satisfactory, or deficient in any respect, proceed to ADVISORY #13.

Advisory #13

If the bank’s internal audit/independent review has not sufficiently tested the validity of the automated or manual systems to identify large currency transactions (i.e. performed a test check of tellers’ proof sheets for large cash transactions), the bank may be in violation of Regulation H, Section 208.14. The examiner in charge should be notified that the integrity of the reporting system for large currency transactions cannot be verified. Depending upon the circumstances, the examiner in charge must choose one of the following options:

- The examiner in charge may instruct the bank to perform a self-assessment of its compliance with the reporting requirements of BSA. Specifically, the bank must conduct a review of its cash activities since the previous examination “sufficient in scope” to satisfy the examiner that no other violations of the BSA have occurred. The scope of such a review should include a detailed test check of each teller’s cash proof sheets since the previous BSA examination. The bank must provide a report to the examiner detailing the scope of the review (i.e. number of days of teller’s work reviewed and the number of tellers reviewed) and the findings that result from the review. (The report from the institution should, at a minimum, include any previously unreported large currency transactions.)
- Where you suspect willful nonreporting of violations and an attempt to cover up such transactions, then you should perform Workprogram procedures 54 through 58.

	Y	N	<i>Comments</i>
54. Review tellers’ cash proof sheets for suspected nonreporting of large currency transactions for periods of time of suspected violations.			
55. If the bank has an automated system in place to capture individual or multiple cash transactions of less than \$10,000, review an appropriate sample of transactions to ascertain the following information. <ul style="list-style-type: none"> a. Evidence of structured transactions. b. Evidence of “concentration accounts” (accounts which have frequent cash deposits aggregating less than \$10,000 on any business day, and relatively few transfers of large amounts out of the accounts, by check or wire). c. Customers with frequent cash transactions of less than \$10,000 who have not provided tax identification numbers. d. Customers with frequent cash transactions that have provided either a foreign address or post office box as an address or have requested that the bank hold monthly statements. e. Other suspicious or unusual activities. 			

	<i>Y</i>	<i>N</i>	<i>Comments</i>
<p>56. If available, obtain copies of the following internally generated reports for review:</p> <p>a. Suspected Kiting Reports—These reports identify excessive activity in accounts and should be reviewed for cash activity. (The account profile of an account used for money laundering can be similar to that of an account used for check kiting, i.e. high volume of activity, matching deposits and withdrawals, low average balances in relation to activity.)</p> <p>b. Demand Deposit Activity Reports—These reports cover all customer and employee accounts. They generally show daily balances and accumulate deposits and withdrawals over a 30-day period. Careful review will show accounts that have changed, either in average balance or in numbers of transactions.</p> <p>c. Large Transaction or Cash-In and Cash-Out Reports—Most institutions prepare reports of deposits and withdrawals, either in cash or by check that exceed a certain amount that is less than the over \$10,000 reporting requirement. Such reports can help identify customers who may be structuring transactions to avoid CTR reporting or who have unusual or suspicious activity in their accounts.</p> <p>d. Incoming and Outgoing Wire Transfer Logs—These logs can identify transfers of funds out of the country or to remote banks, transfers funded by cashier's checks and/or money orders in amounts under the CTR filing threshold (over \$10,000) and other suspicious patterns for non-customers as well as accountholders. Additionally, review incoming and outgoing facsimile logs for payment instructions related to funds transfers.</p> <p>e. Loans Listed by Collateral—Review for “significant” loans collateralized by cash (certificates of deposit, bank accounts). Review situations in which collateral was received by funds transfer and the collateral, such as certificates of deposits, are from offshore institutions. Inquire as to the purpose and terms of loans secured largely with cash and whether payments on such loans are often received in cash, if at all. Look for loans from which the proceeds are immediately used to purchase CD's.</p>			

	Y	N	Comments
<p>57. Obtain copies of the bank statement for the institution's major correspondent bank for a period of at least two months, together with reconciliation sheets and general ledger sheets covering the same period. Review large transactions reflected on either the institution's or the correspondent's records to determine its nature, as indicated by copies of credit or debit advices, or general ledger tickets. Note the following items and determine the reason(s) for such transactions:</p> <ul style="list-style-type: none"> a. Advice of credit from a correspondent bank that cash has been transmitted to the correspondent for credit to the account of the customer initiating the cash shipment on the books of the institution under examination. b. Cashier checks, money orders or similar instruments drawn on other institutions in amounts under \$10,000, more than one of which have been deposited into the same deposit account, or into accounts controlled by the same person, at the institution under examination, and possibly transferred elsewhere in bulk amounts. Traces of such transactions may be found in correspondent account statements, customer account records or in telex records. Note whether the instruments under \$10,000 are sequentially numbered. 			
<p>58. Review incoming mail of the institution to determine if the institution is receiving currency deposits via mail, courier services or internal deliveries. Does the institution have procedures to ensure that CTRs are filed and proper records are maintained?</p>			

Funds Transfers (Refer to *BSA Manual*—
Wire Transfer Operations)

Advisory #14

If this Workprogram is being used for institutions other than commercial banks, foreign branches, Edge Act corporations and agreement

corporations, refer to 31 CFR 103.33 (e) and (f) for the applicable requirements. Also, a copy of the new wire transfer rules is located in the BSA Regulations 31 CFR 103.11 and 103.33.

	<i>Y</i>	<i>N</i>	<i>Comments</i>
59. Is there adequate separation of duties or compensating controls to ensure proper authorization for sending and receipt of transfers, correct posting to accounts and an audit trail of activities?			
60. Does the institution accept cash for funds transfers and, if so, does the institution require identification, maintain documentation, and file CTRs, if applicable?			
61. Does the institution send or receive fund transfers to/from financial institutions in other countries, especially countries with strict privacy and secrecy laws, and, if so, are amounts, frequency, and countries of origin/destination consistent with the nature of the business or occupation of the customer?			
62. Does the institution have procedures to monitor for accounts with frequent cash deposits and subsequent wire transfers of funds to a larger institution or out of the country?			

Responsibilities for Originating Banks

	<i>Y</i>	<i>N</i>	<i>Comments</i>
<p>63. For funds transfer originations of \$3,000 or more, does the institution retain the following records (this information may be with the payment order or in the institution's files if the originator has an established relationship with the institution¹) (31 CFR 103.33(e)(1)(i))</p> <ul style="list-style-type: none"> a. The name and address of the originator; b. The amount of the funds transfer; c. The date of the funds transfer; d. Any payment instructions received from the originator with the payment order; e. The identity of the beneficiary's bank; and f. As many of the following items as are received with the payment order:² <ul style="list-style-type: none"> (1) The name and address of the beneficiary; (2) The account number of the beneficiary; and (3) Any other specific identifier of the beneficiary. <p>64. For funds transfers of \$3,000 or more for originators that do not have an established relationship with the institution,¹ in addition to the requirements in question 63:</p> <ul style="list-style-type: none"> a. If the payment order is made in person, does the institution verify the required noncustomer identification³ and retain a record of this verified information? [31 CFR 103.33(e)(2)(i)] 			

1. A customer has an established relationship with a financial institution if the customer has a loan, deposit, or other asset account, or is a person with respect to which the institution has on file the person's name and address, as well as taxpayer ID number, or, if none, alien identification number or passport number and country of issuance, and to which the institution provides financial services relying on that information.

2. For funds transfers effected through the Federal Reserve's Fedwire funds transfer system, only one of the items is required to be retained, if received with the payment order, until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire message format.

3. Information required from noncustomers includes the name and address; the type of identification reviewed; and the number of the identification document (*e.g.*, driver's license); as well as a record of the person's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance; or a notation in the record of the lack thereof).

	<i>Y</i>	<i>N</i>	<i>Comments</i>
<p>b. If the institution has knowledge that the person placing the payment order is not the originator, does the institution obtain and retain a record of the originator's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person placing the order, or a notation in the record of the lack thereof? (31 CFR 103.33(e)(2)(i)) Does the institution verify the identity of the person placing the order on behalf of a third party?</p> <p>c. If the payment order is not made in person, does the institution obtain and retain a record of name and address of the person placing the payment order, as well as the person's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof, and a copy or record of the method of payment (e.g., check or credit card transaction) for the funds transfer? (31 CFR 103.33(e)(2)(ii))</p>			
65. Is the information that the institution must retain for originators retrievable by reference to the name of the originator? If the originator is an established customer of the institution and has an account used for funds transfers, is the information also retrievable by account number? ⁴ (31 CFR 103.33(e)(4))			
66. For transmittals of funds of \$3,000 or more, does the institution include in the transmittal order ⁵ (31 CFR 103.33(g)(1)):			
<p>a. The name and, if the payment is ordered from an account, the account number of the transmittor?</p> <p>b. The address of the transmittor, except for transmittal orders through Fedwire until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire format;</p>			

4. Account number being the actual account used in the funds transfer transaction at the time of the transfer. If the institution has merged with another financial institution, the transfer must be retrievable by the old account number.

5. See 31 CFR Part 103, Section 103.11 for definitions of terms.

Responsibilities for Intermediary Banks

	<i>Y</i>	<i>N</i>	<i>Comments</i>
<ul style="list-style-type: none"> c. The amount of the transmittal order; d. The date of the transmittal order; e. The identity of the recipient's financial institution; f. As many of the following items as are received with the transmittal order:² <ul style="list-style-type: none"> (1) The name and address of the recipient; (2) The account number of the recipient; and (3) Any other specific identifier of the recipient; and either the name and address or numeric identifier of the transmitter's financial institution. 			
67. For funds transfers of \$3,000 or more, if the institution is acting as an intermediary bank, does the institution retain either the original or a microfilm, other copy, or electronic record of the payment order? (31 CFR 103.33(e)(1)(ii))			
68. For transmittals of funds of \$3,000 or more, does the institution include in the transmittal order to the next receiving financial institution the following, if received from the sender ⁴ (31 CFR 103.33(g)(2)): <ul style="list-style-type: none"> a. the name and account number of the transmitter; b. The address of the transmitter, except for transmittal orders through Fedwire until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire format. c. The amount of the transmittal order; d. The date of the transmittal order; e. The identity of the recipient's financial institution; 			

2. For funds transfers effected through the Federal Reserve's Fedwire funds transfer system, only one of the items is required to be retained, if received with the payment order, until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire message format.

4. Account number being the actual account used in the funds transfer transaction at the time of the transfer. If the institution has merged with another financial institution, the transfer must be retrievable by the old account number.

Responsibilities for Beneficiary Banks

	<i>Y</i>	<i>N</i>	<i>Comments</i>
f. As many of the following items as are received with the transmittal order: ² (1) The name and address of the recipient; (2) The account number of the recipient; and (3) Any other specific identifier of the recipient; and either the name and address or numeric identifier of the transmitter's financial institution.			
69. For each payment order of \$3,000 or more that an institution accepts as a beneficiary's bank, does the institution retain either the original or a microfilm, other copy, or electronic record of the payment order? (31 CFR 103.33(e)(1)(iii))			
70. In addition to the requirements in question 68, for payment orders of \$3,000 or more received for a beneficiary that does not have an established relationship with the institution: ¹			
a. If the proceeds are delivered in person to the beneficiary or its representative or agent, does the beneficiary's bank verify the identity of the person receiving the proceeds and obtain and retain a record of that information? ³ (31 CFR 103.33(e)(3)(i))			

1. A customer has an established relationship with a financial institution if the customer has a loan, deposit, or other asset account, or is a person with respect to which the institution has on file the person's name and address, as well as taxpayer ID number, or, if none, alien identification number or passport number and country of issuance, and to which the institution provides financial services relying on that information.

2. For funds transfers effected through the Federal Reserve's Fedwire funds transfer system, only one of the items is required to be retained, if received with the payment order, until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire message format.

3. Information required from noncustomers includes the name and address; the type of identification reviewed; and the number of the identification document (*e.g.*, driver's license); as well as a record of the person's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance; or a notation in the record of the lack thereof).

	<i>Y</i>	<i>N</i>	<i>Comments</i>
<p>b. If the institution has knowledge that the person receiving the proceeds is not the beneficiary, does the institution obtain and retain a record of the beneficiary's name and address, as well as the beneficiary's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person receiving the proceeds, or a notation in the record of the lack thereof? (31 CFR 103.33(e)(3)(i)) Does the institution verify the identity of the individual receiving the funds on behalf of a third party?</p> <p>c. If the proceeds are delivered other than in person, does the institution retain a copy of the check or other instrument used to effect payment, or the information contained thereon, as well as the name and address of the person to which it was sent? (31 CFR 103.33(e)(3)(ii))</p>			
<p>71. Is the information that the institution must retain for beneficiaries retrievable by reference to the name of the beneficiary? If the beneficiary is an established customer of the institution and has an account used for funds transfers, is the information also retrievable by account number? (31 CFR 103.33(e)(4))</p>			

Purchases/Sales of Monetary Instruments

Section 103.29 of the BSA requires that financial institutions maintain certain information regarding sales in currency of bank checks or drafts, cashier’s checks, money orders or traveler’s checks for \$3,000 to \$10,000, inclusive. (Effective October 17, 1994, financial institutions are no longer required to maintain the necessary information on a “monetary instrument log.”)

\$10,000 inclusive, and where the institution requires deposit-holders to buy monetary instruments only through the use of their deposit accounts (e.g. debit memo, check, etc.), the institution is not required to separately maintain the information pursuant to Section 103.29. However, the institution must have adequate controls and proper training in place to ensure that if a transaction is completed that inadvertently does not comply with the stated policy (i.e. teller mistakenly sells \$5,000 in traveler’s checks to nondeposit-account-holder for cash), the required information will be properly recorded on whatever records or systems that the bank chooses (e.g. on the copy of the instrument purchased). If the institution’s policies are adequate and therefore the institution does not maintain a log, you may proceed to ADVISORY #18.

Advisory #15:

If the institution’s stated policy is not to sell monetary instruments for cash to nondeposit-account-holders in amounts between \$3,000 and

	<i>Y</i>	<i>N</i>	<i>Comments</i>
<p>72. Do the financial institution’s records include the following required information for purchasers who have deposit accounts (as defined in Section 103.11) with the institution:</p> <ul style="list-style-type: none"> a. The name of the purchaser. b. Date of purchase. c. The type(s) of instrument(s) purchased. d. The serial number(s) of each of the instrument(s) purchased. e. The dollar amount(s) of each of the instrument(s) purchased in currency. f. Method of verification of identity (either at time of purchase or when deposit account opened). 			
<p>73. Do the financial institution’s records include the following required information for purchasers who do not have deposit accounts with the institution:</p> <ul style="list-style-type: none"> a. The name and address of the purchaser. b. The social security or alien identification number of the purchaser. c. The date of birth of the purchaser. 			

	<i>Y</i>	<i>N</i>	<i>Comments</i>
d. The date of purchase.			
e. The type(s) of instrument(s) purchased.			
f. The serial number(s) of each of the instrument(s) purchased.			
g. The dollar amount(s) of each of the instrument(s) purchased.			
h. Method of verifying identity of purchaser and specific identifying information (e.g. State of issuance and number of driver's license).			
74. Are the financial institution's records retrievable, upon request from the Treasury, within a reasonable period of time.			
75. Does the institution have a system for capturing multiple sales of monetary instruments in one day, in amounts totalling \$3,000 or more?			
76. Does the institution use manual or automated systems for identifying cash sales of monetary instruments? Note type of system used.			

Advisory #16

If the review of the records of the purchases/sales of monetary instruments shows unusual or suspicious patterns of purchases/sales activity

that might be associated to money laundering, perform Workprogram procedures 77 through 79. If not, proceed to Workprogram procedure 80.

	<i>Y</i>	<i>N</i>	<i>Comments</i>
77. If the institution uses manual systems, proceed to Workprogram procedure 79. If the institution uses automated systems, proceed to Workprogram procedure 78.			
78. If the institution relies upon automated systems for identifying such transactions, does the internal audit/independent review adequately test the accuracy and validity of the cash purchases/sales identification system and is the system comprehensive with regard to all points of purchase/sale? If the internal audit/independent review has verified the integrity of the system, then stop. If the integrity of the automated system has not been verified, proceed to Workprogram ADVISORY #17.			
79. If the institution relies upon manual systems for identifying such transactions, do the institution's records provide an audit trail sufficiently detailed to identify the method of payment for all purchases/sales of monetary instruments? a. Does the internal audit/independent review include a test check of teller's proof sheets to the original record of purchases/sales to determine that required information is properly obtained and retained? b. If the integrity of the manual system is verified by internal audit/independent review and ensures that all purchases/sales have been properly documented, then stop. If the integrity of the manual system has not been verified, proceed to Workprogram ADVISORY #17.			

Advisory #17

If the institution's internal audit/independent review has not sufficiently tested the validity of the automated or manual systems for identification of cash sales, the examiner in charge should be notified that internal audit or control may be inadequate and the institution may be in violation of Regulation H, Section 208.14. Depending upon the circumstances, the examiner in charge may request that the institution conduct a review of all sales of monetary instruments since the previous examination and indicate in a report to the examiner the source of payment for each purchase/sale between \$3,000 and \$10,000. A plan for implementation of adequate internal safeguards to assure proper record retention should also be presented.

Office of Foreign Assets Control

Advisory #18

The U.S. Department of Treasury's Office of Foreign Assets Control ("OFAC") administers laws that impose economic sanctions against foreign countries to further U.S. foreign policy and national security objectives. OFAC is also responsible for making regulations that restrict transactions by U.S. persons or entities (including banks), located in the U.S. or abroad, with certain foreign countries, their nationals or "specially designated nationals." OFAC regularly provides to banks, or banks may subscribe to certain databases or other informational providers (including the *Federal Register*), current listings of foreign countries and designated nationals that are prohibited from conducting business with any U.S. entity or individual (refer to Section 1505 of the *BSA Manual*).

	Y	N	Comments
80. Does the institution have policies and procedures in place for complying with OFAC laws and regulations?			
81. Does the U.S. bank maintain a current listing of prohibited countries, entities and individuals?			
82. Is the OFAC information disseminated to foreign country offices?			
83. Are new accounts compared to the OFAC listings prior to opening?			
84. Are established accounts regularly compared to current OFAC listings?			

Payable Through Accounts

Advisory #19

If the institution being examined engages in payable through account activities, refer to the section of the *BSA Manual* dealing with such accounts.

TITLE 31—Money and Finance:
TreasurySUBTITLE B—Regulations Relating
to Money and FinanceCHAPTER I—Monetary Offices,
Department of the TreasuryPART 103—Financial Recordkeeping
and Reporting of Currency and
Foreign Transactions

SUBPART A—Definitions

31 CFR 103.11

§ 103.11 Meaning of terms.

[PUBLISHER'S NOTE: Paragraphs (n)(7)(i), (z) and (nn) were revised, and paragraphs (rr), (ss), and (tt) were added at 61 FR 7054, 7055, Feb. 23, 1996, effective Aug. 1, 1996.]

When used in this part and in forms prescribed under this part, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meanings ascribed in this section.

- (a) *Accept.* A receiving financial institution, other than the recipient's financial institution, accepts a transmittal order by executing the transmittal order. A recipient's financial institution accepts a transmittal order by paying the recipient, by notifying the recipient of the receipt of the order or by otherwise becoming obligated to carry out the order.
- (b) *At one time.* For purposes of § 103.23 of this part, a person who transports, mails, ships or receives; is about to or attempts to transport, mail or ship; or causes the transportation, mailing, shipment or receipt of monetary instruments, is deemed to do so "at one time" if:
- (1) That person either alone, in conjunction with or on behalf of others;
 - (2) Transports, mails, ships or receives in any manner; is about to transport, mail or ship in any manner; or causes the transportation, mailing, shipment or receipt in any manner of;
 - (3) Monetary instruments;
 - (4) Into the United States or out of the United States;
 - (5) Totaling more than \$10,000;
 - (6) (i) On one calendar day or (ii) if for the purpose of evading the reporting requirements of § 103.23, on one or more days.
- (c) *Bank.* Each agent, agency, branch or office within the United States of any person doing business in one or more of the capacities listed below:
- (1) A commercial bank or trust company organized under the laws of any State or of the United States;
 - (2) A private bank;
 - (3) A savings and loan association or a building and loan association organized under the laws of any State or of the United States;
 - (4) An insured institution as defined in section 401 of the National Housing Act;
 - (5) A savings bank, industrial bank or other thrift institution;
 - (6) A credit union organized under the law of any State or of the United States;
 - (7) Any other organization chartered under the banking laws of any State and subject to the supervision of the bank supervisory authorities of a State;
 - (8) A bank organized under foreign law;
 - (9) Any national banking association or corporation acting under the provisions of section 25(aa) of the Act of Dec. 23, 1913, as added by the Act of Dec. 24, 1919, ch. 18, 41 Stat. 378, as amended (12 U.S.C. 611–32).
- (d) *Beneficiary.* The person to be paid by the beneficiary's bank.
- (e) *Beneficiary's bank.* The bank or foreign bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.
- (f) *Broker or dealer in securities.* A broker or dealer in securities, registered or required to be registered with the Securi-

- ties and Exchange Commission under the Securities Exchange Act of 1934.
- (g) *Common carrier.* Any person engaged in the business of transporting individuals or goods for a fee who holds himself out as ready to engage in such transportation for hire and who undertakes to do so indiscriminately for all persons who are prepared to pay the fee for the particular service offered.
- (h) *Currency.* The coin and paper money of the United States or of any other country that is designated as legal tender and that circulates and is customarily used and accepted as a medium of exchange in the country of issuance. Currency includes U.S. silver certificates, U.S. notes and Federal Reserve notes. Currency also includes official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country.
- (i) *Currency dealer or exchanger.* A person who engages as a business in dealing in or exchanging currency, except for banks which offer such services as an adjunct to their regular services.
- (j) *Deposit account.* Deposit accounts include transaction accounts described in paragraph (q) of this section, savings accounts, and other time deposits.
- (k) *Domestic.* When used herein, refers to the doing of business within the United States, and limits the applicability of the provision where it appears to the performance by such institutions or agencies of functions within the United States.
- (l) *Established customer.* A person with an account with the financial institution, including a loan account or deposit or other asset account, or a person with respect to which the financial institution has obtained and maintains on file the person's name and address, as well as taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, and to which the financial institution provides financial services relying on that information.
- (m) *Execution date.* The day on which the receiving financial institution may properly issue a transmittal order in execution of the sender's order. The execution date may be determined by instruction of the sender but cannot be earlier than the day the order is received, and, unless otherwise determined, is the day the order is received. If the sender's instruction states a payment date, the execution date is the payment date or an earlier date on which execution is reasonably necessary to allow payment to the recipient on the payment date.
- (n) *Financial institution.* Each agent, agency, branch, or office within the United States of any person doing business, whether or not on a regular basis or as an organized business concern, in one or more of the capacities listed below:
- (1) A bank (except bank credit card systems);
 - (2) A broker or dealer in securities;
 - (3) A currency dealer or exchanger, including a person engaged in the business of a check casher;
 - (4) An issuer, seller, or redeemer of traveler's checks or money orders, except as a selling agent exclusively who does not sell more than \$150,000 of such instruments within any given 30-day period;
 - (5) A licensed transmitter of funds, or other person engaged in the business of transmitting funds;
 - (6) A telegraph company;
 - (7) (i) [Effective Aug. 1, 1996.] Casino. A casino or gambling casino that: Is duly licensed or authorized to do business as such in the United States, whether under the laws of a State or of a Territory or Insular Possession of the United States, or under the Indian Gaming Regulatory Act or other federal, state, or tribal law or arrangement affecting Indian lands (including, without limitation, a casino operating on the assumption or under the view that no such authorization is required for casino operation on Indian lands); and has gross annual gaming revenue in excess of \$1 million. The term includes the principal headquarters and every domestic branch or place of business of the casino.
 - (ii) For purposes of this paragraph (i)(7), "gross annual gaming revenue"

- nue” means the gross gaming revenue received by a casino, during either the previous business year or the current business year of the casino. A casino or gambling casino which is a casino for purposes of this part solely because its gross annual gaming revenue exceeds \$1,000,000 during its current business year, shall not be considered a casino for purposes of this part prior to the time in its current business year that its gross annual gaming revenue exceeds \$1,000,000.
- (8) A person subject to supervision by any state or federal bank supervisory authority;
- (9) The United States Postal Service with respect to the sale of money orders.
- (o) *Foreign bank.* A bank organized under foreign law, or an agency, branch or office located outside the United States of a bank. The term does not include an agent, agency, branch or office within the United States of a bank organized under foreign law.
- (p) *Foreign financial agency.* A person acting outside the United States for a person (except for a country, a monetary or financial authority acting as a monetary or financial authority, or an international financial institution of which the United States Government is a member) as a financial institution, bailee, depository trustee, or agent, or acting in a similar way related to money, credit, securities, gold, or a transaction in money, credit, securities, or gold.
- (q) *Funds transfer.* The series of transactions, beginning with the originator’s payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator’s bank or an intermediary bank intended to carry out the originator’s payment order. A funds transfer is completed by acceptance by the beneficiary’s bank of a payment order for the benefit of the beneficiary of the originator’s payment order. Funds transfers governed by the Electronic Fund Transfer Act of 1978 (Title XX, Pub. L. 95-630, 92 Stat. 3728, 15 U.S.C. 1693, et seq.), as well as any other funds transfers that are made through an automated clearinghouse, an automated teller machine, or a point-of-sale system, are excluded from this definition.
- (r) *Transaction.*
- (1) Except as provided in paragraph (ii)(2) of this section, transaction means a purchase, sale, loan, pledge, gift, transfer, delivery or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other investment security or monetary instrument, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.
- (2) For purposes of § 103.22, and other provisions of this part relating solely to the report required by that section, the term “transaction in currency” shall mean a transaction involving the physical transfer of currency from one person to another. A transaction which is a transfer of funds by means of bank check, bank draft, wire transfer, or other written order, and which does not include the physical transfer of currency, is not a transaction in currency for this purpose.
- (s) *Intermediary financial institution.* A receiving financial institution, other than the transmitter’s financial institution or the recipient’s financial institution. The term intermediary financial institution includes an intermediary bank.
- (t) *Investment security.* An instrument which:
- (1) Is issued in bearer or registered form;
- (2) Is of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment;
- (3) Is either one of a class or series or by its terms is divisible into a class or series of instruments; and
- (4) Evidences a share, participation or other interest in property or in an

enterprise or evidences an obligation of the issuer.

- (u) *Monetary instruments.*
 - (1) Monetary instruments include:
 - (i) Currency;
 - (ii) Traveler's checks in any form;
 - (iii) All negotiable instruments (including personal checks, business checks, official bank checks, cashier's checks, third-party checks, promissory notes (as that term is defined in the Uniform Commercial Code), and money orders) that are either in bearer form, endorsed without restriction, made out to a fictitious payee (for the purposes of § 103.23), or otherwise in such form that title thereto passes upon delivery;
 - (iv) Incomplete instruments (including personal checks, business checks, official bank checks, cashier's checks, third-party checks, promissory notes (as that term is defined in the Uniform Commercial Code), and money orders) signed but with the payee's name omitted; and
 - (v) Securities or stock in bearer form or otherwise in such form that title thereto passes upon delivery.
 - (2) Monetary instruments do not include warehouse receipts or bills of lading.
- (v) *Originator.* The sender of the first payment order in a funds transfer.
- (w) *Originator's bank.* The receiving bank to which the payment order of the originator is issued if the originator is not a bank or foreign bank, or the originator if the originator is a bank or foreign bank.
- (x) *Payment date.* The day on which the amount of the transmittal order is payable to the recipient by the recipient's financial institution. The payment date may be determined by instruction of the sender, but cannot be earlier than the day the order is received by the recipient's financial institution and, unless otherwise prescribed by instruction, is the date the order is received by the recipient's financial institution.
- (y) *Payment order.* An instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank or foreign bank to pay, a fixed or determinable amount of money to a beneficiary if:
 - (z) [Effective Aug. 1, 1996.] *Person.* An individual, a corporation, a partnership, a trust or estate, a joint stock company, an association, a syndicate, joint venture, or other unincorporated organization or group, an Indian Tribe (as that term is defined in the Indian Gaming Regulatory Act), and all entities cognizable as legal personalities.
 - (aa) *Receiving bank.* The bank or foreign bank to which the sender's instruction is addressed.
 - (bb) *Receiving financial institution.* The financial institution or foreign financial agency to which the sender's instruction is addressed. The term receiving financial institution includes a receiving bank.
 - (cc) *Recipient.* The person to be paid by the recipient's financial institution. The term recipient includes a beneficiary, except where the recipient's financial institution is a financial institution other than a bank.
 - (dd) *Recipient's financial institution.* The financial institution or foreign financial agency identified in a transmittal order in which an account of the recipient is to be credited pursuant to the transmittal order or which otherwise is to make payment to the recipient if the order does not provide for payment to an account. The term recipient's financial institution includes a beneficiary's bank, except where the beneficiary is a recipient's financial institution.
 - (ee) *Secretary.* The Secretary of the Treasury or any person duly authorized by the Secretary to perform the function mentioned.
 - (ff) *Sender.* The person giving the instruction to the receiving financial institution.
 - (gg) *Structure (structuring).* For purposes of section 103.53, a person structures a transaction if that person, acting alone, or in conjunction with, or on behalf of, other persons, conducts or attempts to conduct one or more transactions in currency, in any amount, at one or more financial institutions, on one or more days, in any manner, for the purpose of evading the reporting requirements under section 103.22 of this Part. 'In any manner'

- includes, but is not limited to, the breaking down of a single sum of currency exceeding \$10,000 into smaller sums, including sums at or below \$10,000, or the conduct of a transaction, or series of currency transactions, including transactions at or below \$10,000. The transaction or transactions need not exceed the \$10,000 reporting threshold at any single financial institution on any single day in order to constitute structuring within the meaning of this definition.
- (hh) *Transaction account.* Transaction accounts include those accounts described in 12 U.S.C. 461(b)(1)(C), money market accounts and similar accounts that take deposits and are subject to withdrawal by check or other negotiable
- (ii) *Transaction in currency.* A transaction involving the physical transfer of currency from one person to another. A transaction which is a transfer of funds by means of bank check, bank draft, wire transfer, or other written order, and which does not include the physical transfer of currency is not a transaction in currency within the meaning of this part.
- (jj) *Transmittal of funds.* A series of transactions beginning with the transmitter's transmittal order, made for the purpose of making payment to the recipient of the order. The term includes any transmittal order issued by the transmitter's financial institution or an intermediary financial institution intended to carry out the transmitter's transmittal order. The term transmittal of funds includes a funds transfer. A transmittal of funds is completed by acceptance by the recipient's financial institution of a transmittal order for the benefit of the recipient of the transmitter's transmittal order. Funds transfers governed by the Electronic Fund Transfer Act of 1978 (Title XX, Pub. L. 95-630, 92 Stat. 3728, 15 U.S.C. 1693, et seq.), as well as any other funds transfers that are made through an automated clearinghouse, an automated teller machine, or a point-of-sale system, are excluded from this definition.
- (kk) *Transmittal order.* The term transmittal order includes a payment order and is an instruction of a sender to a receiving financial institution, transmitted orally, electronically, or in writing, to pay, or cause another financial institution or foreign financial agency to pay, a fixed or determinable amount of money to a recipient if:
- (ll) *Transmittor.* The sender of the first transmittal order in a transmittal of funds. The term transmittor includes an originator, except where the transmittor's financial institution is a financial institution or foreign financial agency other than a bank or foreign bank.
- (mm) *Transmittor's financial institution.* The receiving financial institution to which the transmittal order of the transmittor is issued if the transmittor is not a financial institution or foreign financial agency, or the transmittor if the transmittor is a financial institution or foreign financial agency. The term transmittor's financial institution includes an originator's bank, except where the originator is a transmittor's financial institution other than a bank or foreign bank.
- (nn) [Effective Aug. 1, 1996.] *United States.* The States of the United States, the District of Columbia, the Indian lands (as that term is defined in the Indian Gaming Regulatory Act), and the Territories and Insular Possessions of the United States.
- (oo) *Business day.* Business day, as used in this part with respect to banks, means that day, as normally communicated to its depository customers, on which a bank routinely posts a particular transaction to its customer's account.
- (pp) *Postal Service.* The United States Postal Service
- (qq) *FinCEN.* FinCEN means the Financial Crimes Enforcement Network, an office within the Office of the Under Secretary (Enforcement) of the Department of the Treasury.
- (rr) [Effective Aug. 1, 1996.] *Indian Gaming Regulatory Act.* The Indian Gaming Regulatory Act of 1988, codified at 25 U.S.C. 2701–2721 and 18 U.S.C. 1166–68.
- (ss) [Effective Aug. 1, 1996.] *State.* The States of the United States and, wherever necessary to carry out the provisions of this part, the District of Columbia.
- (tt) [Effective Aug. 1, 1996.] *Territories and Insular Possessions.* The Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and all other

territories and possessions of the United States other than the Indian lands and the District of Columbia.

HISTORY:

[52 FR 11441, Apr. 8, 1987; 52 FR 12641, Apr. 17, 1987, as amended at 53 FR 777, Jan. 13, 1988; 53 FR 4138, Feb. 12, 1988; 54 FR 3027, Jan. 23, 1989; 54 FR 28418, July 6, 1989; 55 FR 20143, May 15, 1990; 58 FR 13546, Mar. 12, 1993; 58 FR 45263, Aug. 27, 1993; 59 FR 9088, Feb. 25, 1994; 60 FR 228, Jan. 3, 1995; 60 FR 44144, Aug. 24, 1995; 61 FR 4326, 4331, Feb. 5, 1996, as corrected at 61 FR 14248, 14249, April 1, 1996; 61 FR 7054, 7055, Feb. 23, 1996; 61 FR 7054, 7055, Feb. 23, 1996; 61 FR 14383, 14385, Apr. 1, 1996]

AUTHORITY:

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5330.

NOTES:

[EFFECTIVE DATE NOTE: 60 FR 228, Jan. 3, 1995, which amended this section, became effective Jan. 1, 1996; 60 FR 44144, Aug. 24, 1995, delayed the effective date of the amendment at 60 FR 228, Jan. 3, 1995, from Jan. 1, 1996 to Apr. 1, 1996; 61 FR 14382, April 1, 1996, delayed the effective date of the amendment at 60 FR 228, Jan. 3, 1995, from April 1, 1996, to May 28, 1996; 61 FR 4326, 4331, Feb. 5, 1996, which revised paragraph (r) and added paragraph (qq), became effective April 1, 1996; 61 FR 7054, 7055, Feb. 23, 1996, which revised paragraphs (n)(7)(i), (z) and (nn), and added paragraphs (rr), (ss) and (tt), is effective Aug. 1, 1996; 61 FR 14383, 14385, April 1, 1996, which revised paragraphs (e), (w), (y), (aa), (bb), (dd), (kk), (ll), and (mm), became effective May 28 1996.]

NOTES APPLICABLE TO ENTIRE TITLE:

EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10.

CROSS REFERENCE: General Accounting Office: See 4 C.F.R. Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:

ABBREVIATION: The following abbreviation is used in this chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:

EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

SUBPART B—Reports Required to be Made

31 C.F.R. 103.20

§ 103.20 Determination by the Secretary.

The Secretary hereby determines that the reports required by this subpart have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

HISTORY:

[37 FR 6912, Apr. 5, 1972, as redesignated at 61 FR 4326, 4331, Feb. 5 1996]

AUTHORITY:

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5330.

NOTES:

[EFFECTIVE DATE NOTE: 61 FR 4326, 4331, Feb. 5 1996, which redesignated this section, is effective April 1, 1996.]
[CROSS REFERENCE: This section was formerly § 103.21.]

NOTES APPLICABLE TO ENTIRE TITLE:

EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10.

CROSS REFERENCE: General Accounting Office: See 4 C.F.R. Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:

ABBREVIATION: The following abbreviation is used in this chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:

EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

SUBPART B—Reports Required to be Made

31 C.F.R. 103.21

§ 103.21 Reports by banks of suspicious transactions.

(a) *General.*

- (1) Every bank shall file with the Treasury Department, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. A bank may also file with the Treasury Department by using the Suspicious Activity Report specified in paragraph (b)(1) of this section or otherwise, a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by this section.
- (2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through the bank, it involves or aggregates at least \$5,000 in funds or other assets, and the bank knows, suspects, or has reason to suspect that:

- (i) The transaction involves funds derived from illegal activities or is intended or conducted in order to hide or disguise funds or assets derived from illegal activities (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;
- (ii) The transaction is designed to evade any requirements of this part or of any other regulations promulgated under the Bank Secrecy Act, Pub. L. 91-508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330; or
- (iii) The transaction has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the bank knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.
- (b) *Filing procedures*—
- (1) *What to file.* A suspicious transaction shall be reported by completing a Suspicious Activity Report (“SAR”), and collecting and maintaining supporting documentation as required by paragraph (d) of this section.
 - (2) *Where to file.* The SAR shall be filed with FinCEN in a central location, to be determined by FinCEN, as indicated in the instructions to the SAR.
 - (3) *When to file.* A bank is required to file a SAR no later than 30 calendar days after the date of initial detection by the bank of facts that may constitute a basis for filing a SAR. If no suspect was identified on the date of the detection of the incident requiring the filing, a bank may delay filing a SAR for an additional 30 calendar days to identify a suspect. In no case shall reporting be delayed more than 60 calendar days after the date of initial detection of a reportable transaction. In situations involving violations that require immediate attention, such as, for example, ongoing money laundering schemes, the bank shall immediately notify, by telephone, an appropriate law enforcement authority in addition to filing timely a SAR.
- (c) *Exceptions.* A bank is not required to file a SAR for a robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities, or for lost, missing, counterfeit, or stolen securities with respect to which the bank files a report pursuant to the reporting requirements of 17 C.F.R. 240.17f-1.
- (d) *Retention of records.* A bank shall maintain a copy of any SAR filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SAR. Supporting documentation shall be identified, and maintained by the bank as such, and shall be deemed to have been filed with the SAR. A bank shall make all supporting documentation available to FinCEN and any appropriate law enforcement agencies or bank supervisory agencies upon request.
- (e) *Confidentiality of reports; limitation of liability.* No bank or other financial institution, and no director, officer, employee, or agent of any bank or other financial institution, who reports a suspicious transaction under this part, may notify any person involved in the transaction that the transaction has been reported. Thus, any person subpoenaed or otherwise requested to disclose a SAR or the information contained in a SAR, except where such disclosure is requested by FinCEN or an appropriate law enforcement or bank supervisory agency, shall decline to produce the SAR or to provide any information that would disclose that a SAR has been prepared or filed, citing this paragraph (e) and 31 U.S.C. 5318(g)(2), and shall notify FinCEN of any such request and its response thereto. A bank, and any director, officer, employee, or agent of such bank, that makes a report pursuant to this section (whether such report is required by this section or is made voluntarily) shall be protected from liability for any disclosure contained in, or for failure to disclose the fact of such report, or both, to the full extent provided by 31 U.S.C. 5318(g)(3).
- (f) *Compliance.* Compliance with this section shall be audited by the Department of the

Treasury, through FinCEN or its delegates under the terms of the Bank Secrecy Act. Failure to satisfy the requirements of this section may be a violation of the reporting rules of the Bank Secrecy Act and of this part. Such failure may also violate provisions of Title 12 of the Code of Federal Regulations.

HISTORY:

[61 FR 4326, 4331, Feb. 5, 1996, as corrected at 61 FR 14248, 14249, April 1, 1996, and 61 FR 18250, April 25, 1996]

AUTHORITY:

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5330.

NOTES:

[EFFECTIVE DATE NOTE: 61 FR 4326, 4331, Feb. 5, 1996, which added this section, became effective April 1, 1996.]

NOTES APPLICABLE TO ENTIRE TITLE:

EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10.

CROSS REFERENCE: General Accounting Office: See 4 C.F.R. Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:

ABBREVIATION: The following abbreviation is used in this chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:

EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

TITLE 31—Money and Finance: Treasury

SUBTITLE B—Regulations Relating to Money and Finance

CHAPTER I—Monetary Offices, Department of the Treasury

PART 103—Financial Recordkeeping and Reporting of Currency and Foreign Transactions

SUBPART A—Definitions

31 C.F.R. 103.11

§ 103.22 Reports of currency transactions.

(a) (1) Each financial institution other than a casino or the Postal Service shall file a report of each deposit, withdrawal,

exchange of currency or other payment or transfer, by, through, or to such financial institution which involves a transaction in currency of more than \$10,000. Transactions in currency by exempt persons with banks occurring after April 30, 1996, are not subject to this requirement to the extent provided in paragraph (h) of this section. Multiple currency transactions shall be treated as a single transaction if the financial institution has knowledge that they are by or on behalf of any person and result in either cash in or cash out totalling more than \$10,000 during any one business day. Deposits made at night or over a weekend or holiday shall be treated as if received on the next business day following the deposit.

(2) Each casino shall file a report of each transaction in currency, involving either cash in or cash out, of more than \$10,000.

(i) Transactions in currency involving cash in include, but are not limited to:

- (A) Purchases of chips, tokens, and plaques;
- (B) Front money deposits;
- (C) Safekeeping deposits;
- (D) Payments on any form of credit, including markers and counter checks;
- (E) Bets of currency;
- (F) Currency received by a casino for transmittal of funds through wire transfer for a customer;
- (G) Purchases of a casino's check; and
- (H) Exchanges of currency for currency, including foreign currency.

(ii) Transactions in currency involving cash out include, but are not limited to:

- (A) Redemptions of chips, tokens, and plaques;
- (B) Front money withdrawals;
- (C) Safekeeping withdrawals;
- (D) Advances on any form of credit, including markers and counter checks;

- (E) Payments on bets, including slot jackpots;
 - (F) Payments by a casino to a customer based on receipt of funds through wire transfer for credit to a customer;
 - (G) Cashing of checks or other negotiable instruments;
 - (H) Exchanges of currency for currency, including foreign currency; and
 - (I) Reimbursements for customers' travel and entertainment expenses by the casino.
- (iii) Multiple currency transactions shall be treated as a single transaction if the casino has knowledge that they are by or on behalf of any person and result in either cash in or cash out totalling more than \$10,000 during any gaming day. For purposes of this paragraph (a)(2), a casino shall be deemed to have the knowledge described in the preceding sentence, if: any sole proprietor, partner, officer, director, or employee of the casino, acting within the scope of his or her employment, has knowledge that such multiple currency transactions have occurred, including knowledge from examining the books, records, logs, information retained on magnetic disk, tape or other machine-readable media, or in any manual system, and similar documents and information, which the casino maintains pursuant to any law or regulation or within the ordinary course of its business, and which contain information that such multiple currency transactions have occurred.
- (A) Any sole proprietor, partner, officer, director, or employee of the casino, acting within the scope of his or her employment has knowledge that such multiple currency transactions have occurred, or
 - (B) The books, records, logs, information retained on magnetic disk, tape or other machine-readable media, or in any manual system, and similar documents and information, which the casino maintains pursuant to any law or regulation or within the normal course of its business, contain information that such multiple currency transactions have occurred.
- (3) The Postal Service shall file a report of each cash purchase of postal money orders in excess of \$10,000. Multiple cash purchases totaling more than \$10,000 shall be treated as a single transaction if the Postal Service has knowledge that they are by or on behalf of any person during any one day.
- (4) A financial institution includes all of its domestic branch offices for the purpose of this paragraph's reporting requirements.
- (b) Except as otherwise directed in writing by the Assistant Secretary (Enforcement) or the Commissioner of Internal Revenue:
- (1) This section shall not require reports:
 - (i) Of transactions with Federal Reserve Banks or Federal Home Loan banks;
 - (ii) Of transactions between domestic banks; or
 - (iii) By nonbank financial institutions of transactions with commercial banks (however, commercial banks must report such transactions with nonbank financial institutions).
 - (2) A bank may exempt from the reporting requirement of paragraph (aa) of this section the following:
 - (i) Deposits or withdrawals of currency from an existing account by an established depositor who is a United States resident and operates a retail type of business in the United States. For the purpose of this subsection, a retail type of business is a business primarily engaged in providing goods to ultimate consumers and for which the business is paid in substantial portions by currency, except that dealerships which buy or sell motor vehicles, vessels, or aircraft are not included and their transactions may not be exempted from the reporting requirements of this section.

- (ii) Deposits or withdrawals of currency from an existing account by an established depositor who is a United States resident and operates a sports arena, race track, amusement park, bar, restaurant, hotel, check cashing service licensed by state or local governments, vending machine company, theater, regularly scheduled passenger carrier or any public utility.
 - (iii) Deposits or withdrawals, exchanges of currency or other payments and transfers by local or state governments, or the United States or any of its agencies or instrumentalities.
 - (iv) Withdrawals for payroll purposes from an existing account by an established depositor who is a United States resident and operates a firm that regularly withdraws more than \$10,000 in order to pay its employees in currency.
- (c) In each instance the transactions exempted under paragraph (b) of this section must be in amounts which the bank may reasonably conclude do not exceed amounts commensurate with the customary conduct of the lawful, domestic business of that customer, or in the case of transactions with a local or state government or the United States or any of its agencies or instrumentalities, in amounts which are customary and commensurate with the authorized activities of the agency or instrumentality. This section does not permit a bank to exempt its transactions with nonbank financial institutions (except for check cashing services licensed by state or local governments and the United States Postal Service) nor will additional exemption authority be granted for such transaction (except transactions by other check cashers).
- (d) After October 27, 1986, a bank may not place any customer on its exempt list without first preparing a written statement, signed by the customer, describing the customary conduct of the lawful domestic business of that customer and a detailed statement of reasons why such person is qualified for an exemption. The statement shall include the name, address, nature of business, taxpayer identification number, and account number of the customer being exempted. The signature, including the title and position of the

person signing, will attest to the accuracy of the information concerning the name, address, nature of business, and tax identification number of the customer. Immediately above the signature line, the following statement shall appear:

“The information contained above is true and correct to the best of my knowledge and belief. I understand that this information will be read and relied upon by the Government.”

The bank shall indicate in this statement whether the exemption covers withdrawals, deposits, or both, as well as the dollar limit of the exemption for both deposits and withdrawals. The bank also shall indicate whether the exemption is limited to certain types of deposits and withdrawals (e.g., withdrawals for payroll purposes). In each instance, the exempted transactions must be in amounts that the bank may reasonably conclude do not exceed amounts commensurate with the customary conduct of the lawful domestic business of that customer. The bank is responsible for independently verifying the activity of the account and determining applicable dollar limits for exempted deposits or withdrawals. The bank must retain each statement that it prepares pursuant to this subparagraph as long as the customer is on the exempt list, and for a period of five years following removal of the customer from the bank's exempt list.

- (e) A bank may apply to the Commissioner of Internal Revenue for additional authority to grant an exemption to the reporting requirement, not otherwise permitted under paragraph (b) of this section, if the bank believes that circumstances warrant such an exemption. Such requests shall be addressed to: Chief, Currency and Banking Reports Branch, Compliance Review Group, IRS Data Center, Post Office Box 32063, Detroit, Michigan 48232, and must be accompanied by a statement of the circumstances that warrant special exemption treatment and a copy of the statement signed by the customer required by paragraph (d) of this section.
- (f) A record of each exemption granted under this section and the reason therefor must be kept in a centralized list. The record shall include the names and addresses of all banks referred to in paragraph (b)(1)(ii) of this section, as well as the name, address, busi-

- ness, taxpayer identification number and account number of each depositor that has engaged in currency transactions which have not been reported because of the exemption provided in paragraph (b)(2) of this section. The record concerning the group of depositors exempted under the provisions of paragraph (b)(2) of this section shall also indicate whether the exemption covers withdrawals, deposits, or both, as well as the dollar limit of the exemption.
- (g) Upon the request of the Assistant Secretary (Enforcement) or the Commissioner of Internal Revenue, a bank shall provide a report containing the list of the bank's customers whose transactions have been exempted under this section and such related information as the Assistant Secretary or Commissioner shall require, including copies of the statements required in paragraph (d) of this section. The report must be provided within 15 days of the request. Any exemption may be rescinded at the discretion of the requesting official, who may require the bank to file reports required by paragraph (aa) of this section with respect to future transactions of any customer whose transactions previously were exempted.
- (h) No filing required by banks for transactions by exempt persons occurring after April 30, 1996.
- (1) Currency transactions of exempt persons with banks occurring after April 30, 1996. Notwithstanding the provisions of paragraph (a)(1) of this section, no bank is required to file a report otherwise required by paragraph (a)(1) of this section, with respect to any transaction in currency between an exempt person and a bank that is conducted after April 30, 1996.
- (2) Exempt person. For purposes of this section, an exempt person is:
- (i) A bank, to the extent of such bank's domestic operations;
 - (ii) A department or agency of the United States, of any state, or of any political subdivision of any state;
 - (iii) Any entity established under the laws of the United States, of any state, or of any political subdivision of any state, or under an interstate compact between two or more states, that exercises govern-
- mental authority on behalf of the United States or any such state or political subdivision;
- (iv) Any corporation whose common stock is listed on the New York Stock Exchange or the American Stock Exchange (except stock listed on the Emerging Company Marketplace of the American Stock Exchange) or whose common stock has been designated as a Nasdaq National Market Security listed on the Nasdaq Stock Market (except stock listed under the separate "Nasdaq Small-Cap Issues" heading); and
- (v) Any subsidiary of any corporation described in paragraph (h)(2)(iv) of this section whose federal income tax return is filed as part of a consolidated federal income tax return with such corporation, pursuant to section 1501 of the Internal Revenue Code and the regulations promulgated thereunder, for the calendar year 1995 or for its last fiscal year ending before April 15, 1996.
- (3) Designation of exempt persons.
- (i) A bank must designate each exempt person with whom it engages in transactions in currency, on or before the later of August 15, 1996,¹ and the date 30 days following the first transaction in currency between such bank and such exempt person that occurs after April 30, 1996.
 - (ii) Designation of an exempt person shall be made by a single filing of Internal Revenue Service Form 4789, in which line 36 is marked "Designation of Exempt Person" and items 2-14 (Part I, Section A) and items 37-49 (Part III) are completed. The designation must be made separately by each bank that treats the person in question as an exempt person. (For availability, see 26 C.F.R. 601.602.)
 - (iii) This designation requirement applies whether or not the particu-

1. Rescinded.

lar exempt person to be designated has previously been treated as exempt from the reporting requirements of paragraph (a) of this section under the rules contained in paragraph (b) or (c) of this section.

(4) Operating rules for designating exempt persons.

- (i) Subject to the specific rules of this paragraph (h), a bank must take such steps to assure itself that a person is an exempt person (within the meaning of applicable provisions of paragraph (h)(2) of this section) that a reasonable and prudent bank would take to protect itself from loan or other fraud or loss based on misidentification of a person's status.
- (ii) A bank may treat a person as a governmental department, agency, or entity if the name of such person reasonably indicates that it is described in paragraph (h)(2)(ii) or (h)(2)(iii) of this section, or if such person is known generally in the community to be a State, the District of Columbia, a tribal government, a Territory or Insular Possession of the United States, or a political subdivision or a wholly-owned agency or instrumentality of any of the foregoing. An entity generally exercises governmental authority on behalf of the United States, a State, or a political subdivision, for purposes of paragraph (h)(2)(iii) of this section, only if its authorities include one or more of the powers to tax, to exercise the authority of eminent domain, or to exercise police powers with respect to matters within its jurisdiction.
- (iii) In determining whether a person is described in paragraph (h)(2)(iv) of this section, a bank may rely on any New York Stock Exchange, American Stock Exchange, or Nasdaq Stock Market listing published in a newspaper of general circulation and on any commonly accepted or published stock symbol guide.

(iv) In determining whether a person is described in paragraph (h)(2)(v) of this section, a bank may rely upon any reasonably authenticated corporate officer's certificate or any reasonably authenticated photocopy of Internal Revenue Service Form 851 (Affiliation Schedule) or the equivalent thereof for the appropriate tax year.

(5) Limitation on exemption. A transaction carried out by an exempt person as an agent for another person who is the beneficial owner of the funds that are the subject of a transaction in currency is not subject to the exemption from reporting contained in paragraph (h)(1) of this section.

(6) Effect of exemption; limitation on liability.

- (i) FinCEN may in the future determine by amendment to this part that the exemption contained in this paragraph (h) shall be the only basis for exempting persons described in paragraph (h)(2) of this section from the reporting requirements of paragraph (a) of this section.
- (ii) No bank shall be subject to penalty under this part for failure to file a report required by paragraph (a) of this section with respect to a currency transaction by an exempt person with respect to which the requirements of this paragraph (h) have been satisfied, unless the bank:
 - (iii) (A) Knowingly files false or incomplete information with respect to the transaction or the customer engaging in the transaction; or
 - (B) Has reason to believe at the time the exemption is granted that the customer does not meet the criteria established by this paragraph (h) for treatment of the transactor as an exempt person or that the transaction is not a transaction of the exempt person.
- (iv) A bank that files a report with respect to a currency transaction by an exempt person rather than treating such person as exempt shall

remain subject with respect to each such report to the rules for filing reports, and the penalties for filing false or incomplete reports, that are applicable to reporting of transactions in currency by persons other than exempt persons. A bank that continues for the period permitted by paragraph (h)(6)(i) of this section to treat a person described in paragraph (h)(2) of this section as exempt from the reporting requirements of paragraph (aa) of this section on a basis other than as provided in this paragraph (h) shall remain subject in full to the rules governing an exemption on such other basis and to the penalties for failing to comply with the rules governing such other exemption.

- (7) Obligation to file suspicious activity reports, etc. Nothing in this paragraph (h) relieves a bank of the obligation, or alters in any way such bank's obligation, to file a report required by § 103.21 with respect to any transaction, including, without limitation, any transaction in currency, or relieves a bank of any other reporting or recordkeeping obligation imposed by this part (except the obligation to report transactions in currency pursuant to paragraph (a) of this section to the extent provided in this paragraph (h)).
- (8) Revocation. The status of any person as an exempt person under this paragraph (h) may be revoked by FinCEN by written notice, which may be provided by publication in the Federal Register in appropriate situations, on such terms as are specified in such notice. In addition, and without any action on the part of the Treasury Department:
- (i) The status of a corporation as an exempt person pursuant to paragraph (h)(2)(iv) of this section ceases once such corporation ceases to be listed on the applicable stock exchange; and
 - (ii) The status of a subsidiary as an exempt person under paragraph (h)(2)(v) of this section ceases once such subsidiary ceases to be included in a consolidated federal income tax

return of a person described in paragraph (h)(2)(iv) of this section.

(Approved by the Office of Management and Budget under control number 1505-0063)

HISTORY:

[52 FR 11442, Apr. 8, 1987, as amended at 53 FR 777, Jan. 13, 1988; 53 FR 4138, Feb. 12, 1988; 58 FR 13547, Mar. 12, 1993; 58 FR 45263, Aug. 27, 1993; 59 FR 9088, Feb. 25, 1994; 59 FR 61662, Dec. 1, 1994; 61 FR 18204, 18209, April 24, 1996]

AUTHORITY:

AUTHORITY NOTE APPLICABLE TO ENTIRE PART: 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5330.

NOTES:

[EFFECTIVE DATE NOTE: 61 FR 18204, 18209, April 24, 1996, which added a new sentence immediately following the first sentence in paragraph (aa)(1), and added a new paragraph (h), became effective May 1, 1996.]

NOTES APPLICABLE TO ENTIRE TITLE:

EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10. **CROSS REFERENCE:** General Accounting Office: See 4 C.F.R. Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:

ABBREVIATION: The following abbreviation is used in this chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:

EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

SUBPART B—Reports Required to be Made

31 C.F.R. 103.23

§ 103.23 Reports of transportation of currency or monetary instruments.

- (a) Each person who physically transports, mails, or ships, or causes to be physically transported, mailed, or shipped, or attempts to physically transport, mail or ship, or attempts to cause to be physically transported, mailed or shipped, currency or other monetary instruments in an aggregate amount exceeding \$10,000 at one time from the United States to any place outside the United States, or into the United States from any place outside the United States, shall make a report thereof. A person is deemed to have caused such transportation, mailing or shipping when he aids, abets, counsels, com-

- mands, procures, or requests it to be done by a financial institution or any other person.
- (b) Each person who receives in the U.S. currency or other monetary instruments in an aggregate amount exceeding \$10,000 at one time which have been transported, mailed, or shipped to such person from any place outside the United States with respect to which a report has not been filed under paragraph (a) of this section, whether or not required to be filed thereunder, shall make a report thereof, stating the amount, the date of receipt, the form of monetary instruments, and the person from whom received.
- (c) This section shall not require reports by:
- (1) A Federal Reserve;
 - (2) A bank, a foreign bank, or a broker or dealer in securities, in respect to currency or other monetary instruments mailed or shipped through the postal service or by common carrier;
 - (3) A commercial bank or trust company organized under the laws of any State or of the United States with respect to overland shipments of currency or monetary instruments shipped to or received from an established customer maintaining a deposit relationship with the bank, in amounts which the bank may reasonably conclude do not exceed amounts commensurate with the customary conduct of the business, industry or profession of the customer concerned;
 - (4) A person who is not a citizen or resident of the United States in respect to currency or other monetary instruments mailed or shipped from abroad to a bank or broker or dealer in securities through the postal service or by common carrier;
 - (5) A common carrier of passengers in respect to currency or other monetary instruments in the possession of its passengers;
 - (6) A common carrier of goods in respect to shipments of currency or monetary instruments not declared to be such by the shipper;
 - (7) A travelers' check issuer or its agent in respect to the transportation of travelers' checks prior to their delivery to selling agents for eventual sale to the public;
 - (8) By a person with respect to a restrictively endorsed traveler's check that is in the collection and reconciliation process after the traveler's check has been negotiated;
 - (9) Nor by a person engaged as a business in the transportation of currency, monetary instruments and other commercial papers with respect to the transportation of currency or other monetary instruments overland between established offices of banks or brokers or dealers in securities and foreign persons.
- (d) A transfer of funds through normal banking procedures which does not involve the physical transportation of currency or monetary instruments is not required to be reported by this section. This section does not require that more than one report be filed covering a particular transportation, mailing or shipping of currency or other monetary instruments with respect to which a complete and truthful report has been filed by a person. However, no person required by paragraph (a) or (b) of this section to file a report shall be excused from liability for failure to do so if, in fact, a complete and truthful report has not been filed.

(Approved by the Office of Management and Budget under control number 1505-0063)

HISTORY:

[37 FR 26517, Dec. 13, 1972, as amended at 50 FR 18479, May 1, 1985; 50 FR 42693, Oct. 22, 1985; 53 FR 4138, Feb. 12, 1988; 54 FR 28418, July 6, 1989]

AUTHORITY:

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5330.

NOTES:

NOTES APPLICABLE TO ENTIRE TITLE:

EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10. **CROSS REFERENCE:** General Accounting Office: See 4 C.F.R. Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:

ABBREVIATION: The following abbreviation is used in this chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:

EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

**TITLE 31—Money and Finance:
Treasury**

**SUBTITLE B—Regulations Relating
to Money and Finance**

**CHAPTER I—Monetary Offices,
Department of the Treasury**

**PART 103—Financial Recordkeeping
and Reporting of Currency and
Foreign Transactions**

**SUBPART B—Reports Required
to be Made**

31 C.F.R. 103.24

**§ 103.24 Reports of foreign financial
accounts.**

- (a) Each person subject to the jurisdiction of the United States (except a foreign subsidiary of a U.S. person) having a financial interest in, or signature or other authority over, a bank, securities or other financial account in a foreign country shall report such relationship to the Commissioner of the Internal Revenue for each year in which such relationship exists, and shall provide such information as shall be specified in a reporting form prescribed by the Secretary to be filed by such persons. Persons having a financial interest in 25 or more foreign financial accounts need only note that fact on the form. Such persons will be required to provide detailed information concerning each account when so requested by the Secretary or his delegate.

HISTORY:

[42 FR 63774, Dec. 20, 1977, as amended at 52 FR 11443, Apr. 8, 1987; 52 FR 12641, Apr. 17, 1987]

AUTHORITY:

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

NOTES:

NOTES APPLICABLE TO ENTIRE TITLE:

EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10. **CROSS REFERENCE:** General Accounting Office: See 4 C.F.R. Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:

ABBREVIATION: The following abbreviation is used in this chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:

EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

**SUBPART B—Reports Required
to be Made**

31 C.F.R. 103.25

**§ 103.25 Reports of transactions with
foreign financial agencies.**

- (a) *Promulgation of reporting requirements.* The Secretary, when he deems appropriate, may promulgate regulations requiring specified financial institutions to file reports of certain transactions with designated foreign financial agencies. If any such regulation is issued as a final rule without notice and opportunity for public comment, then a finding of good cause for dispensing with notice and comment in accordance with 5 U.S.C. 553(b) will be included in the regulation. If any such regulation is not published in the Federal Register, then any financial institution subject to the regulation will be named and personally served or otherwise given actual notice in accordance with 5 U.S.C. 553(b). If a financial institution is given notice of a reporting requirement under this section by means other than publication in the FEDERAL REGISTER, the Secretary may prohibit disclosure of the existence or provisions of that reporting requirement to the designated foreign financial agency or agencies and to any other party.
- (b) *Information subject to reporting requirements.* A regulation promulgated pursuant to paragraph (a) of this section shall designate one or more of the following categories of information to be reported:
- (1) Checks or drafts, including traveler's checks, received by respondent financial institution for collection or credit to the account of a foreign financial agency, sent by respondent financial institution to a foreign country for collection or payment, drawn by respondent financial institution on a foreign financial agency, drawn by a foreign financial agency on respondent financial institution—including the following information.

- (i) Name of maker or drawer;
 - (ii) Name of drawee or drawee financial institution;
 - (iii) Name of payee;
 - (iv) Date and amount of instrument;
 - (v) Names of all endorsers.
- (2) Transmittal orders received by a respondent financial institution from a foreign financial agency or sent by respondent financial institution to a foreign financial agency, including all information maintained by that institution pursuant to § 103.33.
- (3) Loans made by respondent financial institution to or through a foreign financial agency—including the following information:
- (i) Name of borrower;
 - (ii) Name of person acting for borrower;
 - (iii) Date and amount of loan;
 - (iv) Terms of repayment;
 - (v) Name of guarantor;
 - (vi) Rate of interest;
 - (vii) Method of disbursing proceeds;
 - (viii) Collateral for loan.
- (4) Commercial paper received or shipped by the respondent financial institution—including the following information:
- (i) Name of maker;
 - (ii) Date and amount of paper;
 - (iii) Due date;
 - (iv) Certificate number;
 - (v) Amount of transaction.
- (5) Stocks received or shipped by respondent financial institution—including the following information:
- (i) Name of corporation;
 - (ii) Type of stock;
 - (iii) Certificate number;
 - (iv) Number of shares;
 - (v) Date of certificate;
 - (vi) Name of registered holder;
 - (vii) Amount of transaction.
- (6) Bonds received or shipped by respondent financial institution—including the following information:
- (i) Name of issuer;
 - (ii) Bond number;
 - (iii) Type of bond series;
 - (iv) Date issued;
 - (v) Due date;
 - (vi) Rate of interest;
 - (vii) Amount of transaction;
 - (viii) Name of registered holder.
- (7) Certificates of deposit received or shipped by respondent financial institution—including the following information:
- (i) Name and address of issuer;
 - (ii) Date issued;
 - (iii) Dollar amount;
 - (iv) Name of registered holder;
 - (v) Due date;
 - (vi) Rate of interest;
 - (vii) Certificate number;
 - (viii) Name and address of issuing agent.
- (c) *Scope of reports.* In issuing regulations as provided in paragraph (a) of this section, the Secretary will prescribe:
- (1) A reasonable classification of financial institutions subject to or exempt from a reporting requirement;
 - (2) A foreign country to which a reporting requirement applies if the Secretary decides that applying the requirement to all foreign countries is unnecessary or undesirable;
 - (3) The magnitude of transactions subject to a reporting requirement; and
 - (4) The kind of transaction subject to or exempt from a reporting requirement.
- (d) *Form of reports.* Regulations issued pursuant to paragraph (a) of this section may prescribe the manner in which the information is to be reported. However, the Secretary may authorize a designated financial institution to report in a different manner if the institution demonstrates to the Secretary that the form of the required report is unnecessarily burdensome on the institution as prescribed; that a report in a different form will provide all the information the Secretary deems necessary; and that submission of the information in a different manner will not unduly hinder the effective administration of this part.
- (e) *Limitations.*
- (1) In issuing regulations under paragraph (a) of this section, the Secretary shall consider the need to avoid impeding or controlling the export or import of monetary instruments and the need to avoid burdening unreasonably a person making a transaction with a foreign financial agency.

- (2) The Secretary shall not issue a regulation under paragraph (a) of this section for the purpose of obtaining individually identifiable account information concerning a customer, as defined by the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.), where that customer is already the subject of an ongoing investigation for possible violation of the Currency and Foreign Transactions Reporting Act, or is known by the Secretary to be the subject of an investigation for possible violation of any other Federal law.
- (3) The Secretary may issue a regulation pursuant to paragraph (a) of this section requiring a financial institution to report transactions completed prior to the date it received notice of the reporting requirement. However, with respect to completed transactions, a financial institution may be required to provide information only from records required to be maintained pursuant to Subpart C of this part, or any other provision of state or Federal law, or otherwise maintained in the regular course of business.

(Approved by the Office of Management and Budget under control number 1505-0063)

HISTORY:

[50 FR 27824, July 8, 1985, as amended at 53 FR 10073, March 29, 1988; 60 FR 229, Jan. 3, 1995; 60 FR 44144, Aug. 24, 1995; 61 FR 14382, April 1, 1996]

AUTHORITY:

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

NOTES:

NOTES APPLICABLE TO ENTIRE TITLE:

EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10. CROSS REFERENCE: General Accounting Office: See 4 C.F.R. Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:

ABBREVIATION: The following abbreviation is used in this chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:

EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

SUBPART B—Reports Required to be Made

31 C.F.R. 103.26

§ 103.26 Reports of certain domestic coin and currency transactions.

- (a) If the Secretary of the Treasury finds, upon the Secretary's own initiative or at the request of an appropriate Federal or State law enforcement official, that reasonable grounds exist for concluding that additional recordkeeping and/or reporting requirements are necessary to carry out the purposes of this part and to prevent persons from evading the reporting/recordkeeping requirements of this part, the Secretary may issue an order requiring any domestic financial institution or group of domestic financial institutions in a geographic area and any other person participating in the type of transaction to file a report in the manner and to the extent specified in such order. The order shall contain such information as the Secretary may describe concerning any transaction in which such financial institution is involved for the payment, receipt, or transfer of United States coins or currency (or such other monetary instruments as the Secretary may describe in such order) the total amounts or denominations of which are equal to or greater than an amount which the Secretary may prescribe.
- (b) An order issued under paragraph (a) of this section shall be directed to the Chief Executive Officer of the financial institution and shall designate one or more of the following categories of information to be reported: Each deposit, withdrawal, exchange of currency or other payment or transfer, by, through or to such financial institution specified in the order, which involves all or any class of transactions in currency and/or monetary instruments equal to or exceeding an amount to be specified in the order.
- (c) In issuing an order under paragraph (a) of this section, the Secretary will prescribe:
- (1) The dollar amount of transactions subject to the reporting requirement in the order;
 - (2) The type of transaction or transactions subject to or exempt from a reporting requirement in the order;

- (3) The appropriate form for reporting the transactions required in the order;
 - (4) The address to which reports required in the order are to be sent or from which they will be picked up;
 - (5) The starting and ending dates by which such transactions specified in the order are to be reported;
 - (6) The name of a Treasury official to be contacted for any additional information or questions;
 - (7) The amount of time the reports and records of reports generated in response to the order will have to be retained by the financial institution; and
 - (8) Any other information deemed necessary to carry out the purposes of the order.
- (d) (1) No order issued pursuant to paragraph (a) of this section shall prescribe a reporting period of more than 60 days unless renewed pursuant to the requirements of paragraph (a).
- (2) Any revisions to an order issued under this section will not be effective until made in writing by the Secretary.
 - (3) Unless otherwise specified in the order, a bank receiving an order under this section may continue to use the exemptions granted under § 103.22 of this part prior to the receipt of the order, but may not grant additional exemptions.
 - (4) For purposes of this section, the term “geographic area” means any area in one or more States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands, the territories and possessions of the United States, and/or political subdivision or subdivisions thereof, as specified in an order issued pursuant to paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 1505-0063)

HISTORY:

[54 FR 33679, Aug. 16, 1989]

AUTHORITY:

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

NOTES:

NOTES APPLICABLE TO ENTIRE TITLE:

EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10. CROSS REFERENCE: General Accounting Office: See 4 C.F.R. Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:

ABBREVIATION: The following abbreviation is used in this chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:

EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

TITLE 31—Money and Finance: Treasury

SUBTITLE B—Regulations Relating to Money and Finance

CHAPTER I—Monetary Offices, Department of the Treasury

PART 103—Financial Recordkeeping and Reporting of Currency and Foreign Transactions

SUBPART B—Reports to be Made

31 C.F.R. 103.27

§ 103.27 Filing of reports.

- (a) (1) A report required by § 103.22(a) shall be filed by the financial institution within 15 days following the day on which the reportable transaction occurred.
 - (2) A report required by § 103.22(g) shall be filed by the bank within 15 days after receiving a request for the report.
 - (3) A copy of each report filed pursuant to § 103.22 shall be retained by the financial institution for a period of five years from the date of the report.
 - (4) All reports required to be filed by § 103.22 shall be filed with the Commissioner of Internal Revenue, unless otherwise specified.
- (b) (1) A report required by § 103.23(a) shall be filed at the time of entry into the United States or at the time of departure, mailing or shipping from the United States, unless otherwise specified by the Commissioner of Customs.

- (2) A report required by § 103.23(b) shall be filed within 15 days after receipt of the currency or other monetary instruments.
- (3) All reports required by § 103.23 shall be filed with the Customs officer in charge at any port of entry or departure, or as otherwise specified by the Commissioner of Customs. Reports required by § 103.23(a) for currency or other monetary instruments not physically accompanying a person entering or departing from the United States, may be filed by mail on or before the date of entry, departure, mailing or shipping. All reports required by § 103.23(b) may also be filed by mail. Reports filed by mail shall be addressed to the Commissioner of Customs, Attention: Currency Transportation Reports, Washington, DC 20229.
- (c) Reports required to be filed by § 103.24 shall be filed with the Commissioner of Internal Revenue on or before June 30 of each calendar year with respect to foreign financial accounts exceeding \$10,000 maintained during the previous calendar year.
- (d) Reports required by § 103.22, § 103.23 or § 103.24 shall be filed on forms prescribed by the Secretary. All information called for in such forms shall be furnished.
- (e) Forms to be used in making the reports required by §§ 103.22 and 103.24 may be obtained from the Internal Revenue Service. Forms to be used in making the reports required by § 103.23 may be obtained from the U.S. Customs Service.

(Approved by the Office of Management and Budget under control number 1505-0063)

HISTORY:

[52 FR 11443, Apr. 8, 1987; 52 FR 12641, Apr. 17, 1987, as amended at 53 FR 4138, Feb. 12, 1988. Redesignated at 54 FR 33678, Aug. 16, 1989]

AUTHORITY:

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5330.

NOTES:

NOTES APPLICABLE TO ENTIRE TITLE:

EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10. CROSS REFERENCE: General Accounting Office: See 4 C.F.R. Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:

ABBREVIATION: The following abbreviation is used in this chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:

EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

SUBPART B—Reports Required to be Made

31 C.F.R. 103.28

§ 103.28 Identification required.

Before concluding any transaction with respect to which a report is required under § 103.22, a financial institution shall verify and record the name and address of the individual presenting a transaction, as well as record the identity, account number, and the social security or taxpayer identification number, if any, of any person or entity on whose behalf such transaction is to be effected. Verification of the identity of an individual who indicates that he or she is an alien or is not a resident of the United States must be made by passport, alien identification card, or other official document evidencing nationality or residence (e.g., a Provincial driver's license with indication of home address). Verification of identity in any other case shall be made by examination of a document, other than a bank signature card, that is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors (e.g., a drivers license or credit card). Where a person is a nonresident alien, the casino shall also record the person's passport number or a description of some other government document used to verify his identity. A bank signature card may be relied upon only if it was issued after documents establishing the identity of the individual were examined and notation of the specific information was made on the signature card. In each instance, the specific identifying information (i.e., the account number of the credit card, the driver's license number, etc.) used in verifying the identity of the customer shall be recorded on the report, and the mere notation of "known customer" or "bank signature card on file" on the report is prohibited.

(Approved by the Office of Management and Budget under control number 1505-0063)

HISTORY:

[52 FR 11443, Apr. 8, 1987; 52 FR 12641, Apr. 17, 1987, as amended at 54 FR 3027, Jan. 23, 1989. Redesignated at 54 FR 33678, Aug. 16, 1989]

AUTHORITY:

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

NOTES:

NOTES APPLICABLE TO ENTIRE TITLE:

EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10. **CROSS REFERENCE:** General Accounting Office: See 4 C.F.R. Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:

ABBREVIATION: The following abbreviation is used in this chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:

EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

SUBPART B—Reports to be Made**31 C.F.R. 103.29****§ 103.29 Purchases of bank checks and drafts, cashier's checks, money orders and traveler's checks.**

- (a) No financial institution may issue or sell a bank check or draft, cashier's check, money order or traveler's check for \$3,000 or more in currency unless it maintains records of the following information, which must be obtained for each issuance or sale of one or more of these instruments to any individual purchaser which involves currency in amounts of \$3,000–\$10,000 inclusive:
- (1) If the purchaser has a deposit account with the financial institution:
 - (i) (A) The name of the purchaser;
 - (B) The date of purchase;
 - (C) The type(s) of instrument(s) purchased;
 - (D) The serial number(s) of each of the instrument(s) purchased; and
 - (E) The amount in dollars of each of the instrument(s) purchased.
 - (ii) In addition, the financial institution must verify that the individual is a deposit accountholder or must verify the individual's identity. Verification may be either through a signa-

ture card or other file or record at the financial institution provided the deposit accountholder's name and address were verified previously and that information was recorded on the signature card or other file or record; or by examination of a document which is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors and which contains the name and address of the purchaser. If the deposit accountholder's identity has not been verified previously, the financial institution shall verify the deposit accountholder's identity by examination of a document which is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors and which contains the name and address of the purchaser, and shall record the specific identifying information (e.g., State of issuance and number of driver's license).

- (2) If the purchaser does not have a deposit account with the financial institution:
 - (i) (A) The name and address of the purchaser;
 - (B) The social security number of the purchaser, or if the purchaser is an alien and does not have a social security number, the alien identification number;
 - (C) The date of birth of the purchaser;
 - (D) The date of purchase;
 - (E) The type(s) of instrument(s) purchased;
 - (F) The serial number(s) of the instrument(s) purchased; and
 - (G) The amount in dollars of each of the instrument(s) purchased.
 - (ii) In addition, the financial institution shall verify the purchaser's name and address by examination of a document which is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors and which contains the name and address of the purchaser, and shall record the specific identifying infor-

mation (e.g., State of issuance and number of driver's license).

- (b) Contemporaneous purchases of the same or different types of instruments totaling \$3,000 or more shall be treated as one purchase. Multiple purchases during one business day totaling \$3,000 or more shall be treated as one purchase if an individual employee, director, officer, or partner of the financial institution has knowledge that these purchases have occurred.
- (c) Records required to be kept shall be retained by the financial institution for a period of five years and shall be made available to the Secretary upon request at any time.

HISTORY:

[55 FR 20143, May 15, 1990; 59 FR 52252, Oct. 17, 1994]

AUTHORITY:

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

NOTES:

[EFFECTIVE DATE NOTE: 59 FR 52252, Oct. 17, 1994, which revised this section, became effective Oct. 17, 1994.]

NOTES APPLICABLE TO ENTIRE TITLE:

EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10. CROSS REFERENCE: General Accounting Office: See 4 C.F.R. Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:

ABBREVIATION: The following abbreviation is used in this chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:

EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

SUBPART C—Records Required to be Maintained

31 C.F.R. 103.31

§103.31 Determination by the Secretary.

The Secretary hereby determines that the records required to be kept by this subpart have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

HISTORY:

[37 FR 6912, Apr. 5, 1972.

AUTHORITY:

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

NOTES:

NOTES APPLICABLE TO ENTIRE TITLE:

EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10. CROSS REFERENCE: General Accounting Office: See 4 C.F.R. Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:

ABBREVIATION: The following abbreviation is used in this chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:

EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

SUBPART C—Records Required to be Maintained

31 C.F.R. 103.32

§103.32 Records to be made and retained by persons having financial interests in foreign financial accounts.

Records of accounts required by §103.24 to be reported to the Commissioner of Internal Revenue shall be retained by each person having a financial interest in or signature or other authority over any such account. Such records shall contain the name in which each such account is maintained, the number or other designation of such account, the name and address of the foreign bank or other person with whom such account is maintained, the type of such account, and the maximum value of each such account during the reporting period. Such records shall be retained for a period of 5 years and shall be kept at all times available for inspection as authorized by law. In the computation of the period of 5 years, there shall be disregarded any period beginning with a date on which the taxpayer is indicted or information instituted on account of the filing of a false or fraudulent Federal income tax return or failing to file a Federal income tax return, and ending with the date on which final disposition is made of the criminal proceeding.

HISTORY:

[37 FR 6912, Apr. 5, 1972, as amended at 52 FR 11444, Apr. 8, 1987]

AUTHORITY:

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

NOTES:
 NOTES APPLICABLE TO ENTIRE TITLE:
 EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10. CROSS REFERENCE: General Accounting Office: See 4 C.F.R.

Chapter I. NOTES APPLICABLE TO ENTIRE CHAPTER:
 ABBREVIATION: The following abbreviation is used in this chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:
 EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

SUBPART C—Records Required to be Maintained

31 C.F.R. 103.33

§ 103.33 Records to be made and retained by financial institutions.

Each financial institution shall retain either the original or a microfilm or other copy or reproduction of each of the following:

- (a) A record of each extension of credit in an amount in excess of \$10,000, except an extension of credit secured by an interest in real property, which record shall contain the name and address of the person to whom the extension of credit is made, the amount thereof, the nature or purpose thereof, and the date thereof;
- (b) A record of each advice, request, or instruction received or given regarding any transaction resulting (or intended to result and later cancelled if such a record is normally made) in the transfer of currency or other monetary instruments, funds, checks, investment securities, or credit, of more than \$10,000 to or from any person, account, or place outside the United States.
- (c) A record of each advice, request, or instruction given to another financial institution or other person located within or without the United States, regarding a transaction intended to result in the transfer of funds, or of currency, other monetary instruments, checks, investment securities, or credit, of more than \$10,000 to a person, account or place outside the United States.
- (d) A record of such information for such period of time as the Secretary may require in an order issued under § 103.26(a), not to exceed five years.

(Approved by the Office of Management and Budget under control number 1505-0063)

- (e) *Banks*. Each agent, agency, branch, or office located within the United States of a bank is subject to the requirements of this paragraph (e) with respect to a funds transfer in the amount of \$3,000 or more:

- (1) *Recordkeeping requirements*.

- (i) For each payment order that it accepts as an originator's bank, a bank shall obtain and retain either the original or a microfilm, other copy, or electronic record of the following information relating to the payment order:

- (A) The name and address of the originator;
- (B) The amount of the payment order;
- (C) The execution date of the payment order;
- (D) Any payment instructions received from the originator with the payment order;
- (E) The identity of the beneficiary's bank; and
- (F) As many of the following items as are received with the payment order:²
 - (1) The name and address of the beneficiary;
 - (2) The account number of the beneficiary; and
 - (3) Any other specific identifier of the beneficiary.

- (ii) For each payment order that it accepts as an intermediary bank, a bank shall retain either the original or a microfilm, other copy, or electronic record of the payment order.
- (iii) For each payment order that it accepts as a beneficiary's bank, a bank shall retain either the original or a microfilm, other copy, or electronic record of the payment order.

- (2) *Originators other than established customers*. In the case of a payment order from an originator that is not an estab-

2. For funds transfers effected through the Federal Reserve's Fedwire funds transfer system, only one of the items is required to be retained, if received with the payment order, until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire message format.

lished customer, in addition to obtaining and retaining the information required in paragraph (e)(1)(i) of this section:

- (i) If the payment order is made in person, prior to acceptance the originator's bank shall verify the identity of the person placing the payment order. If it accepts the payment order, the originator's bank shall obtain and retain a record of the name and address, the type of identification reviewed, the number of the identification document (e.g., driver's license), as well as a record of the person's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof. If the originator's bank has knowledge that the person placing the payment order is not the originator, the originator's bank shall obtain and retain a record of the originator's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person placing the order, or a notation in the record of the lack thereof.
 - (ii) If the payment order accepted by the originator's bank is not made in person, the originator's bank shall obtain and retain a record of name and address of the person placing the payment order, as well as the person's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof, and a copy or record of the method of payment (e.g., check or credit card transaction) for the funds transfer. If the originator's bank has knowledge that the person placing the payment order is not the originator, the originator's bank shall obtain and retain a record of the originator's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person placing the order, or a notation in the record of the lack thereof.
- (3) *Beneficiaries other than established customers.* For each payment order that it accepts as a beneficiary's bank for a beneficiary that is not an established customer, in addition to obtaining and retaining the information required in paragraph (e)(1)(iii) of this section:
 - (i) if the proceeds are delivered in person to the beneficiary or its representative or agent, the beneficiary's bank shall verify the identity of the person receiving the proceeds and shall obtain and retain a record of the name and address, the type of identification reviewed, and the number of the identification document (e.g., driver's license), as well as a record of the person's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof. If the beneficiary's bank has knowledge that the person receiving the proceeds is not the beneficiary, the beneficiary's bank shall obtain and retain a record of the beneficiary's name and address, as well as the beneficiary's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person receiving the proceeds, or a notation in the record of the lack thereof.
 - (ii) if the proceeds are delivered other than in person, the beneficiary's bank shall retain a copy of the check or other instrument used to effect payment, or the information contained thereon, as well as the name and address of the person to which it was sent.

- (4) *Retrievability.* The information that an originator's bank must retain under paragraphs (e)(1)(i) and (e)(2) of this section shall be retrievable by the originator's bank by reference to the name of the originator. If the originator is an established customer of the originator's bank and has an account used for funds transfers, then the information also shall be retrievable by account number. The information that a beneficiary's bank must retain under paragraphs (e)(1)(iii) and (e)(3) of this section shall be retrievable by the beneficiary's bank by reference to the name of the beneficiary. If the beneficiary is an established customer of the beneficiary's bank and has an account used for funds transfers, then the information also shall be retrievable by account number. This information need not be retained in any particular manner, so long as the bank is able to retrieve the information required by this paragraph, either by accessing funds transfer records directly or through reference to some other record maintained by the bank.
- (5) *Verification.* Where verification is required under paragraphs (e)(2) and (e)(3) of this section, a bank shall verify a person's identity by examination of a document (other than a bank signature card), preferably one that contains the person's name, address, and photograph, that is normally acceptable by financial institutions as a means of identification when cashing checks for persons other than established customers. Verification of the identity of an individual who indicates that he or she is an alien or is not a resident of the United States may be made by passport, alien identification card, or other official document evidencing nationality or residence (e.g., a foreign driver's license with indication of home address).
- (6) *Exceptions.* The following funds transfers are not subject to the requirements of this section:
- (i) Funds transfers where the originator and beneficiary are any of the following:
 - (A) A bank;
 - (B) A wholly-owned domestic subsidiary of a bank chartered in the United States;
 - (C) A broker or dealer in securities;
 - (D) A wholly-owned domestic subsidiary of a broker or dealer in securities;
 - (E) The United States;
 - (F) A state or local government; or
 - (G) A federal, state or local government agency or instrumentality; and
 - (ii) Funds transfers where both the originator and the beneficiary are the same person and the originator's bank and the beneficiary's bank are the same bank.
- (f) *Nonbank financial institutions.* Each agent, agency, branch, or office located within the United States of a financial institution other than a bank is subject to the requirements of this paragraph (f) with respect to a transmittal of funds in the amount of \$3,000 or more:
- (1) *Recordkeeping requirements.*
 - (i) For each transmittal order that it accepts as a transmitter's financial institution, a financial institution shall obtain and retain either the original or a microfilm, other copy, or electronic record of the following information relating to the transmittal order:
 - (A) The name and address of the transmitter;
 - (B) The amount of the transmittal order;
 - (C) The execution date of the transmittal order;
 - (D) Any payment instructions received from the transmitter with the transmittal order;
 - (E) The identity of the recipient's financial institution;
 - (F) As many of the following items as are received with the transmittal order:³

3. For transmittals of funds effected through the Federal Reserve's Fedwire funds transfer system by a domestic broker or dealers in securities, only one of the items is required to be retained, if received with the transmittal order, until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire message format.

- (1) The name and address of the recipient;
 - (2) The account number of the recipient; and
 - (3) Any other specific identifier of the recipient; and
- (G) Any form relating to the transmittal of funds that is completed or signed by the person placing the transmittal order.
- (ii) For each transmittal order that it accepts as an intermediary financial institution, a financial institution shall retain either the original or a microfilm, other copy, or electronic record of the transmittal order.
 - (iii) for each transmittal order that it accepts as a recipient's financial institution, a financial institution shall retain either the original or a microfilm, other copy, or electronic record of the transmittal order.
- (2) *Transmitters other than established customers.* In the case of a transmittal order from a transmitter that is not an established customer, in addition to obtaining and retaining the information required in paragraph (f)(1)(i) of this section:
- (i) If the transmittal order is made in person, prior to acceptance the transmitter's financial institution shall verify the identity of the person placing the transmittal order. If it accepts the transmittal order, the transmitter's financial institution shall obtain and retain a record of the name and address, the type of identification reviewed, and the number of the identification document (e.g., driver's license), as well as a record of the person's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record the lack thereof. If the transmitter's financial institution has knowledge that the person placing the transmittal order is not the transmitter, the transmitter's financial institution shall obtain and retain a record of the transmitter's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person placing the order, or a notation in the record the lack thereof.
- (3) *Recipients other than established customers.* For each transmittal order that it accepts as a recipient's financial institution for a recipient that is not an established customer, in addition to obtaining and retaining the information required in paragraph (f)(1)(iii) of this section:
- (i) If the proceeds are delivered in person to the recipient or its representative or agent, the recipient's financial institution shall verify the identity of the person receiving the proceeds and shall obtain and retain a record of the name and address, the type of identification reviewed, and the number of the identification document (e.g., driver's license), as

well as a record of the person's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof. If the recipient's financial institution has knowledge that the person receiving the proceeds is not the recipient, the recipient's financial institution shall obtain and retain a record of the recipient's name and address, as well as the recipient's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person receiving the proceeds, or a notation in the record of the lack thereof.

(ii) If the proceeds are delivered other than in person, the recipient's financial institution shall retain a copy of the check or other instrument used to effect payment, or the information contained thereon, as well as the name and address of the person to which it was sent.

(4) *Retrievability.* The information that a transmitter's financial institution must retain under paragraphs (f)(1)(i) and (f)(2) of this section shall be retrievable by the transmitter's financial institution by reference to the name of the transmitter. If the transmitter is an established customer of the transmitter's financial institution and has an account used for transmittals of funds, then the information also shall be retrievable by account number. The information that a recipient's financial institution must retain under paragraphs (f)(1)(iii) and (f)(3) of this section shall be retrievable by the recipient's financial institution by reference to the name of the recipient. If the recipient is an established customer of the recipient's financial institution and has an account used for transmittals of funds, then the information also shall be retrievable by account number. This information need not be retained in any particular manner, so long as the financial institution is able to retrieve the

information required by this paragraph, either by accessing transmittal of funds records directly or through reference to some other record maintained by the financial institution.

(5) *Verification.* Where verification is required under paragraphs (f)(2) and (f)(3) of this section, a financial institution shall verify a person's identity by examination of a document (other than a customer signature card), preferably one that contains the person's name, address, and photograph, that is normally acceptable by financial institutions as a means of identification when cashing checks for persons other than established customers. Verification of the identity of an individual who indicates that he or she is an alien or is not a resident of the United States may be made by passport, alien identification card, or other official document evidencing nationality or residence (e.g., a foreign driver's license with indication of home address).

(6) *Exceptions.* The following transmittals of funds are not subject to the requirements of this section:

(i) Transmittals of funds where the transmitter and the recipient are any of the following:

- (A) A bank;
- (B) A wholly-owned domestic subsidiary of a bank chartered in the United States;
- (C) A broker or dealer in securities;
- (D) A wholly-owned domestic subsidiary of a broker or dealer in securities;
- (E) The United States;
- (F) A state or local government; or
- (G) A federal, state or local government agency or instrumentality; and

(ii) Transmittals of funds where both the transmitter and the recipient are the same person and the transmitter's financial institution and the recipient's financial institution are the same broker or dealer in securities.

(g) Any transmitter's financial institution or intermediary financial institution located within the United States shall include in any

transmittal order for a transmittal of funds in the amount of \$3,000 or more, information as required in this paragraph (g):

- (1) A transmitter's financial institution shall include in a transmittal order, at the time it is sent to a receiving financial institution, the following information:
 - (i) The name and, if the payment is ordered from an account, the account number of the transmitter;
 - (ii) The address of the transmitter, except for a transmittal order through Fedwire until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire format;
 - (iii) The amount of the transmittal order;
 - (iv) The execution date of the transmittal order;
 - (v) The identity of the recipient's financial institution;
 - (vi) As many of the following items as are received with the transmittal order:⁴
 - (A) The name and address of the recipient;
 - (B) The account number of the recipient;
 - (C) Any other specific identifier of the recipient; and
 - (vii) Either the name and address or numerical identifier of the transmitter's financial institution.
- (2) A receiving financial institution that acts as an intermediary financial institution, if it accepts a transmittal order, shall include in a corresponding transmittal order at the time it is sent to the next receiving financial institution, the following information, if received from the sender:
 - (i) The name and the account number of the transmitter;
 - (ii) The address of the transmitter, except for a transmittal order

through Fedwire until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire format;

- (iii) The amount of the transmittal order;
 - (iv) The execution date of the transmittal order;
 - (v) The identity of the recipient's financial institution;
 - (vi) As many of the following items as are received with the transmittal order:⁵
 - (A) The name and address of the recipient;
 - (B) The account number of the recipient;
 - (C) Any other specific identifier of the recipient; and
 - (vii) Either the name and address or numerical identifier of the transmitter's financial institution.
- (3) Safe harbor for transmittals of funds prior to conversion to the expanded Fedwire message format. The following provisions apply to transmittals of funds effected through the Federal Reserve's Fedwire funds transfer system or otherwise by a financial institution before the bank that sends the order to the Federal Reserve Bank or otherwise, completes its conversion to the expanded Fedwire message format.
 - (i) *Transmitter's financial institution.* A transmitter's financial institution will be deemed to be in compliance with the provisions of paragraph (g)(1) of this section if it:
 - (A) Includes in the transmittal order, at the time it is sent to the receiving financial institution, the information specified in paragraphs (g)(1)(iii) through (v), and the information specified in paragraph (g)(1)(vi) of this section to the extent that such information

4. For transmittals of funds effected through the Federal Reserve's Fedwire funds transfer system by a financial institution, only one of the items is required to be included in the transmittal order, if received with the sender's transmittal order, until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire message format.

5. For transmittals of funds effected through the Federal Reserve's Fedwire funds transfer system by a financial institution, only one of the items is required to be included in the transmittal order, if received with the sender's transmittal order, until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire message format.

has been received by the financial institution, and

- (B) Provides the information specified in paragraphs (g)(1)(i), (ii) and (vii) of this section to a financial institution that acted as an intermediary financial institution or recipient's financial institution in connection with the transmittal order, within a reasonable time after any such financial institution makes a request therefor in connection with the requesting financial institution's receipt of a lawful request for such information from a federal, state, or local law enforcement or financial regulatory agency, or in connection with the requesting financial institution's own Bank Secrecy Act compliance program.

(ii) *Intermediary financial institution.*

An intermediary financial institution will be deemed to be in compliance with the provisions of paragraph (g)(2) of this section if it:

- (A) Includes in the transmittal order, at the time it is sent to the receiving financial institution, the information specified in paragraphs (g)(2)(iii) through (g)(2)(vi) of this section, to the extent that such information has been received by the intermediary financial institution; and
- (B) Provides the information specified in paragraphs (g)(2)(i), (ii) and (vii) of this section, to the extent that such information has been received by the intermediary financial institution, to a financial institution that acted as an intermediary financial institution or recipient's financial institution in connection with the transmittal order, within a reasonable time after any such financial institution makes a request therefor in connection with the requesting financial insti-

tution's receipt of a lawful request for such information from a federal, state, or local law enforcement or regulatory agency, or in connection with the requesting financial institution's own Bank Secrecy Act compliance program.

- (iii) Obligation of requesting financial institution. Any information requested under paragraph (g)(3)(i)(B) or (g)(3)(ii)(B) of this section shall be treated by the requesting institution, once received, as if it had been included in the transmittal order to which such information relates.

- (4) *Exceptions.* The requirements of this paragraph (g) shall not apply to transmittals of funds that are listed in paragraph (e)(6) or (f)(6) of this section.

HISTORY:

[37 FR 6912, Apr. 5, 1972, as amended at 52 FR 11444, Apr. 8, 1987; 54 FR 33679, Aug. 16, 1989; 60 FR 229, 237, Jan. 3, 1995; 60 FR 44144, Aug. 24, 1995; 61 FR 14382, 14383, 14385, 14386, 14388, April 1, 1996, as corrected at 61 FR 18250, April 25, 1996]

AUTHORITY:

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

NOTES:

[EFFECTIVE DATE NOTE: 60 FR 229, Jan. 3, 1995, which added paragraphs (e) and (f), became effective Jan. 1, 1996; 60 FR 237, Jan. 3, 1995, which added paragraph (g), became effective Jan. 1, 1996; 60 FR 44144, Aug. 24, 1995, delayed the effective date of the amendment at 60 FR 229, Jan. 3, 1995, from Jan. 1, 1996 to April 1, 1996; 61 FR 14382, April 1, 1996, further delayed the effective date of the amendments at 60 FR 229 and 237, Jan. 3, 1995, from April 1, 1996 to May 28, 1996; 61 FR 14383, 14385, April 1, 1996, which amended paragraphs (e) and (f), became effective May 28, 1996; 61 FR 14386, 14388, April 1, 1996, which revised the introductory text of paragraphs (g) and (g)(1), and added paragraphs (g)(3) and (g)(4), became effective May 28, 1996.]

NOTES APPLICABLE TO ENTIRE TITLE:

EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10. CROSS REFERENCE: General Accounting Office: See 4 C.F.R. Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:

ABBREVIATION: The following abbreviation is used in this chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:

EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

SUBPART C—Records Required to be Maintained

31 C.F.R. 103.34

§ 103.34 Additional records to be made and retained by banks.

- (a) (1) With respect to each certificate of deposit sold or redeemed after May 31, 1978, or each deposit or share account opened with a bank after June 30, 1972, a bank shall, within 30 days from the date such a transaction occurs or an account is opened, secure and maintain a record of the taxpayer identification number of the customer involved; or where the account or certificate is in the names of two or more persons, the bank shall secure the taxpayer identification number of a person having a financial interest in the certificate or account. In the event that a bank has been unable to secure, within the 30-day period specified, the required identification, it shall nevertheless not be deemed to be in violation of this section if (i) it has made a reasonable effort to secure such identification, and (ii) it maintains a list containing the names, addresses, and account numbers of those persons from whom it has been unable to secure such identification, and makes the names, addresses, and account numbers of those persons available to the Secretary as directed by him. A bank acting as an agent for another person in the purchase or redemption of a certificate of deposit issued by another bank is responsible for obtaining and recording the required taxpayer identification, as well as for maintaining the records referred to in paragraphs (b)(11) and (12) of this section. The issuing bank can satisfy the recordkeeping requirement by recording the name and address of the agent together with a description of the instrument and the date of the transaction. Where a person is a non-resident alien, the bank shall also record the person's passport number or a description of some other government document used to verify his identity.
- (2) The 30-day period provided for in paragraph (a)(1) of this section shall be

extended where the person opening the account has applied for a taxpayer identification or social security number on Form SS-4 or SS-5, until such time as the person maintaining the account has had a reasonable opportunity to secure such number and furnish it to the bank.

- (3) A taxpayer identification number required under paragraph (a)(1) of this section need not be secured for accounts or transactions with the following:
- (i) agencies and instrumentalities of Federal, state, local or foreign governments;
 - (ii) judges, public officials, or clerks of courts of record as custodians of funds in controversy or under the control of the court; (iii) aliens who are (A) ambassadors, ministers, career diplomatic or consular officers, or (B) naval, military or other attaches of foreign embassies and legations, and for the members of their immediate families; (iv) aliens who are accredited representatives of international organizations which are entitled to enjoy privileges, exemptions and immunities as an international organization under the International Organization Immunities Act of December 29, 1945 (22 U.S.C. 288), and the members of their immediate families; (v) aliens temporarily residing in the United States for a period not to exceed 180 days; (vi) aliens not engaged in a trade or business in the United States who are attending a recognized college or university or any training program, supervised or conducted by any agency of the Federal Government; (vii) unincorporated subordinate units of a tax exempt central organization which are covered by a group exemption letter, (viii) a person under 18 years of age with respect to an account opened as a part of a school thrift savings program, provided the annual interest is less than \$10; (ix) a person opening a Christmas club, vacation club and similar installment savings programs provided the annual interest is less than \$10; and non-resident aliens who are not engaged in a trade or business in the United States. In instances described in paragraphs (a)(3), (viii) and (ix) of this section, the bank shall, within 15 days following the end of any

- calendar year in which the interest accrued in that year is \$10 or more use its best effort to secure and maintain the appropriate taxpayer identification number or application form therefor.
- (4) The rules and regulations issued by the Internal Revenue Service under section 6109 of the Internal Revenue Code of 1954 shall determine what constitutes a taxpayer identification number and whose number shall be obtained in the case of an account maintained by one or more persons.
- (b) Each bank shall, in addition, retain either the original or a microfilm or other copy or reproduction of each of the following:
- (1) Each document granting signature authority over each deposit or share account, including any notations, if such are normally made, of specific identifying information verifying the identity of the signer (such as a driver's license number or credit card number);
 - (2) Each statement, ledger card or other record on each deposit or share account, showing each transaction in, or with respect to, that account;
 - (3) Each check, clean draft, or money order drawn on the bank or issued and payable by it, except those drawn for \$100 or less or those drawn on accounts which can be expected to have drawn on them an average of at least 100 checks per month over the calendar year or on each occasion on which such checks are issued, and which are (i) dividend checks, (ii) payroll checks, (iii) employee benefit checks, (iv) insurance claim checks, (v) medical benefit checks, (vi) checks drawn on government agency accounts, (vii) checks drawn by brokers or dealers in securities, (viii) checks drawn on fiduciary accounts, (ix) checks drawn on other financial institutions, or pension or annuity checks;
 - (4) Each item in excess of \$100 (other than bank charges or periodic charges made pursuant to agreement with the customer), comprising a debit to a customer's deposit or share account, not required to be kept, and not specifically exempted, under paragraph (b)(3) of this section;
 - (5) Each item, including checks, drafts, or transfers of credit, of more than \$10,000 remitted or transferred to a person, account or place outside the United States;
 - (6) A record of each remittance or transfer of funds, or of currency, other monetary instruments, checks, investment securities, or credit, of more than \$10,000 to a person, account or place outside the United States;
 - (7) Each check or draft in an amount in excess of \$10,000 drawn on or issued by a foreign bank which the domestic bank has paid or presented to a non-bank drawee for payment;
 - (8) Each item, including checks, drafts or transfers of credit, of more than \$10,000 received directly and not through a domestic financial institution, by letter, cable or any other means, from a bank, broker or dealer in foreign exchange outside the United States;
 - (9) A record of each receipt of currency, other monetary instruments, investment securities or checks, and of each transfer of funds or credit, of more than \$10,000 received on any one occasion directly and not through a domestic financial institution, from a bank, broker or dealer in foreign exchange outside the United States; and
 - (10) Records prepared or received by a bank in the ordinary course of business, which would be needed to reconstruct a transaction account and to trace a check in excess of \$100 deposited in such account through its domestic processing system or to supply a description of a deposited check in excess of \$100. This subparagraph shall be applicable only with respect to demand deposits.
 - (11) A record containing the name, address, and taxpayer identification number, if available, of the purchaser of each certificate of deposit, as well as a description of the instrument, a notation of the method of payment, and the date of the transaction.
 - (12) A record containing the name, address and taxpayer identification number, if available, of any person presenting a

certificate of deposit for payment, as well as a description of the instrument and the date of the transaction.

- (13) Each deposit slip or credit ticket reflecting a transaction in excess of \$100 or the equivalent record for direct deposit or other wire transfer deposit transactions. The slip or ticket shall record the amount of any currency involved.

(Approved by the Office of Management and Budget under control number 1505-0063)

HISTORY:

[38 FR 2175, Jan. 22, 1973, as amended at 38 FR 3509, Feb. 7, 1973; 43 FR 21672, May 19, 1978; 52 FR 11444, Apr. 8, 1987]

AUTHORITY:

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

NOTES: NOTES APPLICABLE TO ENTIRE TITLE:

EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10. CROSS REFERENCE: General Accounting Office: See 4 C.F.R. Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:

ABBREVIATION: The following abbreviation is used in this chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:

EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

SUBPART C—Records Required to be Maintained

31 C.F.R. 103.35

§ 103.35 Additional records to be made and retained by brokers or dealers in securities.

- (a) (1) With respect to each brokerage account opened with a broker or dealer in securities after June 30, 1972, by a person residing or doing business in the United States or a citizen of the United States, such broker or dealer shall within 30 days from the date such account is opened, secure and maintain a record of the taxpayer identification number of the person maintaining the account; or in the case of an account of one or more

individuals, such broker or dealer shall secure and maintain a record of the social security number of an individual having a financial interest in that account. In the event that a broker or dealer has been unable to secure the identification required within the 30-day period specified, it shall nevertheless not be deemed to be in violation of this section if: (i) It has made a reasonable effort to secure such identification, and (ii) it maintains a list containing the names, addresses, and account numbers of those persons from whom it has been unable to secure such identification, and makes the names, addresses, and account numbers of those persons available to the Secretary as directed by him. Where a person is a non-resident alien, the broker or dealer in securities shall also record the person's passport number or a description of some other government document used to verify his identity.

- (2) The 30-day period provided for in paragraph (a)(1) of this section shall be extended where the person opening the account has applied for a taxpayer identification or social security number on Form SS-4 or SS-5, until such time as the person maintaining the account has had a reasonable opportunity to secure such number and furnish it to the broker or dealer.
- (3) A taxpayer identification number for a deposit or share account required under paragraph (a)(1) of this section need not be secured in the following instances: (i) Accounts for public funds opened by agencies and instrumentalities of Federal, state, local, or foreign governments, (ii) accounts for aliens who are (a) ambassadors, ministers, career diplomatic or consular officers, or (b) naval, military or other attaches of foreign embassies, and legations, and for the members of their immediate families, (iii) accounts for aliens who are accredited representatives to international organizations which are entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act of December 29, 1945 (22 U.S.C. 288), and for the members of their immediate fami-

lies, (iv) aliens temporarily residing in the United States for a period not to exceed 180 days, (v) aliens not engaged in a trade or business in the United States who are attending a recognized college or university or any training program, supervised or conducted by any agency of the Federal Government, and (vi) unincorporated subordinate units of a tax exempt central organization which are covered by a group exemption letter.

(b) Every broker or dealer in securities shall, in addition, retain either the original or a microfilm or other copy or reproduction of each of the following:

- (1) Each document granting signature or trading authority over each customer's account;
- (2) Each record described in § 240.17a-3(a) (1), (2), (3), (5), (6), (7), (8), and (9) of Title 17, Code of Federal Regulations;
- (3) A record of each remittance or transfer of funds, or of currency, checks, other monetary instruments, investment securities, or credit, of more than \$10,000 to a person, account, or place, outside the United States;
- (4) A record of each receipt of currency, other monetary instruments, checks, or investment securities and of each transfer of funds or credit, of more than \$10,000 received on any one occasion directly and not through a domestic financial institution, from any person, account or place outside the United States.

(Approved by the Office of Management and Budget under control number 1505-0063)

HISTORY:

[37 FR 26518, Dec. 13, 1972, as amended at 38 FR 2176, Jan. 22, 1973; 52 FR 11444, Apr. 8, 1987]

AUTHORITY:

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

NOTES:

NOTES APPLICABLE TO ENTIRE TITLE:

EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10. CROSS REFERENCE: General Accounting Office: See 4 C.F.R. Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:

ABBREVIATION: The following abbreviation is used in this chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:

EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

SUBPART C—Records Required to be Maintained

31 C.F.R. 103.36

§ 103.36 Additional records to be made and retained by casinos.

[PUBLISHER'S NOTE: Paragraph (b)(7) was amended at 61 FR 7054, 7056, Feb. 23, 1996, effective Aug. 1, 1996. For the convenience of the user, paragraph (b)(7) has been set out twice below. The first version is effective until Aug. 1, 1996. The second version is effective Aug. 1, 1996.]

- (a) With respect to each deposit of funds, account opened or line of credit extended after the effective date of these regulations, a casino shall, at the time the funds are deposited, the account is opened or credit is extended, secure and maintain a record of the name, permanent address, and social security number of the person involved. Where the deposit, account or credit is in the names of two or more persons, the casino shall secure the name, permanent address, and social security number of each person having a financial interest in the deposit, account or line of credit. The name and address of such person shall be verified by the casino at the time the deposit is made, account opened, or credit extended. The verification shall be made by examination of a document of the type described in § 103.28, and the specific identifying information shall be recorded in the manner described in § 103.28. In the event that a casino has been unable to secure the required social security number, it shall not be deemed to be in violation of this section if (1) it has made a reasonable effort to secure such number and (2) it maintains a list containing the names and permanent addresses of those persons from whom it has been unable to obtain social security numbers and makes the names and addresses of those persons available to the Secretary upon request. Where a person is a nonresident alien, the casino shall also record the person's passport number or a descrip-

- tion of some other government document used to verify his identity.
- (b) In addition, each casino shall retain either the original or a microfilm or other copy or reproduction of each of the following:
- (1) A record of each receipt (including but not limited to funds for safekeeping or front money) of funds by the casino for the account (credit or deposit) of any person. The record shall include the name, permanent address and social security number of the person from whom the funds were received, as well as the date and amount of the funds received. If the person from whom the funds were received is a nonresident alien, the person's passport number or a description of some other government document used to verify the person's identity shall be obtained and recorded;
 - (2) A record of each bookkeeping entry comprising a debit or credit to a customer's deposit account or credit account with the casino;
 - (3) Each statement, ledger card or other record of each deposit account or credit account with the casino, showing each transaction (including deposits, receipts, withdrawals, disbursements or transfers) in or with respect to, a customer's deposit account or credit account with the casino;
 - (4) A record of each extension of credit in excess of \$2500, the terms and conditions of such extension of credit, and repayments. The record shall include the customer's name, permanent address, social security number, and the date and amount of the transaction (including repayments). If the customer or person for whom the credit extended is a non-resident alien, his passport number or description of some other government document used to verify his identity shall be obtained and recorded;
 - (5) A record of each advice, request or instruction received or given by the casino for itself or another person with respect to a transaction involving a person, account or place outside the United States (including but not limited to communications by wire, letter, or telephone). If the transfer outside the United States is on behalf of a third party, the record shall include the third party's name, permanent address, social security number, signature, and the date and amount of the transaction. If the transfer is received from outside the United States on behalf of a third party, the record shall include the third party's name, permanent address, social security number, signature, and the date and amount of the transaction. If the person for whom the transaction is being made is a non-resident alien the record shall also include the person's name, his passport number or a description of some other government document used to verify his identity;
 - (6) Records prepared or received by the casino in the ordinary course of business which would be needed to reconstruct a person's deposit account or credit account with the casino or to trace a check deposited with the casino through the casino's records to the bank of deposit;
 - (7) [Effective until Aug. 1, 1996.] All records, documents or manuals required to be maintained by a casino under state and local laws or regulations.
 - (7) [Effective Aug. 1, 1996.] All records, documents or manuals required to be maintained by a casino under state and local laws or regulations, regulations of any governing Indian tribe or tribal government, or terms of (or any regulations issued under) any Tribal-State compacts entered into pursuant to the Indian Gaming Regulatory Act, with respect to the casino in question.
 - (8) All records which are prepared or used by a casino to monitor a customer's gaming activity.
 - (9) (i) A separate record containing a list of each transaction between the casino and its customers involving the following types of instruments having a face value of \$ 3,000 or more:
 - (A) Personal checks (excluding instruments which evidence credit granted by a casino strictly for gaming, such as markers);

- (B) Business checks (including casino checks);
 - (C) Official bank checks;
 - (D) Cashier's checks;
 - (E) Third-party checks;
 - (F) Traveler's checks; and
 - (G) Money orders.
- (ii) The list will contain the time, date, and amount of the transaction; the name and permanent address of the customer; the type of instrument; the name of the drawee or issuer of the instrument; all reference numbers (e.g., casino account number, personal check number, etc.); and the name or casino license number of the casino employee who conducted the transaction. Applicable transactions will be placed on the list in the chronological order in which they occur.
- (12) A copy of the compliance program described in § 103.54(a).

HISTORY:

[50 FR 5068, Feb. 6, 1985, as amended at 52 FR 11444, Apr. 8, 1987; 54 FR 1167, Jan. 12, 1989; 58 FR 13547, Mar. 12, 1994; 59 FR 61662, Dec. 1, 1994; 61 FR 7054, 7056, Feb. 23, 1996]

AUTHORITY:

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

NOTES:

[EFFECTIVE DATE NOTE: 61 FR 7054, 7056, Feb. 23, 1996, which added “, regulations of any governing Indian tribe or tribal government, or terms of (or any regulations issued under) any Tribal-State compacts entered into pursuant to the Indian Gaming Regulatory Act, with respect to the casino in question.” after “state and local laws or regulations,” is effective Aug. 1, 1996.]

NOTES APPLICABLE TO ENTIRE TITLE:

EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10. **CROSS REFERENCE:** General Accounting Office: See 4 C.F.R. Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:

ABBREVIATION: The following abbreviation is used in this chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:

EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

SUBPART C—Records Required to be Maintained

31 C.F.R. 103.37

§ 103.37 Additional records to be made and retained by currency dealers or exchangers.

- (a) (1) After July 7, 1987, each currency dealer or exchanger shall secure and maintain a record of the taxpayer identification number of each person for whom a transaction account is opened or a line of credit is extended within 30 days after such account is opened or credit line extended. Where a person is a non-resident alien, the currency dealer or exchanger shall also record the person's passport number or a description of some other government document used to verify his identity. Where the account or credit line is in the names of two or more persons, the currency dealer or exchanger shall secure the taxpayer identification number of a person having a financial interest in the account or credit line. In the event that a currency dealer or exchanger has been unable to secure the identification required within the 30-day period specified, it shall nevertheless not be deemed to be in violation of this section if:
- (i) It has made a reasonable effort to secure such identification, and
 - (ii) It maintains a list containing the names, addresses, and account or credit line numbers of those persons from whom it has been unable to secure such identification, and makes the names, addresses, and account or credit line numbers of those persons available to the Secretary as directed by him.
- (2) The 30-day period provided for in paragraph (a)(1) of this section shall be extended where the person opening the account or credit line has applied for a taxpayer identification or social security number on Form SS-4 or SS-5, until such time as the person maintaining the account or credit line has had a reasonable opportunity to secure such number and furnish it to the currency dealer or exchanger.

- (3) A taxpayer identification number for an account or credit line required under paragraph (a)(1) of this section need not be secured in the following instances:
- (i) Accounts for public funds opened by agencies and instrumentalities of Federal, state, local or foreign governments,
 - (ii) Accounts for aliens who are—
 - (A) Ambassadors, ministers, career diplomatic or consular officers, or
 - (B) Naval, military or other attaches of foreign embassies, and legations, and for members of their immediate families,
 - (iii) Accounts for aliens who are accredited representatives to international organizations which are entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act of December 29, 1945 (22 U.S.C. 288), and for the members of their immediate families,
 - (iv) Aliens temporarily residing in the United States for a period not to exceed 180 days,
 - (v) Aliens not engaged in a trade or business in the United States who are attending a recognized college or any training program, supervised or conducted by any agency of the Federal Government, and
 - (vi) Unincorporated subordinate units of a tax exempt central organization which are covered by a group exemption letter.
- (b) Each currency dealer or exchanger shall retain either the original or a microfilm or other copy or reproduction of each of the following:
- (1) Statements of accounts from banks, including paid checks, charges or other debit entry memoranda, deposit slips and other credit memoranda representing the entries reflected on such statements;
 - (2) Daily work records, including purchase and sales slips or other memoranda needed to identify and reconstruct currency transactions with customers and foreign banks;
 - (3) A record of each exchange of currency involving transactions in excess of \$1000, including the name and address of the customer (and passport number or taxpayer identification number unless received by mail or common carrier) date and amount of the transaction and currency name, country, and total amount of each foreign currency;
 - (4) Signature cards or other documents evidencing signature authority over each deposit or security account, containing the name of the depositor, street address, taxpayer identification number (TIN) or employer identification number (EIN) and the signature of the depositor or of a person authorized to sign on the account (if customer accounts are maintained in a code name, a record of the actual owner of the account);
 - (5) Each item, including checks, drafts, or transfers of credit, of more than \$10,000 remitted or transferred to a person, account or place outside the United States;
 - (6) A record of each receipt of currency, other monetary instruments, investment securities and checks, and of each transfer of funds or credit, or more than \$10,000 received on any one occasion directly and not through a domestic financial institution, from any person, account or place outside the United States;
 - (7) Records prepared or received by a dealer in the ordinary course of business, that would be needed to reconstruct an account and trace a check in excess of \$100 deposited in such account through its internal recordkeeping system to its depository institution, or to supply a description of a deposited check in excess of \$100;
 - (8) A record maintaining the name, address and taxpayer identification number, if available, of any person presenting a certificate of deposit for payment, as well as a description of the instrument and date of transaction;
 - (9) A system of books and records that will enable the currency dealer or exchanger to prepare an accurate balance sheet and income statement.

(Approved by the Office of Management and Budget under control number 1505-0063)

HISTORY:

[52 FR 11444, Apr. 8, 1987]

AUTHORITY:

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

NOTES:

NOTES APPLICABLE TO ENTIRE TITLE:

EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10. **CROSS REFERENCE:** General Accounting Office: See 4 C.F.R. Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:

ABBREVIATION: The following abbreviation is used in this chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:

EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

SUBPART C—Records Required to be Maintained

31 C.F.R. 103.38

§ 103.38 Nature of records and retention period.

- (a) Wherever it is required that there be retained either the original or a microfilm or other copy or reproduction of a check, draft, monetary instrument, investment security, or other similar instrument, there shall be retained a copy of both front and back of each such instrument or document, except that no copy need be retained of the back of any instrument or document which is entirely blank or which contains only standardized printed information, a copy of which is on file.
- (b) Records required by this subpart to be retained by financial institutions may be those made in the ordinary course of business by a financial institution. If no record is made in the ordinary course of business of any transaction with respect to which records are required to be retained by this subpart, then such a record shall be prepared in writing by the financial institution.
- (c) The rules and regulations issued by the Internal Revenue Service under 26 U.S.C. 6109 determine what constitutes a taxpayer

identification number and whose number shall be obtained in the case of an account maintained by one or more persons.

- (d) All records that are required to be retained by this part shall be retained for a period of five years. Records or reports required to be kept pursuant to an order issued under § 103.26 of this part shall be retained for the period of time specified in such order, not to exceed five years. All such records shall be filed or stored in such a way as to be accessible within a reasonable period of time, taking into consideration the nature of the record, and the amount of time expired since the record was made.

(Approved by the Office of Management and Budget under control number 1505-0063)

HISTORY:

[37 FR 6912, Apr. 5, 1972. Redesignated at 50 FR 5068, Feb. 6, 1985, and further redesignated and amended at 52 FR 11444, 11445, Apr. 8, 1987; 54 FR 33679, Aug. 16, 1989]

AUTHORITY:

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

NOTES:

NOTES APPLICABLE TO ENTIRE TITLE:

EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10. **CROSS REFERENCE:** General Accounting Office: See 4 C.F.R. Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:

ABBREVIATION: The following abbreviation is used in this chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:

EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

SUBPART C—Records Required to be Maintained

31 C.F.R. 103.39

§ 103.39 Person outside the United States.

For the purposes of this subpart, a remittance or transfer of funds, or of currency, other monetary instruments, checks, investment securities, or credit to the domestic account of a person whose address is known by the person making the remittance or transfer, to be outside the United

States, shall be deemed to be a remittance or transfer to a person outside the United States, except that, unless otherwise directed by the Secretary, this section shall not apply to a transaction on the books of a domestic financial institution involving the account of a customer of such institution whose address is within approximately 50 miles of the location of the institution, or who is known to be temporarily outside the United States.

HISTORY:

[37 FR 6912, Apr. 5, 1972. Redesignated at 50 FR 5068, Feb. 6, 1985 and 52 FR 11444, Apr. 8, 1987]

AUTHORITY:

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

NOTES:

NOTES APPLICABLE TO ENTIRE TITLE:

EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10. **CROSS REFERENCE:** General Accounting Office: See 4 C.F.R. Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:

ABBREVIATION: The following abbreviation is used in this chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:

EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

SUBPART D—General Provisions**31 C.F.R. 103.41****§ 103.41 Dollars as including foreign currency.**

Wherever in this part an amount is stated in dollars, it shall be deemed to mean also the equivalent amount in any foreign currency.

HISTORY:

37 FR 6912, Apr. 5, 1972.

AUTHORITY:

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

NOTES:

NOTES APPLICABLE TO ENTIRE TITLE:

EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10. **CROSS REFERENCE:** General Accounting Office: See 4 C.F.R. Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:

ABBREVIATION: The following abbreviation is used in this chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:

EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

SUBPART D—General Provisions**31 C.F.R. 103.42****§ 103.42 Photographic or other reproductions of Government obligations.**

Nothing herein contained shall require or authorize the microfilming or other reproduction of

- (a) Currency or other obligation or security of the United States as defined in 18 U.S.C. 8, or
- (b) Any obligation or other security of any foreign government, the reproduction of which is prohibited by law.

HISTORY:

37 FR 6912, Apr. 5, 1972.

AUTHORITY:

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

NOTES:

NOTES APPLICABLE TO ENTIRE TITLE:

EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10. **CROSS REFERENCE:** General Accounting Office: See 4 C.F.R. Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:

ABBREVIATION: The following abbreviation is used in this chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:

EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

SUBPART D—General Provisions**31 C.F.R. 103.43****§ 103.43 Availability of information.**

- (a) The Secretary may within his discretion disclose information reported under this part for any reason consistent with the purposes of the Bank Secrecy Act, including those set

forth in paragraphs (b) through (d) of this section.

- (b) The Secretary may make any information set forth in any report received pursuant to this part available to another agency of the United States, to an agency of a state or local government or to an agency of a foreign government, upon the request of the head of such department or agency made in writing and stating the particular information desired, the criminal, tax or regulatory purpose for which the information is sought, and the official need for the information.
- (c) The Secretary may make any information set forth in any report received pursuant to this part available to the Congress, or any committee or subcommittee thereof, upon a written request stating the particular information desired, the criminal, tax or regulatory purpose for which the information is sought, and the official need for the information.
- (d) The Secretary may make any information set forth in any report received pursuant to this part available to any other department or agency of the United States that is a member of the Intelligence Community, as defined by Executive Order 12333 or any succeeding executive order, upon the request of the head of such department or agency made in writing and stating the particular information desired, the national security matter with which the information is sought and the official need therefor.
- (e) Any information made available under this section to other department or agencies of the United States, any state or local government, or any foreign government shall be received by them in confidence, and shall not be disclosed to any person except for official purposes relating to the investigation, proceeding or matter in connection with which the information is sought.
- (f) The Secretary may require that a state or local government department or agency requesting information under paragraph (b) of this section pay fees to reimburse the Department of the Treasury for costs incidental to such disclosure. The amount of such fees will be set in accordance with the statute on fees for government services, 31 U.S.C. 9701.

(Approved by the Office of Management and Budget under control number 1505-0104)

HISTORY:

[50 FR 42693, Oct. 22, 1985, as amended at 50 FR 46283, Nov. 7, 1985; 52 FR 35545, Sept. 22, 1987]

AUTHORITY:

AUTHORITY NOTE APPLICABLE TO ENTIRE PART: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

NOTES:

NOTES APPLICABLE TO ENTIRE TITLE:

EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10. **CROSS REFERENCE:** General Accounting Office: See 4 C.F.R. Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:

ABBREVIATION: The following abbreviation is used in this chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:

EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

SUBPART D—General Provisions

31 C.F.R. 103.44

§ 103.44 Disclosure.

All reports required under this part and all records of such reports are specifically exempted from disclosure under section 552 of Title 5, United States Code.

HISTORY:

37 FR 6912, Apr. 5, 1972.

AUTHORITY:

AUTHORITY NOTE APPLICABLE TO ENTIRE PART: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

NOTES:

NOTES APPLICABLE TO ENTIRE TITLE:

EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10. **CROSS REFERENCE:** General Accounting Office: See 4 C.F.R. Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:

ABBREVIATION: The following abbreviation is used in this chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:

EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

SUBPART D—General Provisions

31 C.F.R. 103.45

§ 103.45 Exceptions, exemptions, and reports.

- (a) The Secretary, in his sole discretion, may by written order or authorization make exceptions to or grant exemptions from the requirements of this part. Such exceptions or exemptions may be conditional or unconditional, may apply to particular persons or to classes of persons, and may apply to particular transactions or classes of transactions. They shall, however, be applicable only as expressly stated in the order of authorization, and they shall be revocable in the sole discretion of the Secretary.
- (b) The Secretary shall have authority to further define all terms used herein.
- (c) (1) The Secretary may, as an alternative to the reporting and recordkeeping requirements for casinos in §§ 103.22(a)(2) and 103.25(a)(2), and 103.36, grant exemptions to the casinos in any state whose regulatory system substantially meets the reporting and recordkeeping requirements of this part.
- (2) In order for a state regulatory system to qualify for an exemption on behalf of its casinos, the state must provide:
- (i) That the Treasury Department be allowed to evaluate the effectiveness of the state's regulatory system by periodic oversight review of that system;
 - (ii) That the reports required under the state's regulatory system be submitted to the Treasury Department within 15 days of receipt by the state;
 - (iii) That any records required to be maintained by the casinos relevant to any matter under this part and to which the state has access or maintains under its regulatory system be made available to the Treasury Department within 30 days of request;
 - (iv) That the Treasury Department be provided with periodic status reports on the state's compliance efforts and findings;

- (v) That all but minor violations of the state requirements be reported to Treasury within 15 days of discovery; and
- (vi) That the state will initiate compliance examinations of specific institutions at the request of Treasury within a reasonable time, not to exceed 90 days where appropriate, and will provide reports of these examinations to Treasury within 15 days of completion or periodically during the course of the examination upon the request of the Secretary. If for any reason the state were not able to conduct an investigation within a reasonable time, the state will permit Treasury to conduct the investigation.
- (3) Revocation of any exemption under this subsection shall be in the sole discretion of the Secretary.

HISTORY:

[38 FR 2176, Jan. 22, 1973, as amended at 50 FR 5069, Feb. 6, 1985; 50 FR 36875, Sept. 10, 1985]

AUTHORITY:

AUTHORITY NOTE APPLICABLE TO ENTIRE PART: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

NOTES:

NOTES APPLICABLE TO ENTIRE TITLE:

EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10. CROSS REFERENCE: General Accounting Office: See 4 C.F.R. Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:

ABBREVIATION: The following abbreviation is used in this chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:

EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

SUBPART D—General Provisions

31 C.F.R. 103.46

§ 103.46 Enforcement.

- (a) Overall authority for enforcement and compliance, including coordination and direction of procedures and activities of all other agencies exercising delegated author-

- ity under this part, is delegated to the Assistant Secretary (Enforcement).
- (b) Authority to examine institutions to determine compliance with the requirements of this part is delegated as follows:
- (1) To the Comptroller of the Currency with respect to those financial institutions regularly examined for safety and soundness by national bank examiners;
 - (2) To the Board of Governors of the Federal Reserve System with respect to those financial institutions regularly examined for safety and soundness by Federal Reserve bank examiners;
 - (3) To the Federal Deposit Insurance Corporation with respect to those financial institutions regularly examined for safety and soundness by FDIC bank examiners;
 - (4) To the Federal Home Loan Bank Board with respect to those financial institutions regularly examined for safety and soundness by FHLBB bank examiners;
 - (5) To the Chairman of the Board of the National Credit Union Administration with respect to those financial institutions regularly examined for safety and soundness by NCUA examiners.
 - (6) To the Securities and Exchange Commission with respect to brokers or dealers in securities;
 - (7) To the Commissioner of Customs with respect to §§ 103.23 and 103.48;
 - (8) To the Commissioner of Internal Revenue with respect to all financial institutions, except brokers or dealers in securities, not currently examined by Federal bank supervisory agencies for soundness and safety.
- (c) Authority for investigating criminal violations of this part is delegated as follows:
- (1) To the Commissioner of Customs with respect to § 103.23;
 - (2) To the Commissioner of Internal Revenue except with respect to § 103.23.
- (d) Authority for the imposition of civil penalties for violations of this part lies with the Assistant Secretary, and in the Assistant Secretary's absence, the Deputy Assistant Secretary (Law Enforcement).
- (e) Periodic reports shall be made to the Assistant Secretary by each agency to which compliance authority has been delegated under paragraph (b) of this section. These reports shall be in such a form and submitted at such intervals as the Assistant Secretary may direct. Evidence of specific violations of any of the requirements of this part may be submitted to the Assistant Secretary at any time.
- (f) The Assistant Secretary or his delegate, and any agency to which compliance has been delegated under paragraph (b) of this section, may examine any books, papers, records, or other data of domestic financial institutions relevant to the recordkeeping or reporting requirements of this part.

HISTORY:

[37 FR 6912, Apr. 5, 1972, as amended at 50 FR 42693, Oct. 22, 1985; 52 FR 11445, Apr. 8, 1987]

AUTHORITY:

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

NOTES:

NOTES APPLICABLE TO ENTIRE TITLE:

EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10. **CROSS REFERENCE:** General Accounting Office: See 4 C.F.R. Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:

ABBREVIATION: The following abbreviation is used in this chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:

EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

SUBPART D—General Provisions

31 C.F.R. 103.47

§ 103.47 Civil penalty.

- (a) For any willful violation, committed on or before October 12, 1984, of any reporting requirement for financial institutions under this part or of any recordkeeping requirements of § 103.22, the Secretary may assess upon any domestic financial institution, and upon any partner, director, officer, or employee thereof who willfully participates in the violation, a civil penalty not to exceed \$1,000.
- (b) For any willful violation committed after October 12, 1984 and before October 28, 1986, of any reporting requirement for financial institutions under this part or of the recordkeeping requirements of § 103.32, the

- Secretary may assess upon any domestic financial institution, and upon any partner, director, officer, or employee thereof who willfully participates in the violation, a civil penalty not to exceed \$10,000.
- (c) For any willful violation of any recordkeeping requirement for financial institutions, except violations of § 103.32, under this part, the Secretary may assess upon any domestic financial institution, and upon any partner, director, officer, or employee thereof who willfully participates in the violation, a civil penalty not to exceed \$1,000.
- (d) For any failure to file a report required under § 103.23 or for filing such a report containing any material omission or misstatement, the Secretary may assess a civil penalty up to the amount of the currency or monetary instruments transported, mailed or shipped, less any amount forfeited under § 103.48.
- (e) For any willful violation of § 103.53 committed after January 26, 1987, the Secretary may assess upon any person a civil penalty not to exceed the amount of coins and currency involved in the transaction with respect to which such penalty is imposed. The amount of any civil penalty assessed under this paragraph shall be reduced by the amount of any forfeiture to the United States in connection with the transaction for which the penalty was imposed.
- (f) For any willful violation committed after October 27, 1986, of any reporting requirement for financial institutions under this part (except § 103.24, § 103.25 or § 103.32), the Secretary may assess upon any domestic financial institution, and upon any partner, director, officer, or employee thereof who willfully participates in the violation, a civil penalty not to exceed the greater of the amount (not to exceed \$100,000) involved in the transaction or \$25,000.
- (g) For any willful violation committed after October 27, 1986, of any requirement of § 103.24, § 103.25, or § 103.32, the Secretary may assess upon any person, a civil penalty:
- (1) In the case of a violation of § 103.25 involving a transaction, a civil penalty not to exceed the greater of the amount (not to exceed \$100,000) of the transaction, or \$25,000; and
 - (2) In the case of a violation of § 103.24 or § 103.32 involving a failure to report the existence of an account or any identifying information required to be provided with respect to such account, a civil penalty not to exceed the greater of the amount (not to exceed \$100,000) equal to the balance in the account at the time of the violation, or \$25,000.
- (h) For each negligent violation of any requirement of this part, committed after October 27, 1986, the Secretary may assess upon any financial institution a civil penalty not to exceed \$500.

HISTORY:

[37 FR 6912, Apr. 5, 1972, as amended at 52 FR 11445, Apr. 8, 1987; 52 FR 12641, Apr. 17, 1987]

AUTHORITY:

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5330.

NOTES:

NOTES APPLICABLE TO ENTIRE TITLE:

EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10. CROSS REFERENCE: General Accounting Office: See 4 C.F.R. Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:

ABBREVIATION: The following abbreviation is used in this chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:

EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

SUBPART D—General Provisions

31 C.F.R. 103.48

§ 103.48 Forfeiture of currency or monetary instruments.

Any currency or other monetary instruments which are in the process of any transportation with respect to which a report is required under § 103.23 are subject to seizure and forfeiture to the United States if such report has not been filed as required in § 103.25, or contains material omissions or misstatements. The Secretary may, in his sole discretion, remit or mitigate any such forfeiture in whole or in part upon such terms and conditions as he deems reasonable.

HISTORY:

37 FR 6912, Apr. 5, 1972.

AUTHORITY:

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5330.

NOTES:

NOTES APPLICABLE TO ENTIRE TITLE:

EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10. CROSS REFERENCE: General Accounting Office: See 4 C.F.R. Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:

ABBREVIATION: The following abbreviation is used in this chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:

EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

SUBPART D—General Provisions

31 C.F.R. 103.49

§ 103.49 Criminal penalty.

- (a) Any person who willfully violates any provision of Title I of Pub. L. 91-508, or of this part authorized thereby may, upon conviction thereof, be fined not more than \$1,000 or be imprisoned not more than 1 year, or both. Such person may in addition, if the violation is of any provision authorized by Title I of Pub. L. 91-508 and if the violation is committed in furtherance of the commission of any violation of Federal law punishable by imprisonment for more than 1 year, be fined not more than \$10,000 or be imprisoned not more than 5 years, or both.
- (b) Any person who willfully violates any provision of Title II of Pub. L. 91-508, or of this part authorized thereby, may, upon conviction thereof, be fined not more than \$250,000 or be imprisoned not more than 5 years, or both.
- (c) Any person who willfully violates any provision of Title II of Pub. L. 91-508, or of this part authorized thereby, where the violation is either
- (1) Committed while violating another law of the United States, or
 - (2) Committed as part of a pattern of any illegal activity involving more than \$100,000 in any 12-month period, may, upon conviction thereof, be fined not more than \$500,000 or be imprisoned not more than 10 years, or both.
- (d) Any person who knowingly makes any false, fictitious or fraudulent statement or representation in any report required by this part

may, upon conviction thereof, be fined not more than \$10,000 or be imprisoned not more than 5 years, or both.

HISTORY:

[37 FR 6912, Apr. 5, 1972, as amended at 50 FR 18479, May 1, 1985; 53 FR 4138, Feb. 12, 1988]

AUTHORITY:

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

NOTES:

NOTES APPLICABLE TO ENTIRE TITLE:

EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10. CROSS REFERENCE: General Accounting Office: See 4 C.F.R. Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:

ABBREVIATION: The following abbreviation is used in this chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:

EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

SUBPART D—General Provisions

31 C.F.R. 103.50

§ 103.50 Enforcement authority with respect to transportation of currency or monetary instruments.

- (a) If a customs officer has reasonable cause to believe that there is a monetary instrument being transported without the filing of the report required by §§ 103.23 and 103.25 of this chapter, he may stop and search, without a search warrant, a vehicle, vessel, aircraft, or other conveyance, envelope or other container, or person entering or departing from the United States with respect to which or whom the officer reasonably believes is transporting such instrument.
- (b) If the Secretary has reason to believe that currency or monetary instruments are in the process of transportation and with respect to which a report required under § 103.23 has not been filed or contains material omissions or misstatements, he may apply to any court of competent jurisdiction for a search warrant. Upon a showing of probable cause, the court may issue a warrant authorizing the search of any or all of the following:
- (1) One or more designated persons.

- (2) One or more designated or described places or premises.
 - (3) One or more designated or described letters, parcels, packages, or other physical objects.
 - (4) One or more designated or described vehicles. Any application for a search warrant pursuant to this section shall be accompanied by allegations of fact supporting the application.
- (c) This section is not in derogation of the authority of the Secretary under any other law or regulation.

HISTORY:

[37 FR 6912, Apr. 5, 1972, as amended at 50 FR 18479, May 1, 1985]

AUTHORITY:

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

NOTES:

NOTES APPLICABLE TO ENTIRE TITLE:

EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10. **CROSS REFERENCE:** General Accounting Office: See 4 C.F.R. Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:

ABBREVIATION: The following abbreviation is used in this chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:

EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

SUBPART D—General Provisions**31 C.F.R. 103.51****§ 103.51 Access to records.**

Except as provided in §§ 103.34(a)(1), 103.35(a)(1), and 103.36(a) and except for the purpose of assuring compliance with the record-keeping and reporting requirements of this part, this part does not authorize the Secretary or any other person to inspect or review the records required to be maintained by subpart C of this part. Other inspection, review or access to such records is governed by other applicable law.

HISTORY:

[50 FR 5069, Feb. 6, 1985]

AUTHORITY:

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

NOTES:

NOTES APPLICABLE TO ENTIRE TITLE:

EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10. **CROSS REFERENCE:** General Accounting Office: See 4 C.F.R. Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:

ABBREVIATION: The following abbreviation is used in this chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:

EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

SUBPART D—General Provisions**31 C.F.R. 103.52****§ 103.52 Rewards for informants.**

- (a) If an individual provides original information which leads to a recovery of a criminal fine, civil penalty, or forfeiture, which exceeds \$50,000, for a violation of the provisions of the Act or of this part, the Secretary may pay a reward to that individual.
- (b) The Secretary shall determine the amount of the reward to be paid under this section; however, any reward paid may not be more than 25 percent of the net amount of the fine, penalty or forfeiture collected, or \$150,000, whichever is less.
- (c) An officer or employee of the United States, a State, or a local government who provides original information described in paragraph (a) in the performance of official duties is not eligible for a reward under this section.

HISTORY:

[50 FR 18479, May 1, 1985]

AUTHORITY:

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

NOTES:

NOTES APPLICABLE TO ENTIRE TITLE:

EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10. **CROSS REFERENCE:** General Accounting Office: See 4 C.F.R. Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:

ABBREVIATION: The following abbreviation is used in this chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:

EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

SUBPART D—General Provisions

31 C.F.R. 103.53

§ 103.53 Structured transactions.

No person shall for the purpose of evading the reporting requirements of § 103.22 with respect to such transaction:

- (a) Cause or attempt to cause a domestic financial institution to fail to file a report required under § 103.22;
- (b) Cause or attempt to cause a domestic financial institution to file a report required under § 103.22 that contains a material omission or misstatement of fact; or
- (c) Structure (as that term is defined in § 103.11(gg) of this part) or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.

HISTORY:

[52 FR 11446, Apr. 8, 1987, as amended at 54 FR 3027, Jan. 23, 1989]

AUTHORITY:

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

NOTES:

NOTES APPLICABLE TO ENTIRE TITLE:

EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10. CROSS REFERENCE: General Accounting Office: See 4 C.F.R. Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:

ABBREVIATION: The following abbreviation is used in this chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:

EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

SUBPART D—General Provisions

31 C.F.R. 103.54

§ 103.54 Special rules for casinos.

- (a) *Compliance programs.*

- (1) Each casino shall develop and implement a written program reasonably designed to assure and monitor compliance with the requirements set forth in 31 U.S.C. chapter 53, subchapter II and the regulations contained in this part.
- (2) At a minimum, each compliance program shall provide for:
 - (i) A system of internal controls to assure ongoing compliance;
 - (ii) Internal and/or external independent testing for compliance;
 - (iii) Training of casino personnel, including training in the identification of unusual or suspicious transactions, to the extent that the reporting of such transactions is hereafter required by this part, by other applicable law or regulation, or by the casino's own administrative and compliance policies;
 - (iv) An individual or individuals to assure day-to-day compliance;
 - (v) Procedures for using all available information to determine:
 - (A) When required by this part, the name, address, social security number, and other information, and verification of the same, of a person;
 - (B) When required by this part, the occurrence of unusual or suspicious transactions; and
 - (C) Whether any record as described in subpart C of this part must be made and retained; and
 - (vi) For casinos that have automated data processing systems, the use of automated programs to aid in assuring compliance.

- (b) *Special terms.* As used in this part, as applied to casinos:

- (1) Business year means the annual accounting period, such as a calendar or fiscal year, by which a casino maintains its books and records for purposes of subtitle A of title 26 of the United States Code.
- (2) Casino account number means any and all numbers by which a casino identifies a customer.
- (3) Customer includes every person which is involved in a transaction to which this part applies with a casino, whether or

not that person participates, or intends to participate, in the gaming activities offered by that casino.

- (4) Gaming day means the normal business day of a casino. For a casino that offers 24 hour gaming, the term means that 24 hour period by which the casino keeps its books and records for business, accounting, and tax purposes. For purposes of the regulations contained in this part, each casino may have only one gaming day, common to all of its divisions.

- (5) Machine-readable means capable of being read by an automated data processing system.

(c) [Removed. See 59 FR 61662, Dec. 1, 1994]

HISTORY:

[58 FR 13549, Mar. 12, 1993; 58 FR 45263, Aug. 27, 1993; 59 FR 9088, Feb. 25, 1994; 59 FR 61662, Dec. 1, 1994; 60 FR 33725, June 29, 1995]

AUTHORITY:

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

NOTES:

[EFFECTIVE DATE NOTE: 60 FR 33725, June 29, 1995, which revised paragraph (a)(1) and substituted “unusual” for “usual” in paragraph (a)(2)(v)(B), became effective June 29, 1995.]

NOTES APPLICABLE TO ENTIRE TITLE:

EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10. **CROSS REFERENCE:** General Accounting Office: See 4 C.F.R. Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:

ABBREVIATION: The following abbreviation is used in this chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:

EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

SUBPART E—Summons

31 C.F.R. 103.61

§ 103.61 General.

For any investigation for the purpose of civil enforcement of violations of the Currency and Foreign Transactions Reporting Act, as amended (31 U.S.C. 5311 through 5324), section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b), section 411 of the National Housing Act

(12 U.S.C. 1730d), or Chapter 2 of Pub. L. 91-508 (12 U.S.C. 1951 et seq.), or any regulation under any such provision, the Secretary or delegate of the Secretary may summon a financial institution or an officer or employee of a financial institution (including a former officer or employee), or any person having possession, custody, or care of any of the records and reports required under the Currency and Foreign Transactions Reporting Act or this part to appear before the Secretary or his delegate, at a time and place named in the summons, and to give testimony, under oath, and be examined, and to produce such books, papers, records, or other data as may be relevant or material to such investigation.

HISTORY:

52 FR 23979, June 26, 1987.

AUTHORITY:

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

NOTES:

NOTES APPLICABLE TO ENTIRE TITLE:

EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10. **CROSS REFERENCE:** General Accounting Office: See 4 C.F.R. Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:

ABBREVIATION: The following abbreviation is used in this chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:

EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

SUBPART E—Summons

31 C.F.R. 103.62

§ 103.62 Persons who may issue summons.

For purposes of this part, the following officials are hereby designated as delegates of the Secretary who are authorized to issue a summons under § 103.61, solely for the purposes of civil enforcement of this part:

- (a) *Office of the Secretary.* The Assistant Secretary (Enforcement), the Deputy Assistant Secretary (Law Enforcement), and the Director, Office of Financial Enforcement.
- (b) *Internal Revenue Service.* Except with respect to § 103.23 of this part, the Commis-

sioner, the Deputy Commissioner, the Associate Commissioner (Operations), the Assistant Commissioner (Examination), Regional Commissioners, Assistant Regional Commissioners (Examination), District Directors, District Examination Division Chiefs, and, for the purposes of perfecting seizures and forfeitures related to civil enforcement of this part, the Assistant Commissioner (Criminal Investigation), Assistant Regional Commissioners (Criminal Investigation), and District Criminal Investigation Division Chiefs.

- (c) *Customs Service.* With respect to § 103.23 of this part, the Commissioner, the Deputy Commissioner, the Assistant Commissioner (Enforcement), Regional Commissioners, Assistant Regional Commissioners (Enforcement), and Special Agents in Charge.

HISTORY:

52 FR 23979, June 26, 1987.

AUTHORITY:

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

NOTES:

NOTES APPLICABLE TO ENTIRE TITLE:

EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10. CROSS REFERENCE: General Accounting Office: See 4 C.F.R. Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:

ABBREVIATION: The following abbreviation is used in this

chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:

EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

SUBPART E—Summons

31 C.F.R. 103.63

§ 103.63 Contents of summons.

- (a) *Summons for testimony.* Any summons issued under § 103.61 of this part to compel the appearance and testimony of a person shall state:

- (1) The name, title, address, and telephone number of the person before whom the appearance shall take place (who may be a person other than the persons who

are authorized to issue such a summons under § 103.62 of this part);

- (2) The address to which the person summoned shall report for the appearance;
- (3) The date and time of the appearance; and
- (4) The name, title, address, and telephone number of the person who has issued the summons.

- (b) *Summons of books, papers, records, or data.* Any summons issued under § 103.61 of this part to require the production of books, papers, records, or other data shall describe the materials to be produced with reasonable specificity, and shall state:

- (1) The name, title, address, and telephone number of the person to whom the materials shall be produced (who may be a person other than the persons who are authorized to issue such a summons under § 103.62 of this part);
- (2) The address at which the person summoned shall produce the materials, not to exceed 500 miles from any place where the financial institution operates or conducts business in the United States;
- (3) The specific manner of production, whether by personal delivery, by mail, or by messenger service;
- (4) The date and time for production; and
- (5) The name, title, address, and telephone number of the person who has issued the summons.

HISTORY:

52 FR 23979, June 26, 1987.

AUTHORITY:

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

NOTES:

NOTES APPLICABLE TO ENTIRE TITLE:

EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10. CROSS REFERENCE: General Accounting Office: See 4 C.F.R. Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:

ABBREVIATION: The following abbreviation is used in this chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:

EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

SUBPART E—Summons

31 C.F.R. 103.64

§ 103.64 Service of summons.

- (a) *Who may serve.* Any delegate of the Secretary authorized under § 103.62 of this part to issue a summons, or any other person authorized by law to serve summonses or other process, is hereby authorized to serve a summons issued under this part.
- (b) *Manner of service.* Service of a summons may be made—
- (1) Upon any person, by registered mail, return receipt requested, directed to the person summoned;
 - (2) Upon a natural person by personal delivery; or
 - (3) Upon any other person by delivery to an officer, managing or general agent, or any other agent authorized to receive service of process.
- (c) *Certificate of service.* The summons shall contain a certificate of service to be signed by the server of the summons. On the hearing of an application for enforcement of the summons, the certificate of service signed by the person serving the summons shall be evidence of the facts it states.

HISTORY:
52 FR 23979, June 26, 1987.

AUTHORITY:
AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

NOTES:
NOTES APPLICABLE TO ENTIRE TITLE:
EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10. CROSS REFERENCE: General Accounting Office: See 4 C.F.R. Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:
ABBREVIATION: The following abbreviation is used in this chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:
EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

SUBPART E—Summons

31 C.F.R. 103.65

§ 103.65 Examination of witnesses and records.

- (a) *General.* Any delegate of the Secretary authorized under § 103.62 of this part to issue a summons, or any officer or employee of the Treasury Department or any component thereof who is designated by that person (whether in the summons or otherwise), is hereby authorized to receive evidence and to examine witnesses pursuant to the summons. Any person authorized by law may administer any oaths and affirmations that may be required under this subpart.
- (b) *Testimony taken under oath.* Testimony of any person under this part may be taken under oath, and shall be taken down in writing by the person examining the person summoned or shall be otherwise transcribed. After the testimony of a witness has been transcribed, a copy of that transcript shall be made available to the witness upon request, unless for good cause the person issuing the summons determines, under 5 U.S.C. 555, that a copy should not be provided. If such a determination has been made, the witness shall be limited to inspection of the official transcript of the testimony.
- (c) *Disclosure of summons, testimony, or records.* Unless the Secretary or a delegate of the Secretary listed under § 103.62(a) of this part so authorizes in writing, or it is otherwise required by law, no delegate of the Secretary listed under § 103.62 (b) or (c) of this part or other officer or employee of the Treasury Department or any component thereof shall—
- (1) Make public the name of any person to whom a summons has been issued under this part, or release any information to the public concerning that person or the issuance of a summons to that person prior to the time and date set for that person's appearance or production of records; or
 - (2) Disclose any testimony taken (including the name of the witness) or material presented pursuant to the summons, to any person other than an officer or

employee of the Treasury Department or of any component thereof.

Nothing in the preceding sentence shall preclude a delegate of the Secretary, or other officer or employee of the Treasury Department or any component thereof, from disclosing testimony taken, or material presented pursuant to a summons issued under this part, to any person in order to obtain necessary information for investigative purposes relating to the performance of official duties, or to any officer or employee of the Department of Justice in connection with a possible violation of Federal law.

HISTORY:

52 FR 23979, June 26, 1987.

AUTHORITY:

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

NOTES:

NOTES APPLICABLE TO ENTIRE TITLE:

EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10. **CROSS REFERENCE:** General Accounting Office: See 4 C.F.R. Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:

ABBREVIATION: The following abbreviation is used in this chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:

EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

SUBPART E—Summons

31 C.F.R. 103.66

§ 103.66 Enforcement of summons.

In the case of contumacy by, or refusal to obey a summons issued to, any person under this part, the Secretary or any delegate of the Secretary listed under § 103.62 of this part shall refer the matter to the Attorney General or delegate of the Attorney General (including any United States Attorney or Assistant United States Attorney, as appropriate), who may bring an action to compel compliance with the summons in any court of the United States within the jurisdiction of which the investigation which gave rise to the

summons being or has been carried on, the jurisdiction in which the person summoned is a resident, or the jurisdiction in which the person summoned carries on business or may be found. When a referral is made by a delegate of the Secretary other than a delegate named in § 103.62(a) of this part, prompt notification of the referral must be made to the Director, Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement). The court may issue an order requiring the person summoned to appear before the Secretary or delegate of the Secretary to produce books, papers, records, or other data, to give testimony as may be necessary in order to explain how such material was compiled and maintained, and to pay the costs of the proceeding. Any failure to obey the order of the court may be punished by the court as a contempt thereof. All process in any case under this section may be served in any judicial district in which such person may be found.

HISTORY:

52 FR 23979, June 26, 1987.

AUTHORITY:

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

NOTES:

NOTES APPLICABLE TO ENTIRE TITLE:

EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10. **CROSS REFERENCE:** General Accounting Office: See 4 C.F.R. Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:

ABBREVIATION: The following abbreviation is used in this chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:

EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

SUBPART E—Summons

31 C.F.R. 103.67

§ 103.67 Payment of expenses.

Persons summoned under this part shall be paid the same fees and mileage for travel in the United States that are paid witnesses in the courts of the United States. The United

States shall not be liable for any other expense incurred in connection with the production of books, papers, records, or other data under this part.

HISTORY:

52 FR 23979, June 26, 1987.

AUTHORITY:

AUTHORITY NOTE APPLICABLE TO ENTIRE PART: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

NOTES:

NOTES APPLICABLE TO ENTIRE TITLE:

EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10. **CROSS REFERENCE:** General Accounting Office: See 4 C.F.R. Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:

ABBREVIATION: The following abbreviation is used in this chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:

EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

SUBPART F—Administrative Rulings

31 C.F.R. 103.70

§ 103.70 Scope.

This subpart provides that the Assistant Secretary (Enforcement), or his designee, either unilaterally or upon request, may issue administrative rulings interpreting the application of part 103.

HISTORY:

52 FR 35546, Sept. 22, 1987.

AUTHORITY:

AUTHORITY NOTE APPLICABLE TO ENTIRE PART: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

NOTES:

NOTES APPLICABLE TO ENTIRE TITLE:

EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10. **CROSS REFERENCE:** General Accounting Office: See 4 C.F.R. Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:

ABBREVIATION: The following abbreviation is used in this chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:

EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

SUBPART F—Administrative Rulings

31 C.F.R. 103.71

§ 103.71 Submitting requests.

- (a) Each request for an administrative ruling must be in writing and contain the following information:
- (1) A complete description of the situation for which the ruling is requested,
 - (2) A complete statement of all material facts related to the subject transaction,
 - (3) A concise and unambiguous question to be answered,
 - (4) A statement certifying, to the best of the requestor's knowledge and belief, that the question to be answered is not applicable to any ongoing state or federal investigation, litigation, grand jury proceeding, or proceeding before any other governmental body involving either the requestor, any other party to the subject transaction, or any other party with whom the requestor has an agency relationship,
 - (5) A statement identifying any information in the request that the requestor considers to be exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552, and the reason therefor,
 - (6) If the subject situation is hypothetical, a statement justifying why the particular situation described warrants the issuance of a ruling,
 - (7) The signature of the person making the request, or
 - (8) If an agent makes the request, the signature of the agent and a statement certifying the authority under which the request is made.
- (b) A request filed by a corporation shall be signed by a corporate officer and a request filed by a partnership shall be signed by a partner.
- (c) A request may advocate a particular proposed interpretation and may set forth the legal and factual basis for that interpretation.
- (d) Requests shall be addressed to: Director, FinCEN, Office of the Assistant Secretary (Enforcement), U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Room 4320, Washington, DC 20220.
- (e) The requester shall advise the Director, FinCEN, immediately in writing of any

subsequent change in any material fact or statement submitted with a ruling request in conformity with paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 1505-0105)

HISTORY:

52 FR 35546, Sept. 22, 1987.

AUTHORITY:

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

NOTES:

NOTES APPLICABLE TO ENTIRE TITLE:

EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10. **CROSS REFERENCE:** General Accounting Office: See 4 C.F.R. Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:

ABBREVIATION: The following abbreviation is used in this chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:

EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

SUBPART F—Administrative Rulings

31 C.F.R. 103.72

§ 103.72 Nonconforming requests.

The Director, Office of Financial Enforcement, shall notify the requester if the ruling request does not conform with the requirements of § 103.71. The notice shall be in writing and shall describe the requirements that have not been met. A request that is not brought into conformity with such requirements within 30 days from the date of such notice, unless extended for good cause by the Office of Financial Enforcement, shall be treated as though it were withdrawn.

(Approved by the Office of Management and Budget under control number 1505-0105)

HISTORY:

52 FR 35546, Sept. 22, 1987.

AUTHORITY:

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

NOTES:

NOTES APPLICABLE TO ENTIRE TITLE:

EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chap-

ters II, IV, V, VI, and VII, and Title 48, Chapter 10. **CROSS REFERENCE:** General Accounting Office: See 4 C.F.R. Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:

ABBREVIATION: The following abbreviation is used in this chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:

EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

SUBPART F—Administrative Rulings

31 C.F.R. 103.73

§ 103.73 Oral communications.

- (a) The Office of the Assistant Secretary (Enforcement) will not issue administrative rulings in response to oral requests. Oral opinions or advice by Treasury, the Customs Service, the Internal Revenue Service, the Office of the Comptroller of the Currency, or any other bank supervisory agency personnel, regarding the interpretation and application of this part, do not bind the Treasury Department and carry no precedential value.
- (b) A person who has made a ruling request in conformity with § 103.71 may request an opportunity for oral discussion of the issues presented in the request. The request should be made to the Director, Office of Financial Enforcement, and any decision to grant such a conference is wholly within the discretion of the Director. Personal conferences or telephone conferences may be scheduled only for the purpose of affording the requester an opportunity to discuss freely and openly the matters set forth in the administrative ruling request. Accordingly, the conferees will not be bound by any argument or position advocated or agreed to, expressly or impliedly, during the conference. Any new arguments or facts put forth by the requester at the meeting must be reduced to writing by the requester and submitted in conformity with § 103.71 before they may be considered in connection with the request.

(Approved by the Office of Management and Budget under control number 1505-0105)

HISTORY:

52 FR 35546, Sept. 22, 1987.

AUTHORITY:
AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

NOTES:
NOTES APPLICABLE TO ENTIRE TITLE:
EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10. **CROSS REFERENCE:** General Accounting Office: See 4 C.F.R. Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:
ABBREVIATION: The following abbreviation is used in this chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:
EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

SUBPART F—Administrative Rulings

31 C.F.R. 103.74

§ 103.74 Withdrawing requests.

A person may withdraw a request for an administrative ruling at any time before the ruling has been issued.

HISTORY:
 52 FR 35546, Sept. 22, 1987.

AUTHORITY:
AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

NOTES:
NOTES APPLICABLE TO ENTIRE TITLE:
EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10. **CROSS REFERENCE:** General Accounting Office: See 4 C.F.R. Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:
ABBREVIATION: The following abbreviation is used in this chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:
EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

SUBPART F—Administrative Rulings

31 C.F.R. 103.75

§ 103.75 Issuing rulings.

The Assistant Secretary (Enforcement), or his designee may issue a written ruling interpreting

the relationship between part 103 and each situation for which such a ruling has been requested in conformity with § 103.71. A ruling issued under this section shall bind the Treasury Department only in the event that the request describes a specifically identified actual situation. A ruling issued under this section shall have precedential value, and hence may be relied upon by others similarly situated, only if it is published or will be published by the Office of Financial Enforcement in the **FEDERAL REGISTER**. Rulings with precedential value will be published periodically in the **Federal Register** and yearly in the **Appendix** to this part. All rulings with precedential value will be available by mail to any person upon written request specifically identifying the ruling sought. Treasury will make every effort to respond to each requestor within 90 days of receiving a request.

(Approved by the Office of Management and Budget under control number 1505-0105)

HISTORY:
 52 FR 35546, Sept. 22, 1987.

AUTHORITY:
AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

NOTES:
NOTES APPLICABLE TO ENTIRE TITLE:
EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10. **CROSS REFERENCE:** General Accounting Office: See 4 C.F.R. Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:
ABBREVIATION: The following abbreviation is used in this chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:
EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

SUBPART F—Administrative Rulings

31 C.F.R. 103.76

§ 103.76 Modifying or rescinding rulings.

(a) The Assistant Secretary (Enforcement), or his designee may modify or rescind any ruling made pursuant to § 103.75:

- (1) When, in light of changes in the statute or regulations, the ruling no longer sets

forth the interpretation of the Assistant Secretary (Enforcement) with respect to the described situation,

- (2) When any fact or statement submitted in the original ruling request is found to be materially inaccurate or incomplete, or
 - (3) For other good cause.
- (b) Any person may submit to the Assistant Secretary (Enforcement) a written request that an administrative ruling be modified or rescinded. The request should conform to the requirements of § 103.71, explain why rescission or modification is warranted, and refer to any reasons in paragraph (a) of this section that are relevant. The request may advocate an alternative interpretation and may set forth the legal and factual basis for that interpretation.
- (c) Treasury shall modify an existing administrative ruling by issuing a new ruling that rescinds the relevant prior ruling. Once rescinded, an administrative ruling shall no longer have any precedential value.
- (d) An administrative ruling may be modified or rescinded retroactively with respect to one or more parties to the original ruling request if the Assistant Secretary determines that:
- (1) A fact or statement in the original ruling request was materially inaccurate or incomplete,
 - (2) The requestor failed to notify in writing the Office of Enforcement of a material change to any fact or statement in the original request, or
 - (3) A party to the original request acted in bad faith when relying upon the ruling.

(Approved by the Office of Management and Budget under control number 1505-0105)

HISTORY:
52 FR 35546, Sept. 22, 1987.

AUTHORITY:
AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

NOTES:
NOTES APPLICABLE TO ENTIRE TITLE:
EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10. **CROSS REFERENCE:** General Accounting Office: See 4 C.F.R. Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:
ABBREVIATION: The following abbreviation is used in this chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:
EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

SUBPART F—Administrative Rulings

31 C.F.R. 103.77

§ 103.77 Disclosing information.

- (a) Any part of any administrative ruling, including names, addresses, or information related to the business transactions of private parties, may be disclosed pursuant to a request under the Freedom of Information Act, 5 U.S.C. 552. If the request for an administrative ruling contains information which the requestor wishes to be considered for exemption from disclosure under the Freedom of Information Act, the requestor should clearly identify such portions of the request and the reasons why such information should be exempt from disclosure.
- (b) A requestor claiming an exemption from disclosure will be notified, at least 10 days before the administrative ruling is issued, of a decision not to exempt any of such information from disclosure so that the underlying request for an administrative ruling can be withdrawn if the requestor so chooses.

(Approved by the Office of Management and Budget under control number 1505-0105)

HISTORY:
52 FR 35546, Sept. 22, 1987.

AUTHORITY:
AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

NOTES:
NOTES APPLICABLE TO ENTIRE TITLE:
EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10. **CROSS REFERENCE:** General Accounting Office: See 4 C.F.R. Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:
ABBREVIATION: The following abbreviation is used in this chapter: C.P.D. = Commissioner of the Public Debt.

NOTES APPLICABLE TO ENTIRE PART:
EDITORIAL NOTE: Nomenclature changes for part 103 appear at 52 FR 11442, Apr. 8, 1987.

31 U.S.C. 5313—REPORTS ON
DOMESTIC COINS AND
CURRENCY TRANSACTIONS

31 C.F.R. 103.22—REPORTS OF
CURRENCY TRANSACTIONS
(ALSO SECTION 103.53)

Suspicious transactions; how to notify proper law enforcement authorities and what information should be reported. Treasury encourages all financial institutions to be aware of the possibility that their institutions may be misused by those who intentionally structure transactions to evade the reporting requirement or engage in transactions that may involve illegal activity. Information which may be relevant to a possible violation of the Bank Secrecy Act or its regulations or indicative of money laundering or tax evasion should be reported to the local Internal Revenue Service, Criminal Investigation Division office or 1-800-BSA-CTRS. All disclosures should be made in accordance with the Right to Financial Privacy Act.

BSA RULING 88-1

Issue

What action should a financial institution take when it believes that it is being misused by persons who are intentionally structuring transactions to evade the reporting requirement or engaging in transactions that may involve illegal activity such as drug trafficking, tax evasion or money laundering?

Facts

A teller at X State Bank notices that the same person comes into the bank each day and purchases, with cash, between \$9,000 and \$9,900 in cashier's checks. Even when aggregated, these purchases never exceed \$10,000 during any one business day. The teller also notices that this person tries to go to different tellers for each transaction and is very reluctant to provide information about his frequent transactions or other information such as name, address, etc.

Likewise, the payees on these cashier's checks all have common names such as "John Smith" or "Mary Jones." The teller informs the bank's compliance officer that she believes that this person is structuring his transactions in order to evade the reporting requirements under the Bank Secrecy Act. X State Bank wants to know what actions it should take in this situation or in any other situation where a transaction or a person conducting a transaction appears suspicious.

Law and Analysis

As it appears that the person may be intentionally structuring the transactions to evade the Bank Secrecy Act reporting requirements, X State Bank should immediately telephone the local office of the Internal Revenue Service ("IRS") and speak to a Special Agent in the IRS Criminal Investigation Division, or should call 1-800-BSA-CTRS, where his call will be referred to a Special Agent.

Any information provided to the IRS should be given within the confines of § 1103(c) of the Right to Financial Privacy Act, 12 U.S.C. § 3401-3422, Section 1103(c) of that Act permits a financial institution to notify a government authority of information relevant to a possible violation of any statute or regulation. Such information may consist of the names of any individuals or corporate entities involved in the suspicious transactions; account numbers; home and business addresses; social security numbers; type of account; interest paid on account; location of the branch or office where the suspicious transaction occurred; a specification of the offense that the financial institution believes has been committed; and a description of the activities giving rise to the bank's suspicion. S. Rep. 99-433, 99th Cong., 2d Sess., pp. 15-16.

Additionally, the bank may be required, by the Federal regulatory agency which supervises it, to submit a criminal referral form.¹ Thus, the bank should check with its regulatory agency to determine whether a referral form should be submitted.

Lastly, under the facts as described above, X State Bank is not required to file a Currency

1. Effective 4-1-96, new form termed *Suspicious Activity Report*.

Transaction Report (“CTR”) because the currency transaction (i.e. purchase of cashier’s checks) did not exceed \$10,000 during one business day. If the bank had found that on a particular day the person had in fact used a total of more than \$10,000 in currency to purchase cashier’s checks, but had each individual cashier’s checks made out in amounts of less than \$10,000, the bank is obligated to file a CTR, and should follow the other steps described above.

Holding

If X State Bank notices that a person may be misusing it by intentionally structuring transactions to evade the BSA reporting requirements or engaging in transactions that may involve

other illegal activity, the bank should telephone the local office of the Internal Revenue Service, Criminal Investigation Division, and report that information to a Special Agent, or should call 1-800-BSA-CTRS. In addition, the Federal regulatory agency which supervises X State Bank may require the bank to submit a criminal referral form.² All disclosures to the Government should be made in accordance with the provisions of the Right to Financial Privacy Act.

Gerald L. Hilsher
Deputy Assistant Secretary
(Law Enforcement)

² Effective 4-1-96, replaced with *Suspicious Activity Report*.

31 U.S.C. 5316—REPORTS ON
EXPORTING AND IMPORTING
MONETARY INSTRUMENTS

31 C.F.R. 103.23—REPORTS OF
TRANSPORTATION OF
CURRENCY OR MONETARY
INSTRUMENTS
(ALSO SECTION 103.22)

Filing of CMIRS; bank's duty to file on behalf of their customers international transportation of monetary instruments. A bank has no duty to file a Report of the International Transportation of Currency or Monetary Instrument ("CMIR", Customs Form 4790), on behalf of its customers when the customer is importing or exporting currency or monetary instruments in excess of \$10,000.

BSA RULING 88–2

Issue

When, if ever, should a bank file a CMIR on behalf of its customer, when the customer is importing or exporting more than \$10,000 in currency or monetary instruments?

Facts

A customer walks into B National Bank ("B") with \$15,000 in cash for deposit into her account. As is required, the bank teller begins to fill out a Currency Transaction Report ("CTR", IRS Form 4789) in order to report a transaction in currency of more than \$10,000. While the teller is filling out the CTR, the customer mentions to the teller that she has just received the money in a letter from a relative in France. Should the teller also file a CMIR, either on the customer's behalf or on the bank's behalf?

Law and Analysis

B National Bank should not file a CMIR when a customer deposits currency in excess of \$10,000 into her account, even if the bank has knowledge that the customer received the currency from a

place outside the United States. 31 CFR 103.23 requires that a CMIR be filed by anyone who transports, mails, ships or receives, or attempts, causes or attempts to cause the transportation, mailing, shipping or receiving of currency or monetary instruments in excess of \$10,000, from or to a place outside the United States. The term "monetary instruments" includes currency and instruments such as negotiable instruments endorsed without restriction. *See* 31 CFR 103.11(k).

The obligation to file the CMIR is solely on the person who transports, mails, ships, or receives, or causes or attempts to transport, mail, ship, or receive. No other person is under any obligation to file a CMIR. Thus, if a customer walks into the bank and declares that he or she has received or transported currency in an aggregate amount exceeding \$10,000 from a place outside the United States and wishes to deposit the currency into his or her account, the bank is under no obligation to file a CMIR on the customer's behalf. Likewise, because the bank itself did not receive the money from a customer outside the United States, it has no obligation to file a CMIR on its own behalf. The same holds true if a customer declares his intent to transport currency or monetary instruments in excess of \$10,000 to a place outside the United States.

However, the bank is strongly encouraged to inform the customer of the CMIR reporting requirement. If the bank has knowledge that the customer is aware of the CMIR reporting requirement, but is nevertheless disregarding the requirement or if information about the transaction is otherwise suspicious, the bank should contact the local office of the U.S. Customs Service or 1-800-BE-ALERT. The United States Customs Service has been delegated authority by the Assistant Secretary (Enforcement) to investigate criminal violations of 31 CFR 103.23.

Any information provided to Customs should be given within the confines of section 1103(c) of the Right to Financial Privacy Act, 12 U.S.C. 3401–3422. Section 1103(c) permits a financial institution to notify a Government authority of information relevant to a possible violation of any statute or regulation. Such information may consist of the name (including those of corporate entities) of any individual involved in the suspicious transaction; account numbers; home and business addresses; social security numbers;

type of account; interest paid on account; location of branch where the suspicious transaction occurred; a specification of the offense that the financial institution believes has been committed; and a description of the activities giving rise to the bank's suspicions. See S. Rep. 99-433, 99th Cong., 2nd Sess., pp. 15-16.

Therefore, under the facts above, the teller need only file a CTR for the deposit of the customer's \$15,000 in currency.

A previous interpretation of section 103.23(b) by Treasury held that if a bank received currency or monetary instruments over the counter from a person who may have transported them into the United States, and knows that such items have been transported into the country, it must file a report on Form 4790 if a complete and truthful report has not been filed by the customer. See 31 CFR Part 103 Appendix, Section 103.23 Interpretation 2, at 364 (1987). This ruling hereby supersedes that interpretation.

Holding

A bank should not file a CMIR when a customer deposits currency or monetary instruments in

excess of \$10,000 into her account even if the bank has knowledge that the currency or monetary instruments were received or transported from a place outside the United States. 31 CFR 103.23. The same is true if the bank has knowledge that the customer intends to transport the currency or monetary instruments to a place outside the United States.

However, the bank is required to file a CTR if it receives in excess of \$10,000 in cash from its customer, and is strongly encouraged to inform the customer of the CMIR requirements. In addition, if the bank has knowledge that the customer is aware of the CMIR reporting requirement and is nevertheless planning to disregard it or if the transaction is otherwise suspicious, the bank should notify the local office of the United States Customs Service (or 1-800-BE-ALERT) of the suspicious transaction. Such notice should be made within the confines of the Right to Financial Privacy Act, 12 U.S.C. 3403(c).

Gerald H. Hilsher
Deputy Assistant Secretary
(Law Enforcement)

31 U.S.C. 5313—REPORTS OF
DOMESTIC COINS AND
CURRENCY TRANSACTIONS

31 C.F.R. 103.22—REPORTS OF
CURRENCY TRANSACTIONS

Exemptions; reporting of “cash-back” transactions. Under sections 103.22(b)(2)(i) and 103.22(b)(2)(ii), a bank may only exempt *deposits or withdrawals* of currency from the reporting requirements of section 103.22(a)(1) (emphasis added). A bank may not grant a unilateral exemption, or obtain additional authority to grant a special exemption to “cash-back” transactions because these transactions are neither deposits nor withdrawals. A “cash back” transaction is one where one or more checks or other monetary instruments are presented in exchange for cash or a portion of the checks or monetary instruments are deposited while the remainder is exchanged for cash. If, during a single banking day, a bank handles a “cash-back” transaction that results in the transfer of more than \$10,000 in currency to a customer who operates an otherwise exemptible business, the bank must file a CTR identifying the transaction as a “check cashed” transaction, regardless of whether the customer has been properly granted an exemption for daily deposits or withdrawals.

BSA RULING 88–3

Issue

Whether a bank may exempt “cash-back” transactions of a customer whose primary business is of a type that may be exempted either unilaterally by the bank or pursuant to additional authority granted by the IRS.

Facts

The ABC Grocery (“ABC”), a retail grocery store, has an account at the X State Bank for its daily deposits of currency. Because ABC regularly and frequently deposits amounts ranging from \$20,000 to \$30,000, the bank has properly

granted ABC an exemption for daily deposits up to a limit of \$30,000.

Recently, ABC began providing its customers with a check-cashing service as an adjunct to its primary business of selling groceries. ABC’s primary business still consists of the sale of groceries. However, the unexpectedly heavy demand for ABC’s check-cashing service has required ABC to maintain a substantially greater quantity of cash in the store than was necessary for the grocery business in the past. To facilitate the operations of its check-cashing service, ABC is presenting the bank with large numbers of checks in “cash-back” transactions, rather than depositing the checks into its account and withdrawing cash from that account. X State Bank has just been presented with a “cash-back” transaction wherein an employee of ABC is exchanging \$15,000 worth of checks for cash. How should the bank treat this transaction?

Law and Analysis

A “cash back” transaction is one where one or more checks or other monetary instruments are presented in exchange for cash or a portion of the checks or monetary instruments are deposited while the remainder is exchanged for cash. “Cash back” transactions can never be exempted from the Bank Secrecy Act reporting requirements. Thus, the bank must file a Currency Transaction Report on IRS Form 4789 reporting this \$15,000 “cash back” transaction, even though the customer’s account has been granted an exemption for daily deposits of up to \$30,000. This is because section 103.22(b)(2)(i) permits a bank to exempt only “(*deposits or withdrawals of currency* from an existing account by an established depositor who is a United States resident and operates a retail type of business in the United States” (emphasis added). As “cash-back” transactions do not constitute either a “deposit or withdrawal of currency” within the meaning of the regulations, the bank must report on a CTR any “cash-back” transaction that results in the transfer of more than \$10,000 in currency to a customer during a single banking day, regardless of whether the customer has properly been granted an exemption for its deposits or withdrawals.

Moreover, because “cash back” transactions are never exemptible, the bank may not unilaterally exempt “cash-back” transactions by ABC, or seek additional authority from the IRS to grant a special exemption for ABC’s “cash-back” transactions. Instead, the bank must report ABC’s “cash back” transaction on a CTR, listing it as a \$15,000 “check cashed” transaction.

Holding

A bank may never grant a unilateral exemption, or obtain additional authority from the IRS to grant a special exemption to the “cash-back” transactions of a customer. A “cash back”

transaction is one where one or more checks or other monetary instruments are presented in exchange for cash or a portion of the checks or monetary instruments are deposited while the remainder is exchanged for cash. If a bank handles a “cash-back” transaction that results in the transfer of more than \$10,000 to a customer during a single banking day, it must report that transaction on IRS Form 4789, the Currency Transaction Report, as a “check cashed” transaction, regardless of whether the customer has been properly granted an exemption for daily deposits or withdrawals.

Gerald L. Hilsher
Deputy Assistant Secretary
(Law Enforcement)

31 U.S.C. 5313—REPORTS ON
DOMESTIC COINS AND
CURRENCY TRANSACTIONS

31 C.F.R. 103.22—REPORTS OF
CURRENCY TRANSACTIONS

Exemption lists; listing of multiple establishments using exempted account. When a bank has exempted a single deposit account of a customer into which more than one of the customer's establishments makes deposits, the bank may list the name, address, business, types of transactions exempted (i.e., withdrawals, deposits or both), the dollar limit of the exemption, taxpayer identification number and account number ("Section 103.22(f) information") of the customer's headquarters or its principal business establishment, or it may separately list the same information for each establishment using that account. If the bank chooses to list only the information for the customer's headquarters, the bank should briefly note on the exemption list that the account is used by multiple establishments and should ensure that the individual addresses of those establishments are readily available upon request. If a bank has granted separate exemptions to several accounts, each of which is used by a single establishment of the customer, the bank must separately list the Section 103.22(f) information for each of those establishments.

BSA RULING 88-4

Issue

If a bank has exempted a single account of a customer into which multiple establishments of that customer make deposits, must the bank list all of the establishments on its exemption list or may the bank list only the section 103.22(f) information of the customer's headquarters or its principal business establishment on its exemption list?

Facts

A fast food company operates a chain of fast-food restaurants in several states. In New York,

the company has established a single deposit account at Bank A, into which all of the company's establishments in that area make deposits. In Connecticut, the company has established ten bank accounts at Bank B; each of the company's ten establishments in Connecticut have been assigned a separate account into which it makes deposits. Banks A and B have properly exempted the company's accounts, but now seek guidance on the manner in which they should add these accounts to their exemption lists. All of the company's establishments use the same taxpayer identification number ("TIN").

Law and Analysis

Under the regulations, the bank must keep "in a centralized list," section 103.22(f) information for "each depositor that has engaged in currency transactions which have not been reported because of (an) exemption . . ." However, where all of the company's establishments deposit into one exempt account as at Bank A, above, the bank need only maintain section 103.22(f) information on its list for the customer's corporate headquarters or the principal establishment that obtained the exemption. The bank may, but is not required to, list identifying information for all of the customers' establishments depositing into the one account. If the bank chooses to list only the information for the customer's headquarters or principal establishment, it should briefly note that on the exemption list and should ensure that the individual addresses for each establishment are readily available upon request. Where each of the company's establishments deposit into separate exempt accounts as at Bank B, the bank must maintain separate section 103.22(f) information on the exemption list for each establishment.

Under section 103.22(b)(2)(i), (ii), and (iv) and 103.22(e) of the regulation, a bank can only grant an exemption for "an existing account (of) an established depositor who is a United States resident." Under these provisions, therefore, the bank can only grant an exemption for an existing individual account, not for an individual customer or group of accounts. Thus, if a customer has a separate account for each of its business establishments, the bank must consider each account for a separate exemption. If the

bank grants exemptions for more than one account, it should prepare a separate exemption statement and establish a separate dollar limit for each account.

Once an exemption has been granted for an account, section 103.22(f) requires the bank to maintain a centralized exemption list that includes the name, address, business, types of transactions exempted, the dollar limit of the exemption, taxpayer identification number, and account number of the customers whose accounts have been exempted.

Holding

Under 31 CFR 103.22, when a bank has exempted a single account of a customer into which more than one of the customer's establishments make deposits, the bank may include the name, address, business, type of transactions exempted, the dollar limit of the exemption, taxpayer identification number, and account num-

ber ("section 103.22(f) information") of either the customer's headquarters or the principal business establishment, or it may separately list section 103.22(f) information for each of the establishments using that account. If the bank chooses to list only the information for the customer's headquarters or principal establishment, it should briefly note that fact on the exemption list, and it should ensure that the individual addresses of those establishments not on the list are readily available upon request. If a bank has granted separate exemptions to several accounts, each of which is used by a single establishment of the same customer, the bank must include on its exemption list section 103.22(f) information for each of those establishments. Previous Treasury correspondence or interpretations contrary to this policy are hereby rescinded.

Gerald L. Hilsher
Deputy Assistant Secretary
(Law Enforcement)

31 U.S.C. 5313—REPORTS ON
DOMESTIC COINS AND
CURRENCY TRANSACTIONS

31 C.F.R. 103.11—MEANING OF
TERMS—BANK AND FINANCIAL
INSTITUTION

31 C.F.R. 103.22—REPORTS OF
CURRENCY TRANSACTIONS

Filing of CTRs: The use of armored car operations—a bank's duty to file a CTR when currency is never physically received or in possession of the bank.

It is the duty of a financial institution to file a Form 4789, Currency Transaction Report (“CTR”), on currency transactions in excess of \$10,000 when such transactions are effected by an armored car company acting on behalf of the financial institution, even if the currency never physically enters the financial institution.

BSA RULING 88-5

Issue

Does a financial institution have a duty to file a CTR on currency transactions where the financial institution never physically receives the cash because it uses an armored car service to collect, transport and process its customer's cash receipts?

Facts

X State Bank (the “Bank”) and Acme Armored Car Service (“Acme”) have entered into a contract which provides for Acme to collect, transport and process revenues received from Bank customers.

Each day, Acme picks up cash, checks and deposit tickets from Little Z, a non-exempt customer of the Bank. Recently, receipts of cash from Little Z have exceeded \$10,000. Acme delivers the checks and deposit tickets to the Bank where they are processed and Little Z's account is credited. All cash collected, however, is taken by Acme to its central office where it is counted and processed. The cash is then deliv-

ered by Acme to the Federal Reserve Bank for deposit into the Bank's account. Must the Bank file a CTR to report a receipt of cash in excess of \$10,000 by Acme from Little Z?

Law and Analysis

Yes. Since Acme is receiving cash in excess of \$10,000 on behalf of the Bank, the Bank must file a CTR in order to report these transactions.

Section 103.22(a)(1) requires “(e)ach financial institution . . . [to] file a report of each deposit, withdrawal, exchange of currency or other payment or transfer, by, through or to such financial institution which involves a transaction in currency of more than \$10,000.” Section 103.11(c) and (n) defines “Bank” and “Financial Institution” to include agents of those banks and financial institutions.

Under the facts presented, Acme is acting as an agent of the Bank. This is because Acme and the Bank have a contractual relationship whereby the Bank has authorized Acme to pick up, transport and process Little Z's receipts on behalf of the Bank. The Federal Reserve Bank's acceptance of deposits from Acme into the Bank's account at the Fed, is additional evidence of the agency relationship between the Bank and Acme.

Therefore, when Acme receives currency in excess of \$10,000 from Little Z, the Bank must report that transaction on Form 4789. Likewise, if Acme receives currency from Little Z in multiple transactions, section 103.22(a)(1) requires the Bank to aggregate these transactions and file a single CTR for the total amount of currency received by Acme, if the Bank has knowledge of these multiple transactions. Knowledge by the Bank's agent, i.e., Acme, that the currency was received in multiple transactions, is attributable to the Bank. The Bank must assure that Acme, as its agent, obtains all the information and identification necessary to complete the CTR.

Holding

Financial institutions must file a CTR for the currency received by an armored car service

from the financial institution's customer when the armored car service physically receives the cash from the customer, transports it and processes the receipts, even though the currency may never physically be received by the financial institution. This is because the armored car

service is acting as an agent of the financial institution.

Gerald L. Hilsher
Deputy Assistant Secretary
(Law Enforcement)

31 U.S.C. 5313—REPORTS OF
DOMESTIC COINS AND
CURRENCY TRANSACTIONS

31 C.F.R. 103.22—REPORTS OF
CURRENCY TRANSACTIONS

Exemptions: special exemption for a group of accounts belonging to the same customer. Under sections 103.22(b) (2)(i) and 103.22(b)(2)(ii) of the Bank Secrecy Act (“BSA”) regulations, a bank may exempt only *deposits* or *withdrawals* of currency from an *existing* account by an established depositor who is a United States resident and operates a retail type of business in the United States or one of the businesses specified in Section 103.22(b)(2)(ii). 31 C.F.R. Part 103. A bank may not *unilaterally* grant one exemption or establish a single dollar exemption limit for a group of existing accounts of the same customer. Under section 103-22(e), however, a bank may apply to the Internal Revenue Service (“IRS”) for additional authority to grant exemptions to the reporting requirements not otherwise permitted under section 103.22(b). Under this authority and at the request of a bank, the IRS may, in its discretion, provide the bank with authority to grant one exemption and one exemption limit applicable to a group of exemptible accounts that belong to the same customer and have the same Taxpayer Identification Number (“TIN”). Only accounts with transactions of less than \$10,000 in currency may be included in the group exemption, and the aggregated transactions of the various accounts included in the group must regularly and frequently exceed \$10,000 in currency.

BSA RULING 89-1

Issue

Under Section 103.22 of the BSA regulations, may a bank unilaterally grant one exemption or establish a single dollar exemption limit for a group of existing accounts of the same customer? If not, may a bank obtain additional authority from the IRS to grant a single exemption for a group of exemptible accounts belonging to the same customer?

Facts

ABC Inc. (“ABC”), with TIN 12-3456789, owns five fast food restaurants. Each restaurant has its own account at the X State Bank and each restaurant routinely deposits less than \$10,000 into its individual account. However, when the deposits into these five accounts are aggregated they regularly and frequently exceed \$10,000. Accordingly, the bank prepares and files one CTR for ABC Inc., on each business day that ABC’s aggregated currency transactions exceed \$10,000. X State Bank wants to know whether it can unilaterally exempt these five accounts having the same TIN, and, if not, whether it can obtain additional authority from the IRS to grant a single exemption to the group of five accounts belonging to ABC.

Law and Analysis

Under section 103.22(b)(2)(i) and (ii) of the Bank Secrecy Act (“BSA”) regulations, 31 C.F.R. Part 103, only an individual account of a customer may be unilaterally exempted from the currency transaction reporting provisions. The bank may not unilaterally grant one exemption or establish a single dollar exemption limit for multiple accounts of the same customer. This is because sections 103.22(b)(2)(i) and 103.22(b)(2)(ii) of the BSA regulations only permit a bank to unilaterally exempt “[d]eposits or withdrawals of currency from an *existing account* by an *established depositor* who is a United States resident and operates a retail type of business in the United States.” 31 C.F.R. 103.22(b) (2)(i) and (ii).

Section 103.22(e) of the BSA regulations provides, however, that “[a]bank may apply to the . . . [IRS] for additional authority to grant exemptions to the reporting requirements not otherwise permitted under paragraph (b) of this section 31 C.F.R. 103.22(e). Therefore, under this authority, and at the request of a bank, the IRS may, in its discretion, grant the requesting bank additional authority to exempt a group of accounts when the following conditions are met:

- Each of the accounts in the group is owned by the same person and has the same taxpayer identification number.

- The deposits or withdrawals into each account are made by a customer that operates a business that may be either unilaterally or specially exemptible and each account meets the other exemption criteria (except for the dollar amount).
- Currency transactions for each account individually do not exceed \$10,000 on a regular and frequent basis.
- Aggregated currency transactions for all accounts included in the group regularly and frequently exceed \$10,000.

If a bank determines that an exemption would be appropriate in a situation involving a group of accounts belonging to a single customer, it must apply to the IRS for authority to grant one special exemption covering the accounts in question. As with all requests for special exemptions, any request for additional authority to grant a special exemption must be made in writing and accompanied by a statement of the circumstances that warrant special exemption treatment and a copy of the statement signed by the customer as required by section 103.22(d). 31 C.F.R. 103.22(d).

Additional authority to grant a special exemption for a group of accounts must be obtained from the IRS regardless of whether the businesses may be unilaterally exempted under 103.22(b)(2), because the exemption, if granted, would apply to a group of existing accounts as opposed to an *individual existing* account. 31 C.F.R. § 103.22(b)(2).

Also, if any one of a given customer's accounts has regular and frequent currency transactions which exceed \$10,000, that account *may not* be included in the group exemption. This is because the bank may, as provided by section 103.22(b)(2), either unilaterally exempt that account or obtain authority from the IRS to grant a special exemption for that account if it meets the other criteria for exemption. Thus, only accounts of exemptible businesses which do not have regular and frequent (*e.g.*, daily,

weekly or twice a month) currency transactions in excess of \$10,000 may be eligible for a group exemption.

The intention of this special exemption is to permit banks to exempt the accounts of established customers, such as the ABC Inc. restaurants described above, which are owned by the same person and have the same TIN but which individually do not have sufficient currency deposit or withdrawal activity that regularly and frequently exceed \$10,000.

Holding

If X State Bank determines that an exemption would be appropriate for ABC Inc., it must apply to the IRS for authority to grant one special exemption covering ABC's five separate accounts. As with all requests for special exemptions, ABC's request for additional authority to grant a special exemption must be made in writing and accompanied by a statement of the circumstances that warrant special exemption treatment and a copy of the statement signed by the customer as required by section 103.22(d). 31 C.F.R. 103.22(d). The IRS may, in its discretion, grant additional authority to exempt the ABC accounts if: (1) they have the same taxpayer identification number; (2) they each are for customers that operate a business that may be either unilaterally or specially exemptible and each account meets the other exemption criteria (except for dollar amount); (3) the currency transactions for each account individually do not exceed \$10,000 on a regular and frequent basis; but (4) when aggregated the currency transactions for all the accounts regularly and frequently do exceed \$10,000.

Gerald L. Hilsher
Deputy Assistant Secretary
(Law Enforcement)

31 U.S.C. 5313—REPORTS ON
DOMESTIC COINS AND
CURRENCY TRANSACTIONS

31 C.F.R. 103.22—REPORTS OF
CURRENCY TRANSACTIONS

Exemptions; aggregation and reporting of multiple transactions involving exempted accounts. When a customer has more than one account and a bank has knowledge that multiple currency transactions have been conducted in these accounts on the same business day, the bank must aggregate the transactions in those accounts. Where one or more of the customers' accounts has been exempted, the bank must total the currency transactions within each account to determine whether the exemption limit has been exceeded. If the exemption limit has not been exceeded, the bank does not have to aggregate the transactions for the exempted account with any other of the customer's currency transactions. If the total of the transactions involving the exempt account exceeds the exemption limit, the bank must aggregate those transactions with the transactions from any other exempted accounts where the exemption limit has been exceeded, with the transactions from any non-exempt accounts, and with any reportable transactions conducted by or on behalf of the customer that do not involve accounts (e.g., purchases of bank checks or "cash back" transactions) of which the bank has knowledge.

BSA RULING 89-2

Issue

When a customer has established bank accounts for each of several establishments that it owns, and the bank has exempted one or more of those accounts, how does the bank aggregate the customer's currency transactions?

Facts

X Company ("X") operates two fast-food restaurants and a wholesale food business. X has opened separate bank accounts at the A National

Bank (the "bank") for each of its two restaurants, account numbers 1 and 2 respectively. Each of these two accounts has been properly exempted by the bank. Account number 1 has an exemption limit of \$25,000 for deposits, and account number 2 has an exemption limit of \$40,000 for deposits. X also has a third account, account number 3, at the bank for use in the operation of its wholesale food business. On occasion, cash deposits of more than \$10,000 are made into this third account. Because these cash deposits are infrequent, the bank cannot obtain additional authority to grant this account a special exemption.

During the same business day, two \$15,000 cash deposits totalling \$30,000 are made into account number 1, a separate cash deposit of \$35,000 is made into account number 2 and a deposit of \$9,000 in currency is made into account number 3 (X's account for its wholesale food business).

The bank must now determine how to aggregate and report all of these transactions on a Form 4789, Currency Transaction Report, ("CTR"). Must they aggregate all of the deposits made into account numbers 1, 2 and 3 and report them on a single CTR?

Law and Analysis

Section 103.22 of the Bank Secrecy Act ("BSA"), 31 CFR Part 103, requires a financial institution to treat multiple currency transactions "as a single transaction if the financial institution has knowledge that they are by or on behalf of any person and result in either cash-in or cash-out totalling more than \$10,000 during any one business day." This means that a financial institution must file a CTR if it knows that multiple currency transactions involving two or more accounts have been conducted by or on behalf of the same person and, those transactions, when aggregated, exceed \$10,000. Knowledge, in this context, means knowledge on the part of a partner, director, officer or employee of the institution or on the part of any existing computer or manual system at the institution that permits it to aggregate transactions.

Thus, if the bank has knowledge of multiple transactions, the bank should aggregate the transactions in the following manner.

First, the bank should separately review and total all cash-in and cash-out transactions within each account. Cash-in transactions should be aggregated with other cash-in transactions and cash-out transactions should be aggregated with cash-out transactions. Cash-in and cash-out transactions should not be aggregated together or offset against each other.

Second, the bank should determine whether the account has an exemption limit. If the account has an exemption limit, the bank should determine whether it has been exceeded. If the exemption limit has not been exceeded, the transactions for the exempted account should not be aggregated with other transactions.

If the total transactions during the same business day for a particular account exceed the exemption limit, the total of all of the transactions for that account should be aggregated with the total amount of the transactions for other accounts that exceed their respective exemption limits, with any accounts without exemption limits, and with transactions conducted by or on behalf of the same person that do not involve accounts (e.g., purchases of bank checks with cash) of which the bank has knowledge.

In the example discussed above, all of the transactions have been conducted "on behalf of" X, as X owns the restaurants and the wholesale food business. The total \$30,000 deposit for account 1 exceeds the \$25,000 exemption limit for that account. The \$35,000 deposit into account number 2 is less than the \$40,000 exemption limit for that account. Finally, the \$9,000 deposit into account number 3, does not by itself constitute a reportable transaction.

Therefore, under the facts above, the bank should aggregate the entire \$30,000 deposit into account number 1 (not just the amount that exceeds the exemption limit), with the \$9,000 deposit into account number 3, for a total of \$39,000. The bank should not include the \$35,000 deposit into account number 2, as that deposit does not exceed the exemption limit for that account. Accordingly, the bank should complete and file a single CTR for \$39,000.

If the bank does not have knowledge that

multiple currency transactions have been conducted in these accounts on the same business day (e.g., because it does not have a system that aggregates among accounts and the deposits were made by three different individuals at different times) the bank should file one CTR for \$30,000 for account number 1, as the activity into that account exceeds its exemption limit.

Holding

When a customer has more than one account and a bank employee has knowledge that multiple currency transaction have been conducted in the accounts or the bank has an existing computer or manual system that permits it to aggregate transactions for multiple accounts, the bank should aggregate the transactions in the following manner.

First, the bank should aggregate for each account all cash-in or cash-out transactions conducted during one business day. If the account has an exemption limit, the bank should determine whether the exemption limit of that account has been exceeded. If the exemption limit has not been exceeded, the total of the transactions for that particular account does not have to be aggregated with other transactions. If the total transactions during the same business day for a particular account exceed the exemption limit, however, the total of all of the transactions for that account should be aggregated with any total from other accounts that exceed their respective exemption limits, with any accounts without exemption limits, and with any reportable transactions conducted by or on behalf of the customer not involving accounts (e.g., purchases of bank checks or "cash back" transactions) of which the bank has knowledge. The bank should then file a CTR for the aggregated amount.

Michael L. Williams
Deputy Assistant Secretary
(Law Enforcement)

Rescinded

Rescinded

31 U.S.C. 5313—REPORTS OF
DOMESTIC COINS AND
CURRENCY TRANSACTIONS

31 C.F.R.
103.27—IDENTIFICATION
REQUIRED

Identification of person on whose behalf transaction was conducted. Pursuant to 31 U.S.C. 5313 and 31 C.F.R. 103.22 and 103.28, financial institutions must report transactions in currency that exceed \$10,000 on IRS Form 4789, Currency Transaction Report (“CTR”). The CTR must include information about the identity of the person who conducted the transaction (Part I) and any person on whose behalf the transaction was conducted (Part II). It is the responsibility of the financial institution to develop internal controls and procedures to ensure the filing of accurate and complete CTRs. One way that financial institutions can obtain information about the person on whose behalf the transaction is being conducted is to ask the person conducting the transaction whether he is acting for himself or on behalf of another person. Only if as a result of strong “know your customer” or other internal policies, the financial institution is satisfied that its records contain the necessary information concerning the true identity of the person for whom the transaction is conducted, may the financial institution rely on those records in completing the CTR. The identifying information concerning the person conducting the transaction must be listed in Part I of the CTR, and the identifying information concerning the person on whose behalf the transaction is being conducted must be listed in Part II.

BSA Ruling 89-5

Issue

How does a financial institution fulfill the requirement that it furnish information about the person on whose behalf a reportable currency transaction is being conducted?

Facts

No. 1

Linda Scott has had an account relationship with the Bank for 15 years. Ms. Scott enters the bank and deposits \$15,000 in cash into her personal checking account. The bank knows that Ms. Scott is an artist who on occasions exhibits and sells her art work and that her art work currently is on exhibit at the local gallery. The bank further knows that cash deposits in the amount of \$15,000 are commensurate with Ms. Scott’s art sales.

No. 2

Dick Wallace has recently opened a personal account at the Bank. Although the bank verified his identity when the account was opened, the bank has no additional information about Mr. Wallace. Mr. Wallace enters the bank with \$18,000 in currency and asks that it be wired transferred to a bank in a foreign country.

No. 3

Dorothy Green, a partner at a law firm, makes a \$50,000 cash deposit into the firm’s trust account.¹ The bank knows that this is a trust account. The \$50,000 represents cash received from three clients.

No. 4

Carlos Gomez enters a Currency Dealer and asks to buy \$12,000 in traveler’s checks with cash.

No. 5

Gail Julian, a trusted employee of Q-mart, a large retail chain, enters the bank three times during one business day and makes three large

1. This type of account is sometimes called a trust account, attorney account or special account. It is an account established by an attorney into which commingled funds of clients may be deposited. It is not necessarily a “trust” in the legal sense of the term.

cash deposits totalling \$48,000 into Q-mart's account. The Bank knows that Ms. Julian is responsible for making the deposits on behalf of Q-mart. Q-mart has an exemption limit of \$45,000.

Law and Analysis

Under section 103.28 of the Bank Secrecy Act ("BSA") regulations, 31 C.F.R. Part 103, a financial institution must report on a Currency Transaction Report ("CTR") the name and address of the individual conducting the transaction, and the identity, account number, and the social security or taxpayer identification number of any person on whose behalf the transaction was conducted. See 31 U.S.C. 5313. "A participant acting for another person shall make the report as the agent or bailee of the person and identify the person for whom the transaction is being made." Identifying information about the person on whose behalf the transaction is conducted must always be furnished if the transaction is reportable under the BSA, regardless of whether the transaction involves an account.

This type of account is sometimes called a trust account, attorney account or special account. It is an account established by an attorney into which commingled funds of clients may be deposited. It is not necessarily a "trust" in the legal sense of the term.

Because the BSA requires financial institutions to file complete and accurate CTRs, it is the financial institution's responsibility to ascertain the real party in interest. 31 U.S.C. § 5313. One way that a financial institution can obtain information about the identity of the person on whose behalf the transaction is being conducted is to ask the person conducting the transaction whether he is acting for himself or on behalf of another person. Only if as a result of strong "know your customer" or other internal control policies, the financial institution is satisfied that its records contain information concerning the true identity of the person on whose behalf the transaction is conducted, may the financial institution rely on those records to complete the CTR.

No. 1

Linda Scott, an artist, is a known customer of the bank. The bank is aware that she is exhibit-

ing her work at a local gallery and that cash deposits in the amount of \$15,000 would not be unusual or inconsistent with Ms. Scott's business practices. Therefore, if the bank through its stringent "know your customer" policies is satisfied that the money being deposited by Ms. Scott into her personal account is for her benefit, the bank need not ask Ms. Scott whether she is acting on behalf of someone-else.

No. 2

Because Dick Wallace is a new customer of the bank and because the bank has no additional information about him or his business activity, the bank should ask Mr. Wallace whether he is acting on his own behalf or on behalf of someone else. This is particularly true given the nature of the transaction—a wire transfer with cash for an individual to a foreign country.

No. 3

Dorothy Green's cash deposit of \$50,000 into the law firm's trust account clearly is being done on behalf of some else. The bank should ask Ms. Green to identify the clients on whose behalf the transaction is being conducted. Because Ms. Green is acting both on behalf of her employer and the clients, the names of the three clients and the law firm should be included on the CTR filed by the bank.

No. 4

The currency dealer, having no account relationship with Carlos Gomez, should ask Mr. Gomez if he is acting on behalf of someone else.

No. 5

Gail Julian is known to the bank as a trusted employee of Q-mart, who often deposits cash into Q-mart's account. If the bank, through its strong "know your customer" policies is satisfied that Ms. Julian makes these deposits on behalf of Q-mart, the bank need not ask her if she is acting on behalf of someone other than Q-mart.

Holding

It is the responsibility of a financial institution to file complete and accurate CTRs. This includes providing identifying information about the person on whose behalf the transaction is conducted in Part II of the CTR. One way that a financial institution can obtain information about the true identity of the person on whose behalf the transaction is being conducted is to ask the person conducting the transaction whether he is acting for himself or on behalf of another

person. Only if as a result of strong “know your customer” or other internal control policies, the financial institution is satisfied that its records contain the necessary information concerning the true identity of the person on whose behalf the transaction is being conducted, may the financial institutions rely on those records in completing the CTR.

Salvatore R. Martoche
Assistant Secretary
(Enforcement)

31 U.S.C. 5313—REPORTS ON DOMESTIC COINS AND CURRENCY TRANSACTIONS**31 U.S.C. 5325—IDENTIFICATION REQUIRED TO PURCHASE CERTAIN MONETARY INSTRUMENTS****31 C.F.R. 103.28—IDENTIFICATION REQUIRED****31 C.F.R. 103.29—PURCHASES OF BANK CHECKS AND DRAFTS, CASHIER'S CHECKS, MONEY ORDERS AND TRAVELER'S CHECKS**

Identification of elderly or disabled patrons conducting large currency transactions. Financial institutions must file a form 4789, Currency Transaction Report (CTR) on transactions in currency in excess of \$10,000, and must verify and record information about the identity of the person(s) who conduct(s) the transaction in Part I of the CTR. Financial institutions also must record on a chronological log¹ sales of, and verify the identity of individuals who purchase, certain monetary instruments with currency in amounts between \$3,000 and \$10,000, inclusive. Many financial institutions have asked Treasury how they can meet the requirement to examine an identifying document that contains the person's name and address when s/he does not possess such a document (e.g., a driver's license). Financial institutions have indicated that this question arises almost exclusively with their elderly and/or disabled patrons. This Administrative Ruling answers those inquiries.

Issue

How does a financial institution fulfill the requirement to verify and record the name and address of an elderly or disabled individual who conducts a currency transaction in excess of \$10,000 or who purchases certain monetary instruments with currency valued between \$3,000

and \$10,000 when he/she does not possess a passport, alien identification card or other official document, or other document that is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors?

Holding

It is the responsibility of a financial institution to file complete and accurate CTRs and to maintain complete and accurate monetary instrument logs pursuant to 31 C.F.R. §§103.27(d) and 103.29 of the BSA regulations. It is also the responsibility of a financial institution to verify and to record the identity of individuals conducting reportable currency transactions and/or cash purchases of certain monetary instruments as required by BSA regulations §§103.28 and 103.29. Only if the financial institution is confident that an elderly or disabled patron is who s/he says s/he is may it complete these transactions. A financial institution shall use whatever information it has available, in accordance with its established policies and procedures, to determine its patron's identity. This includes review of its internal records for any information on file, and asking for other forms of identification, including a social security or medicare/medicaid card along with another document which contains both the patron's name and address such as an organizational membership card, voter registration card, utility bill or real estate tax bill. These forms of identification shall also be identified as acceptable in the bank's formal written policy and operating procedures as identification for transactions involving the elderly or the disabled. Once implemented, the financial institution should permit no exception to its policy and procedures. In these cases, the financial institution should record the word "Elderly" or "Disabled" on the CTR and/or chronological log and the method used to identify the elderly, or disabled patron such as "Social Security and (organization) Membership Card only ID."

Law and Analysis

Before concluding a transaction for which a Currency Transaction Report is required pursu-

1. Effective 10-17-94, financial institutions are no longer required to maintain the necessary information on a "monetary instrument log."

ant to 31 C.F.R. § 103.22, a financial institution must verify and record the name and address of the individual conducting the transaction. 31 C.F.R. § 103.28. Verification of the individual's identity must be made by examination of a document, other than a bank signature card, that is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors (*e.g.*, a driver's license). A bank signature card may be relied upon only if it was issued after documents establishing the identity of the individual were examined and a notation of the method and specific information regarding identification (*e.g.* state of issuance and driver's license number) was made on the signature card. In each instance, the specific identifying information noted above and used to verify the identity of the individual must be recorded on the CTR. The notation of "known customer" or "bank signature card on file" on the CTR is prohibited. 31 C.F.R. § 103.28.

Before issuing or selling bank checks or drafts, cashier's checks, traveler's checks or money orders to an individual(s), for currency between \$3,000 and \$10,000, a financial institution must verify whether the individual has a deposit account or verify the individual's identity. 31 C.F.R. § 103.29. Verification may be made by examination of a signature card or other account record at the financial institution if the deposit accountholder's name and address were verified at the time the account was opened, or at any subsequent time, and that information was recorded on the signature card or record being examined.

Verification may also be made by examination of a document that contains the name and address of the purchaser and which is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors. In the case of a deposit accountholder whose identity has not been previously verified, the financial institution shall record the specific identifying information on its chronological log (*e.g.* state of issuance and driver's license number). In all situations, the financial institution must record all the appropriate information required by § 103.29(a)(1)(i) for deposit account holders or 103.29(a)(2)(i) for nondeposit account holders.

Certain elderly or disabled patrons do not possess identification documents that would normally be considered acceptable within the banking community (*e.g.*, driver's licenses,

passports, or state-issued identification cards). Accordingly, the procedure set forth below should be followed to fulfill the identification verification requirements of §§ 103.28 and 103.29.

Financial institutions may accept as appropriate identification a social security, medicare, medicaid or other insurance card presented along with another document that contains both the name and address of the patron (*e.g.* an organization membership or voter registration card, utility or real estate tax bill). Such forms of identification shall be specified in the bank's formal written policy and operating procedures as acceptable identification for transactions involving elderly or disabled patrons who do not possess identification documents normally considered acceptable within the banking community for cashing checks for nondepositors.

This procedure may only be applied if the following circumstances exist. First, the financial institution must establish that the identification the elderly or disabled patron has is limited to a social security or medicare/medicaid card plus another document which contains the patron's name and address. Second, the financial institution must use whatever information it has available, or policies and procedures it has in place, to determine the patron's identity. If the patron is a deposit accountholder, the financial institution should review its internal records to determine if there is information on file to verify his/her identity. Only if the financial institution is confident that the elderly or disabled patron is who s/he says s/he is, may the transaction be concluded. Failure to identify an elderly or a disabled customer's identity as required by 31 C.F.R. § 103.28 and as described herein may result in the imposition of civil and or criminal penalties. Finally, the financial institution shall establish a formal written policy and implement operating procedures for processing reportable currency transactions or recording cash sales of certain monetary instruments to elderly or disabled patrons who do not have forms of identification ordinarily considered "acceptable." Once implemented, the financial institution shall permit no exceptions to its policy and procedures. In addition, financial institutions are encouraged to record the elderly or disabled patron's identity and address as well as the method of identification on a signature card or other record when it is obtained and verified.

In completing a CTR, if all of the above conditions are satisfied, the financial institution should enter the words "Elderly" or "Disabled"

and the method used to verify the patron's identity, such as "Social Security & (organization) Membership Cards Only ID," in Item 15a.

Similarly, when logging the cash purchase of a monetary instrument(s), the financial institution shall enter on its chronological log the words, "Elderly" or "Disabled," and the method used to verify such patron's identity.

Example

Jesse Fleming, a 75 year old retiree, has been saving \$10 bills for twenty years in order to help pay for his granddaughter's college education. He enters the Trustworthy National Bank where he has no account but his granddaughter has a savings account, and presents \$13,000 in \$10 bills to the teller. He instructs the teller to deposit \$9,000 into his granddaughter's savings account, and requests a cashier's check for \$4,000 made payable to State University.

Because of poor eyesight, Mr. Fleming no longer drives and does not possess a valid driver's license. When asked for identification by the teller he presents a social security card and his retirement organization membership card that contains his name and address.

Application of Law to Example

In this example, the Trustworthy National Bank must check to determine if Mr. Fleming's social

security and organizational membership cards are acceptable forms of identification as defined in the bank's policy and procedures. If so, and the bank is confident that Mr. Fleming is who he says he is, it may complete the transaction. Because Mr. Fleming conducted a transaction in currency which exceeded \$10,000 (deposit of \$9,000 and purchase of \$4,000 monetary instrument), First National Bank must complete a CTR. It should record information about Mr. Fleming in Part I of the CTR and in Item 15a record the words "Elderly—Social Security and (organization) Membership Cards Only ID." The balance of the CTR must be appropriately completed as required by §§ 103.22 and 103.27(d). First National Bank must also record the transaction in its monetary instrument sales log because it issued to Mr. Fleming a cashier's check for \$4,000 in currency. Mr. Fleming must be listed as the purchaser and the bank should record on the log the words "Elderly—Social Security and (organization) Membership Cards Only ID" as the method used to verify his identity. In addition, because Mr. Fleming is not a deposit accountholder at First National Bank, the bank is required to record on the log all the information required under § 103.29(a)(2)(i) for cash purchases of monetary instruments by non-deposit accountholders.

Peter K. Nunez
Assistant Secretary
(Enforcement)

**31 U.S.C. 5313—REPORTS ON
DOMESTIC COINS AND
CURRENCY TRANSACTIONS****31 C.F.R. 103.22—REPORTING OF
CURRENCY TRANSACTIONS****31 C.F.R. 103.28—
IDENTIFICATION REQUIRED**

*Proper completion of the Currency Transaction Report (CTR), IRS Form 4789, when reporting multiple transactions.*¹ Financial institutions must report transactions in currency that exceed \$10,000 or an exempted account's established exemption limit and provide certain information including verified identifying information about the individual conducting the transaction. Multiple currency transactions must be treated as a single transaction, aggregated, and reported on a single Form 4789, if the financial institution has knowledge that the transactions are by or on behalf of any person and result in either cash in or cash out totalling more than \$10,000, or the exemption limit, during any one business day. All CTRs must be fully and accurately completed. Some or all of the individual transactions which comprise an aggregated CTR are frequently below the \$10,000 reporting or applicable exemption threshold and, as such, are not reportable and financial institutions do not gather the information required to complete a CTR.

Issue

How should a financial institution complete a CTR when multiple transactions are aggregated and reported on a single form and all or part of the information called for in the form may not be known?

Holding

Multiple transactions that total in excess of \$10,000, or an established exemption limit, when aggregated must be reported on a CTR if the financial institution has knowledge that the

transactions have occurred. In many cases, the individual transactions being reported are each under \$10,000, or the exemption limit, and the institution was not aware at the time of any one of the transactions that a CTR would be required. Therefore, the identifying information on the person conducting the transaction was not required to be obtained at the time the transaction was conducted.

If after a reasonable effort to obtain the information required to complete items 4 through 15 of the CTR, all or part of such information is not available, the institution must check item 3d to indicate that the information is not being provided because the report involves multiple transactions for which complete information is not available. The institution must, however, provide as much of the information as is reasonably available.

All subsections of item 48 on the CTR must be completed to report the number of transactions involved and the number of locations of the financial institution and zip codes of those locations where the transactions were conducted.

Law and Analysis

Sections 103.22(a)(1) and (c) of the Bank Secrecy Act (BSA) regulations, 31 C.F.R. Part 103, require a financial institution to file a CTR for each deposit, withdrawal, exchange of currency, or other payment or transfer, by, through, or to the financial institution, which involves a transaction in currency of more than \$10,000 or the established exemption limit for an exempt account. Multiple transactions must be treated as a single transaction if the financial institution has knowledge that they are by, or on behalf of, any person and result in either cash in or cash out of the financial institution totalling more than \$10,000 or the exemption limit during any one business day. Knowledge, in this context, means knowledge on the part of a partner, director, officer or employee of the financial institution or on the part of any existing automated or manual system at the financial institution that permits it to aggregate transactions.

The purpose of item 3 on the CTR is to indicate why all or part of the information required in items 4 through 15 is not being

1. New CTR form in effect 10-1-95. Item numbers reflected in this ruling are no longer applicable to the new form.

provided on the form. If the reason information is missing is solely because the transaction(s) occurred through an armored car service, a mail deposit or shipment, or a night deposit or Automated Teller Machine (ATM), the financial institution must check either box a, b, or c, as appropriate, in item 3. CTR instructions state that item 3d is to be checked for multiple transactions where none of the individual transactions exceeds \$10,000 or the exemption limit and all of the required information might not be available.

As described in Example No. 5 below, there may be situations where one transaction among several exceeds the applicable threshold. Item 3d should be checked whenever multiple transactions are being reported and all or part of the information necessary to complete items 4 through 15 is not available because at the time of any one of the individual transactions, a CTR was not required and the financial institution did not obtain the appropriate information. When reporting multiple transactions, the financial institution must complete as many of items 4 through 15 as possible. In the event the institution learns that more than one person conducted the multiple transactions being reported, it must check item 2 on the CTR and is encouraged to make reasonable efforts to obtain and report any appropriate information on each of the persons in items 4 through 15 on the front and back of the CTR form, and if necessary, on additional sheets of paper attached to the report.

The purpose of item 48 is to indicate that multiple transactions are involved in the CTR being filed. Items 48 a, b, and c require information about the number of transactions being reported and the number of bank branches and the zip code of each branch where the transactions took place. If multiple transactions exceeding \$10,000 or an account exemption limit occur at the same time, the financial institution should treat the transactions in a manner consistent with its internal transaction posting procedures. For example, if a customer presents four separate deposits, at the same time, totalling over \$10,000, the institution may report the transactions in item 48a to be one or four separate transactions. If the transactions are posted as four separate transactions the financial institution should enter the number 4 in item 48a and the number 1 in item 48b. If the transactions are posted as one transaction the institution should enter the number 1 in both 48a and 48b. Reporting the transactions in this manner will guarantee the

integrity of the paper trail being created, that is, the number of transactions reported on the CTR will be the same as the number of transactions showing in the institution's records.

These situations should be differentiated from those cases where separate transactions occur at different times during the same business day, and which, when aggregated, exceed \$10,000 or the exemption limit. For instance, if the same or another individual conducts two of the same type of transactions at different times during the same business day at two different branches of the financial institution on behalf of the same person, and the institution has knowledge that the transactions occurred and exceed \$10,000 or the exemption limit, then the financial institution must enter the number 2 in items 48a and 48b.

Examples and Application of Law to Examples

Example No. 1

Dorothy Fishback presents a teller with three cash deposits to the same account, at the same time, in amounts of \$5,000, \$6,000, and \$8,500 requesting that the deposits be posted to the account separately. It is the bank's procedure to post the transactions separately. A CTR is completed while the customer is at the teller window.

Application of Law to Example No. 1

A CTR is completed based upon the information obtained at the time Dorothy Fishback presents the multiple transactions. Item 3d would not be checked on the CTR because all of the information in items 4 through 15 is being provided contemporaneously with the transaction. As it is the bank's procedure to post the transactions separately, the number of transactions reported in item 48a would be 3 and the number of branches reported in item 48b would be 1. The zip code for the location where the transactions were conducted would be entered in item 48c.

Example No. 2

Andrew Weiner makes a \$7,000 cash deposit to his account at ABC Federal Savings Bank. Later the same day, Mr. Weiner returns to the same

teller and deposits \$5,000 in cash to a different account. At the time Mr. Weiner makes the second deposit, the teller realizes that the two deposits exceed \$10,000 and prepares a CTR obtaining all of the necessary identifying information directly from Mr. Weiner.

Application of Law to Example No. 2

Even though the two transactions were conducted at different times during the same business day, Mr. Weiner conducted both transactions at the same place and the appropriate identifying information was obtained by the teller at the time of the second transaction. Item 3d would not be checked on the CTR. The number of transactions reported in item 48a must be 2 and the number of branches reported in item 48b would be 1. The zip code for the location where the transactions took place would be entered in item 48c.

Example No. 3

Internal auditor Mike Pelzer is reviewing the daily cash transactions report for People's Bank and notices that five cash deposits were made the previous day to account #12345. The total of the deposits is \$25,000 and they were made at three different offices of the bank. Mike researches the account data base and finds that the account belongs to a department store and that the account is exempted for deposits up to \$17,000 per day. Each of the five transactions was under \$17,000.

Application of Law to Example No. 3

Having reviewed the report of aggregated transactions, Mike Pelzer has knowledge that transactions exceeding the account exemption limit have occurred during a single business day. A CTR must be filed. People's Bank is encouraged to make a reasonable effort to provide the information for items 4 through 15 on the CTR. Such efforts could include a search of the institution's records or a phone call to the department store to identify the persons that conducted the transactions. If all of the information is not contained in the institution's records or otherwise obtained, item 3d must be checked. The number of transactions reported in item 48a must be 5 and the number of branches reported in 48b would be 3. The zip codes for the three

locations where the transactions occurred must be entered in item 48c.

Example No. 4

Mrs. Saunders makes a cash withdrawal, for \$4,000, from a joint savings account she owns with her husband. That day her husband, Mr. Saunders, withdraws \$7,000 cash using the same teller. Realizing that the withdrawals exceed \$10,000, the teller obtains identifying information on Mr. Saunders required to complete a CTR.

Application of Law to Example No. 4

In this case, item 2 on the CTR must be checked because the teller knows that more than one person conducted the transactions. Information on Mr. Saunders would appear in Part I and the bank is encouraged to ask him for, or to check its records for the required identifying information on Mrs. Saunders. If after taking reasonable efforts to locate the desired information, all of the required information is not found on file in the institution's records or is not otherwise obtained, box 3d must be checked to indicate that all information is not being provided because multiple transactions are being reported. Whatever information on Mrs. Saunders is contained in the records of the institution must be reported in the continuation of Part I on the back of Form 4789. The number of transactions reported in item 48a must be 2 and the number of branches reported in item 48b would be 1. The zip code for the branch where the transactions took place would be entered in item 48c.

Example No. 5

On another day, Mrs. Saunders makes a deposit of \$3,000 cash and no information required for Part I of the CTR is requested of her. She is followed later the same day by her husband, Mr. Saunders, who deposits \$12,000 in currency and who provides all data required to complete Part I for himself.

Application of Law to Example No. 5

Item 2 on the CTR must be checked because the teller knows that more than one person con-

ducted the transactions. Information on Mr. Saunders would appear in Part I and the bank is encouraged to ask him for, or to check its records for the required identifying information on Mrs. Saunders. If after taking reasonable efforts to locate the desired information, all of the required information is not found on file in the institution's records or is not otherwise obtained, box 3d must be checked to indicate that all information is not being provided because multiple transactions are being reported. Whatever information on Mrs. Saunders is contained in the records of the institution must be reported in the continuation of Part I on the back of Form 4789. The number of transactions reported in item 48a must be 2 and the number of branches reported in item 48b would be 1. The zip code for the branch where the transactions took place would be entered in item 48c.

Example No. 6

A review of First Federal Bank's daily cash transactions report for a given day indicates several cash deposits to a single account totaling more than \$10,000. Two separate deposits were made in the night depository at the institution's

main office, and two deposits were conducted at the teller windows of two other branch locations. Each deposit was under \$10,000.

Application of Law to Example No. 6

Item 3c should be checked to indicate that identifying information is not provided because transactions were received through the night deposit box. If the tellers involved with the two face to face deposits remember who conducted the transactions, institution records can be checked for identifying information. If the records contain some of the information required by items 4 through 15, that information must be provided, and item 3d must be checked to indicate that some information is missing because multiple transactions are being reported and the information was not obtained at the time the transactions were conducted. Item 48a must indicate 4 transactions and item 48b must indicate 3 locations. The zip codes of those locations would be provided in item 48c.

Peter K. Nunez
Assistant Secretary
(Enforcement)

Currency Transaction Report

(IRS Form 4789)

Section 401.0

Form 4789 (Rev. October 1995) Department of the Treasury Internal Revenue Service	<h2 style="margin: 0;">Currency Transaction Report</h2> <p style="margin: 0;">▶ Use this 1995 revision effective October 1, 1995.</p> <p style="margin: 0;">▶ For Paperwork Reduction Act Notice, see page 3. ▶ Please type or print.</p> <p style="margin: 0;">(Complete all parts that apply—See instructions.)</p>	OMB No. 1545-0183
1 Check all boxes that apply: <input type="checkbox"/> a Amends prior report <input type="checkbox"/> b Multiple persons <input type="checkbox"/> c Multiple transactions		
Part I Person(s) Involved in Transaction(s)		
Section A—Person(s) on Whose Behalf Transaction(s) Is Conducted		
2 Individual's last name or Organization's name		3 First name
5 Doing business as (DBA)		4 M.I.
7 Address (number, street, and apt. or suite no.)		6 SSN or EIN
9 City	10 State 	11 ZIP code
12 Country (if not U.S.)		13 Occupation, profession, or business
14 If an individual, describe method used to verify identity: <input type="checkbox"/> a Driver's license/State I.D. <input type="checkbox"/> b Passport <input type="checkbox"/> c Alien registration <input type="checkbox"/> d Other _____ <input type="checkbox"/> e Issued by: _____ <input type="checkbox"/> f Number: _____		
Section B—Individual(s) Conducting Transaction(s) (if other than above).		
If section B is left blank or incomplete, check the box(es) below to indicate the reason(s): <input type="checkbox"/> a Armored Car Service <input type="checkbox"/> b Mail Deposit or Shipment <input type="checkbox"/> c Night Deposit or Automated Teller Machine (ATM) <input type="checkbox"/> d Multiple Transactions <input type="checkbox"/> e Conducted On Own Behalf		
15 Individual's last name		16 First name
18 Address (number, street, and apt. or suite no.)		17 M.I.
20 City		19 SSN
21 State 	22 ZIP code	23 Country (if not U.S.)
24 Date of birth 		25 If an individual, describe method used to verify identity: <input type="checkbox"/> a Driver's license/State I.D. <input type="checkbox"/> b Passport <input type="checkbox"/> c Alien registration <input type="checkbox"/> d Other _____ <input type="checkbox"/> e Issued by: _____ <input type="checkbox"/> f Number: _____
Part II Amount and Type of Transaction(s). Check all boxes that apply.		
26 Cash In \$ _____ .00		27 Cash Out \$ _____ .00
28 Date of Transaction 		29 <input type="checkbox"/> Foreign Currency _____ (Country)
30 <input type="checkbox"/> Wire Transfer(s)		31 <input type="checkbox"/> Negotiable Instrument(s) Purchased
32 <input type="checkbox"/> Negotiable Instrument(s) Cashed		33 <input type="checkbox"/> Currency Exchange(s)
34 <input type="checkbox"/> Deposit(s)/Withdrawal(s)		35 <input type="checkbox"/> Account Number(s) Affected (if any): _____ _____
36 <input type="checkbox"/> Other (specify) _____ _____		
Part III Financial Institution Where Transaction(s) Takes Place		
37 Name of financial institution		Enter Federal regulator or BSA Examiner code number from the instructions here. ▶ []
38 Address (number, street, and apt. or suite no.)		39 SSN or EIN
40 City		41 State
42 Zip Code		43 MICR No.
Sign Here ▶	44 Title of approving official	45 Signature of approving official
	46 Date of signature 	47 Type or print preparer's name
48 Type or print name of person to contact		49 Telephone number ()

Cat. No. 42004W

Form **4789** (Rev. 10-95)

Form 4789 (Rev. 10-95)

Page 3

Paperwork Reduction Act Notice.—The requested information has been determined to be useful in criminal, tax, and regulatory investigations and proceedings. Financial institutions are required to provide the information under 31 U.S.C. 5313 and 31 CFR Part 103. These provisions are commonly referred to as the Bank Secrecy Act (BSA) which is administered by the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN).

The time needed to complete this form will vary depending on individual circumstances. The estimated average time is 19 minutes. If you have comments concerning the accuracy of this time estimate or suggestions for making this form simpler, we would be happy to hear from you. You can write to the **Internal Revenue Service**, Attention: Tax Forms Committee, PC:FP, Washington, DC 20224. **DO NOT** send this form to this office. Instead, see **When and Where To File** below.

Suspicious Transactions

This Currency Transaction Report (CTR) should NOT be filed for suspicious transactions involving \$10,000 or less in currency OR to note that a transaction of more than \$10,000 is suspicious. Any suspicious or unusual activity should be reported by a financial institution in the manner prescribed by its appropriate federal regulator or BSA examiner. (See Item 37.) If a transaction is suspicious and in excess of \$10,000 in currency, then both a CTR and the appropriate referral form must be filed.

Should the suspicious activity require immediate attention, financial institutions should telephone 1-800-800-CTRS. An Internal Revenue Service (IRS) employee will direct the call to the local office of the IRS Criminal Investigation Division (CID). This toll-free number is operational Monday through Friday, from approximately 9:00 am to 6:00 pm Eastern Standard Time. If an emergency, consult directory assistance for the local IRS CID Office.

General Instructions

Who Must File.—Each financial institution (other than a casino, which instead must file Form 8362 and the U.S. Postal Service for which there are separate rules), must file Form 4789 (CTR) for each deposit, withdrawal, exchange of currency, or other payment or transfer, by, through, or to the financial institution which involves a transaction in currency of more than \$10,000. Multiple transactions must be treated as a single transaction if the financial institution has knowledge that (1) they are by or on behalf of the same person, and (2) they result in either currency received (Cash In) or currency disbursed (Cash Out) by the financial institution totaling more than \$10,000 during any one business day. For a bank, a business day is the day on which transactions are routinely posted to customers' accounts, as normally considered to depository customers. For all other financial institutions, a business day is a calendar day.

Generally, financial institutions are defined as banks, other types of depository institutions, brokers or dealers in securities, money transmitters, currency exchangers, check cashers, issuers and sellers of money orders and traveler's checks. Should you have questions, see the definitions in 31 CFR Part 103.

When and Where To File.—File this CTR by the 15th calendar day after the day of the transaction with the IRS Detroit Computing Center, ATTN: CTR, P.O. Box 33604, Detroit, MI 48232-5604 or with your local IRS office. Keep a

copy of each CTR for five years from the date filed.

A financial institution may apply to file the CTRs magnetically. To obtain an application to file magnetically, write to the IRS Detroit Computing Center, ATTN: CTR Magnetic Media Coordinator, at the address listed above.

Identification Requirements.—All individuals (except employees of armored car services) conducting a reportable transaction(s) for themselves or for another person must be identified by means of an official document(s).

Acceptable forms of identification include a driver's license, military, and military/dependent identification cards, passport, state issued identification card, cedular card (foreign), non-resident alien identification cards, or any other identification document or documents, which contain name and preferably address and a photograph and are normally acceptable by financial institutions as a means of identification when cashing checks for persons other than established customers.

Acceptable identification information obtained previously and maintained in the financial institution's records may be used. For example, if documents verifying an individual's identity were examined and recorded on a signature card when an account was opened, the financial institution may rely on that information. In completing the CTR, the financial institution must indicate on the form the method, type, and number of the identification. Statements such as "known customer" or "signature card on file" are not sufficient for form completion.

Penalties.—Civil and criminal penalties are provided for failure to file a CTR or to supply information or for filing a false or fraudulent CTR. See 31 U.S.C. 5321, 5322 and 5324.

For purposes of this CTR, the terms below have the following meanings:

Currency.—The coin and paper money of the United States or any other country, which is circulated and customarily used and accepted as money.

Person.—An individual, corporation, partnership, trust or estate, joint stock company, association, syndicate, joint venture or other unincorporated organization or group.

Organization.—Person other than an individual.

Transaction In Currency.—The physical transfer of currency from one person to another. This does not include a transfer of funds by means of bank check, bank draft, wire transfer or other written order that does not involve the physical transfer of currency.

Negotiable Instruments.—All checks and drafts (including business, personal, bank, cashier's and third-party), money orders, and promissory notes. For purposes of this CTR, all traveler's checks shall also be considered negotiable instruments. All such instruments shall be considered negotiable instruments whether or not they are in bearer form.

Specific Instructions

Because of the limited space on the front and back of the CTR, it may be necessary to submit additional information on attached sheets. Submit this additional information on plain paper attached to the CTR. Be sure to put the individual's or organization's name and identifying number (Items 2, 3, 4, and 6 of the CTR) on any additional sheets so that if it becomes separated, it may be associated with the CTR.

Item 1a. Amends Prior Report.—If this CTR is being filed because it amends a report filed

previously, check Item 1a. Staple a copy of the original CTR to the amended one, complete Part III fully and only those other entries which are being amended.

Item 1b. Multiple Persons.—If this transaction is being conducted by more than one person or on behalf of more than one person, check Item 1b. Enter information in Part 1 for one of the persons and provide information on any other persons on the back of the CTR.

Item 1c. Multiple Transactions.—If the financial institution has knowledge that there are multiple transactions, check Item 1c.

Part I - Person(s) Involved In Transaction(s)

Section A must be completed. If an individual conducts a transaction on his own behalf, complete Section A; leave Section B BLANK. If an individual conducts a transaction on his own behalf and on behalf of another person(s), complete Section A for each person; leave Section B BLANK. If an individual conducts a transaction on behalf of another person(s), complete Section B for the individual conducting the transaction, and complete Section A for each person on whose behalf the transaction is conducted of whom the financial institution has knowledge.

Section A. Person(s) on Whose Behalf Transaction(s) Is Conducted.—See instructions above.

Items 2, 3, and 4. Individual/Organization Name.—If the person on whose behalf the transaction(s) is conducted is an individual, put his/her last name in Item 2, first name in Item 3 and middle initial in Item 4. If there is no middle initial, leave Item 4 BLANK. If the transaction is conducted on behalf of an organization, put its name in Item 2 and leave Items 3 and 4 BLANK.

Item 5. Doing Business As (DBA).—If the financial institution has knowledge of a separate "doing business as" name, enter it in Item 5. For example, Johnson Enterprises DBA P.J.'s Pizzeria.

Item 6. Social Security Number (SSN) or Employer Identification Number (EIN).—Enter the SSN or EIN of the person identified in Item 2. If none, write NONE.

Items 7, 9, 10, 11, and 12. Address.—Enter the permanent street address including zip code of the person identified in Item 2. Use the Post Office's two letter state abbreviation code. A P.O. Box should not be used by itself and may only be used if there is no street address. If a P.O. Box is used, the name of the apartment or suite number, road or route number where the person resides must also be provided. If the address is outside the U.S., provide the street address, city, province, or state, post code (if known), and the name of the country.

Item 8. Date of Birth. Enter the date of birth. Six numerals must be inserted for each date. The first two will reflect the month of birth, the second two the calendar day of birth, and the last two numerals the year of birth. Zero (0) should precede any single digit number. For example, if an individual's birth date is April 3, 1948, Item 8 should read 04 03 48.

Item 13. Occupation, Profession, or Business.—Identify fully the occupation, profession or business of the person on whose behalf the transaction(s) was conducted. For example, secretary, shoe salesman, carpenter, attorney, housewife, restaurant, liquor store, etc. Do not use non-specific terms such as merchant, self-employed, businessman, etc.

Item 14. If an Individual, Describe Method Used To Verify.—If an individual conducts the transaction(s) on his/her own behalf, his/her identity must be verified by examination of an acceptable document (see **General Instructions**). For example, check box a if a driver's license is used to verify an individual's identity, and enter the state that issued the license and the number in items e and f. If the transaction is conducted by an individual on behalf of another individual not present or an organization, enter N/A in item 14.

Section B. Individual(s) Conducting Transaction(s) (if other than above).—Financial institutions should enter as much information as is available. However, there may be instances in which Items 15-25 may be left BLANK or incomplete.

If Items 15-25 are left BLANK or incomplete, check one or more of the boxes provided to indicate the reason(s).

Example: If there are multiple transactions that, if only when aggregated, the financial institution has knowledge the transactions exceed the reporting threshold, and therefore, did not identify the transaction(s), check box d for Multiple Transactions.

Item 15, 16, and 17. Individual(s) Name.—Complete these items if an individual conducts a transaction(s) on behalf of another person. For example, if John Doe, an employee of XYZ Grocery Store makes a deposit to the store's account, XYZ Grocery Store should be identified in Section A, and John Doe should be identified in Section B.

Items 18, 20, 21, 22, and 23. Address.—Enter the permanent street address including zip code of the individual. (See Items 7, 9, 10, 11, and 12.)

Item 19. SSN.—If the individual has an SSN, enter it in Item 19. If the individual does not have an SSN, enter NONE.

Item 24. Date of Birth.—Enter the individual's date of birth. See the instructions for item 8.

Item 25. If an Individual, Describe Method Used To Verify.—Enter the method by which the individual's identity is verified (see **General Instructions** and Item 14).

Part II - Amount and Type of Transaction(s)

Complete Part II to identify the type of transaction(s) reported and the amount(s) involved.

Items 26 and 27. Cash In/Cash Out.—In the spaces provided, enter the amount of currency received (Cash In) or disbursed (Cash Out) by the financial institution. If foreign currency is exchanged, use the U.S. dollar equivalent on the day of the transaction.

If less than a full dollar amount is involved, increase that figure to the next highest dollar. For example, if the currency totals \$20,000.05, show the total as \$20,001.00.

Item 28. Date of Transaction.—Six numerals must be inserted for each date. (See Item 8.)

Determining Whether Transactions Meet the Reporting Threshold

Only cash transactions that, if alone or when aggregated, exceed \$10,000 should be reported on the CTR. Transactions shall not be offset against one another.

If there are both Cash In and Cash Out transactions that are reportable, the amounts should be considered separately and not aggregated. However, they may be reported on a single CTR.

If there is a currency exchange, it should be aggregated separately with each of the Cash In and Cash Out totals.

Example 1: A person deposits \$11,000 in currency to his savings account and withdraws \$3,000 in currency from his checking account.

The CTR should be completed as follows: Cash In \$11,000, and no entry for Cash Out. This is because the \$3,000 transaction does not meet the reporting threshold.

Example 2: A person deposits \$11,000 in currency to his savings account and withdraws \$12,000 in currency from his checking account.

The CTR should be completed as follows: Cash In \$11,000, Cash Out \$12,000. This is because there are two reportable transactions. However, one CTR may be filed to reflect both.

Example 3: A person deposits \$6,000 in currency to his savings account and withdraws \$4,000 in currency from his checking account. Further, he presents \$5,000 in currency to be exchanged for the equivalent in French francs.

The CTR should be completed as follows: Cash In \$11,000 and no entry for Cash Out. This is because in determining whether the transactions are reportable, the currency exchange is aggregated with each of the Cash In and the Cash Out amounts. The result is a reportable \$11,000 Cash In transaction. The total Cash Out amount is \$9,000 which does not meet the reporting threshold; therefore, it is not entered on the CTR.

Example 4: A person deposits \$6,000 in currency to his savings account and withdraws \$7,000 in currency from his checking account. Further, he presents \$5,000 in currency to be exchanged for the equivalent in French francs.

The CTR should be completed as follows: Cash In \$11,000, Cash Out \$12,000. This is because in determining whether the transactions are reportable, the currency exchange is aggregated with each of the Cash In and Cash Out amounts. In this example, each of the Cash In and Cash Out totals exceed \$10,000 and must be reflected on the CTR.

Item 29. Foreign Currency.—If foreign currency is involved, check Item 29 and identify the country. If multiple foreign currencies are involved, identify the country for which the largest amount is exchanged.

Items 30-33.—Check the appropriate item(s) to identify the following type of transaction(s):

- 30. Wire Transfer(s)
- 31. Negotiable Instrument(s) Purchased
- 32. Negotiable Instrument(s) Cashed
- 33. Currency Exchange(s)

Item 34. Deposits/Withdrawals.—Check this item to identify deposits to or withdrawals from accounts, e.g., demand deposit accounts, savings accounts, time deposits, mutual fund accounts or any other account held at the financial institution. Enter the account number(s) in item 35.

Item 35. Account Numbers Affected (if any).—Enter the account number of any accounts affected by the transaction(s) that are maintained

at the financial institution conducting the transaction(s). If necessary, use additional sheets of paper to indicate all of the affected accounts.

Example 1: If a person cashes a check drawn on an account held at the financial institution, the CTR should be completed as follows: Indicate Negotiable Instrument(s) Cashed and provide the account number of the check.

If the transaction does not affect an account, make no entry.

Example 2: A person cashes a check drawn on another financial institution. In this instance, Negotiable Instrument(s) Cashed would be indicated, but no account at the financial institution has been affected. Therefore, item 35 should be left BLANK.

Item 36. Other (specify).—If a transaction is not identified in Items 30-34, check item 36 and provide an additional description. For example, a person presents a check to purchase "foreign currency".

Part III - Financial Institution Where Transaction(s) Takes Place

Item 37. Name of Financial Institution and Identity of Federal Regulator or BSA Examiner.—Enter the financial institution's full legal name and identify the federal regulator or BSA examiner, using the following codes:

FEDERAL REGULATOR OR BSA EXAMINER	CODE
Comptroller of the Currency (OCC)	1
Federal Deposit Insurance Corporation (FDIC)	2
Federal Reserve System (FRS)	3
Office of Thrift Supervision (OTS)	4
National Credit Union Administration (NCUA)	5
Securities and Exchange Commission (SEC)	6
Internal Revenue Service (IRS)	7
U.S. Postal Service (USPS)	8

Items 38, 40, 41, and 42. Address.—Enter the street address, city, state, and ZIP code of the financial institution where the transaction occurred. If there are multiple transactions, provide information on the office or branch where any one of the transactions has occurred.

Item 39. EIN or SSN.—Enter the financial institution's EIN. If the financial institution does not have an EIN, enter the SSN of the financial institution's principal owner.

Item 43. MICR Number.—If a depository institution, enter the Magnetic Ink Character Recognition (MICR) number.

Signature

Items 44 and 45. Title and Signature of Approving Official.—The official who reviews and approves the CTR must indicate his/her title and sign the CTR.

Item 46. Date the Form Was Signed.—The approving official must enter the date the CTR is signed. (See Item 8.)

Item 47. Preparer's Name.—Type or print the full name of the individual preparing the CTR. The preparer and the approving official may not necessarily be the same individual.

Items 48 and 49. Contact Person/Telephone Number.—Type or print the name and telephone number of an individual to contact concerning questions about the CTR.

Report of International Transportation of Currency or Monetary Instruments (Customs Form 4790) Section 402.0

(U. S. Customs Use Only) Control No. 31 U.S.C. 5316; 31 CFR 103.23 and 103.25 ▶ Please Type or print.		 DEPARTMENT OF THE TREASURY UNITED STATES CUSTOMS SERVICE REPORT OF INTERNATIONAL TRANSPORTATION OF CURRENCY OR MONETARY INSTRUMENTS	Form Approved OMB No. 1515-0079 ▶ This form is to be filed with the United States Customs Service ▶ For Paperwork Reduction Act Notice and Privacy Act Notice, see back of form.
Part I FOR INDIVIDUAL DEPARTING FROM OR ENTERING THE UNITED STATES			
1. NAME (Last or family, first, and middle)		2. IDENTIFYING NO. (See instructions)	3. DATE OF BIRTH (Mo./Day/Yr.)
4. PERMANENT ADDRESS IN UNITED STATES OR ABROAD		5. OF WHAT COUNTRY ARE YOU A CITIZEN/SUBJECT?	
6. ADDRESS WHILE IN THE UNITED STATES		7. PASSPORT NO. & COUNTRY	
8. U.S. VISA DATE	9. PLACE UNITED STATES VISA WAS ISSUED	10. IMMIGRATION ALIEN NO. (if any)	
11. CURRENCY OR MONETARY INSTRUMENT WAS: (Complete 11A or 11B)			
A. EXPORTED		B. IMPORTED	
Departed From: (City in U.S.)	Arrived At: (Foreign City/Country)	From: (Foreign City/Country)	At: (City in U.S.)
Part II FOR PERSON SHIPPING, MAILING, OR RECEIVING CURRENCY OR MONETARY INSTRUMENTS			
12. NAME (Last or family, first, and middle)		13. IDENTIFYING NO. (See instructions)	14. DATE OF BIRTH (Mo./Day/Yr.)
15. PERMANENT ADDRESS IN UNITED STATES OR ABROAD		16. OF WHAT COUNTRY ARE YOU A CITIZEN/SUBJECT?	
17. ADDRESS WHILE IN THE UNITED STATES		18. PASSPORT NO. & COUNTRY	
19. U.S. VISA DATE	20. PLACE UNITED STATES VISA WAS ISSUED	21. IMMIGRATION ALIEN NO. (if any)	
22. CURRENCY OR MONETARY INSTRUMENTS	23. CURRENCY OR MONETARY INSTRUMENTS	NAME AND ADDRESS	24. IF THE CURRENCY OR MONETARY INSTRUMENT WAS MAILED, SHIPPED, OR TRANSPORTED COMPLETE BLOCKS A AND B.
DATE SHIPPED	<input type="checkbox"/> Shipped To ▶		A. Method of Shipment (Auto, U.S. Mail, Public Carrier, etc.)
DATE RECEIVED	<input type="checkbox"/> Received From ▶		B. Name of Transporter/Carrier
Part III CURRENCY AND MONETARY INSTRUMENT INFORMATION (SEE INSTRUCTIONS ON REVERSE) (To be completed by everyone)			
25. TYPE AND AMOUNT OF CURRENCY/MONETARY INSTRUMENTS		Value in U.S. Dollars	26. IF OTHER THAN U.S. CURRENCY IS INVOLVED, PLEASE COMPLETE BLOCKS A AND B. (SEE SPECIAL INSTRUCTIONS)
Coins <input type="checkbox"/> A. ▶ \$			A. Currency Name
Currency <input type="checkbox"/> B. ▶			
Other Instruments (Specify Type) <input type="checkbox"/> C. ▶			B. Country
(Add lines A, B and C) TOTAL AMOUNT ▶ \$			
Part IV GENERAL - TO BE COMPLETED BY ALL TRAVELERS, SHIPPERS, AND RECIPIENTS			
27. WERE YOU ACTING AS AN AGENT, ATTORNEY OR IN CAPACITY FOR ANYONE IN THIS CURRENCY OR MONETARY INSTRUMENT ACTIVITY? (If "Yes" complete A, B and C) <input type="checkbox"/> Yes <input type="checkbox"/> No			
PERSON IN WHOSE BEHALF YOU ARE ACTING ▶	A. Name	B. Address	C. Business Activity, occupation, or profession
Under penalties of perjury, I declare that I have examined this report, and to the best of my knowledge and belief it is true, correct and complete.			
28. NAME AND TITLE		29. SIGNATURE	30. DATE
(Replaces IRS Form 4790 which is obsolete.) Customs Form 4790 (031695)			

GENERAL INSTRUCTIONS

This report is required by Treasury Department regulations (31 Code of Federal Regulations 103).

Who Must File.--Each person who physically transports, mails, or ships, or causes to be physically transported, mailed, shipped or received currency or other monetary instruments in an aggregate amount exceeding \$10,000 on any one occasion from the United States to any place outside the United States, or into the United States from any place outside the United States.

A TRANSFER OF FUNDS THROUGH NORMAL BANKING PROCEDURES WHICH DOES NOT INVOLVE THE PHYSICAL TRANSPORTATION OF CURRENCY OR MONETARY INSTRUMENTS IS NOT REQUIRED TO BE REPORTED.

Exceptions.--The following persons are not required to file reports: (1) a Federal Reserve Bank, (2) a bank, a foreign bank, or a broker or dealer in securities in respect to currency or other monetary instruments mailed or shipped through the postal service or by common carrier, (3) a commercial bank or trust company organized under the laws of any State or of the United States with respect to overland shipments of currency or monetary instruments shipped to or received from an established customer maintaining a deposit relationship with the bank, in amounts which the bank may reasonably conclude do not exceed amounts commensurate with the customary conduct of the business, industry, or profession of the customer concerned, (4) a person who is not a citizen or resident of the United States in respect to currency or other monetary instruments mailed or shipped from abroad to a bank or broker or dealer in securities through the postal service or by common carrier, (5) a common carrier of passengers in respect to currency or other monetary instruments in the possession of its passengers, (6) a common carrier of goods in respect to shipments of currency or monetary instruments not declared to be such by the shipper, (7) a travelers' check issuer or its agent in respect to the transportation of traveler's checks prior to their delivery to selling agents for eventual sale to the public, nor by (8) a person engaged as a business in the transportation of currency, monetary instruments and other commercial papers with respect to the transportation of currency or other monetary instruments overland between established offices of banks or brokers or dealers in securities and foreign persons.

WHEN AND WHERE TO FILE:

A. Recipients.--Each person who receives currency or other monetary instruments shall file Form 4790, within 30 days after receipt, with the Customs officer in charge at any port of entry or departure or by mail with the Commissioner of Customs, Attention: Currency Transportation Reports, Washington DC 20229.

B. Shippers or Mailers:--If the currency or other monetary instrument does not accompany the person entering or departing the United States, Form 4790 may be filed by mail on or before the date of entry, departure, mailing, or shipping with the Commissioner of Customs, Attention: Currency Transportation Reports, Washington DC 20229.

C. Travelers.--Travelers carrying currency or other monetary instruments with them shall file Form 4790 at the time of entry into the United States or at the time of departure from the United States with the Customs officer in charge at any Customs port of entry or departure.

An additional report of a particular transportation, mailing, or shipping of currency or the monetary instruments, is not required if a complete and truthful report has already been filed. However, no person otherwise required to file a report shall be excused from liability for failure to do so if, in fact, a complete and truthful report has not been filed. Forms may be obtained from any United States Customs Service office.

Penalties.--Civil and criminal penalties, including under certain circumstances a fine of not more than \$500,000 and imprisonment of not more than five years, are provided for failure to file a report, supply information, and for filing a false or fraudulent report. In addition, the currency or monetary instrument may be subject to seizure and forfeiture. See section 103.47, 103.48 and 103.49 of the regulations.

DEFINITIONS:

Bank.--Each agent, agency, branch or office within the United States of a foreign bank and each agency, branch or office within the United States of any person doing business in one or more of the capacities listed: (1) a commercial bank or trust company organized under the laws of any state or of the United States; (2) a private bank; (3) a savings and loan association or a building and loan association organized under the laws of any state of the United States; (4) an insured institution as defined in section 401 of the National Housing Act; (5) a savings bank, industrial bank or other thrift institution; (6) a credit union organized under the laws of any state or of the United States; and (7) any other organization chartered under the banking laws of any state and subject to the supervision of the bank supervisory authorities of a state.

Foreign Bank.--A bank organized under foreign law, or an agency, branch or office located outside the United States of a bank. The term does not include an agent, agency, branch or office within the United States of a bank organized under foreign law.

Broker or Dealer in Securities.--A broker or dealer in securities, registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934.

IDENTIFICATION NUMBER.--Individuals must enter their social security number, if any. However, aliens who do not have a social security number should enter passport or alien registration number. All others should enter their employer identification number.

Investment Security.--An instrument which: (1) is issued in bearer or registered form; (2) is of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any areas in which it is issued or dealt in as a medium for investment; (3) is either one of a class or series or by its terms is divisible into a class or series of instruments; and (4) evidences a share, participation or other interest in property or in an enterprise or evidences an obligation of the issuer.

Monetary Instruments.--Coin or currency of the United States or of any other country, travelers' checks, money orders, investment securities in bearer form or otherwise in such form that title thereto passes upon delivery, and negotiable instruments (except warehouse receipts or bills of lading) in bearer form or other is in such form that title thereto passes upon delivery. The term includes bank checks, travelers' checks and money orders which are signed but on which the name of the payee has been omitted, but does not include bank checks, travelers' checks or money orders made payable to the order of a named person which have not been endorsed or which bear restrictive endorsements.

Person.--An individual, a corporation, a partnership, a trust or estate, a joint stock company, and association, a syndicate, joint venture or other unincorporated organization or group, and all entities cognizable as legal personalities.

SPECIAL INSTRUCTIONS:

You should complete each line which applies to you. **Part II.**--Line 22, enter the exact date you shipped or received currency or monetary instrument(s). Line 23, check the applicable box and give the complete name and address of the shipper or recipient. **Part III.**--Line 26, if currency or monetary instruments of more than one country is involved, attach a schedule showing each kind, country, and amount.

PRIVACY ACT AND PAPERWORK REDUCTION ACT NOTICE

Pursuant to the requirements of Public Law 93-579 (Privacy Act of 1974), notice is hereby given that the authority to collect information on Form 4790 in accordance with 5 U.S.C. 552a(e)(3) is Public Law 91-508; 31 U.S.C. 5316; 5 U.S.C. 301; Reorganization Plan No.1 of 1950; Treasury Department No.165, revised, as amended; 31 CFR 103; and 44 U.S.C. 3501.

The principal purpose for collecting the information is to assure maintenance of reports or records where such reports or records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. The information collected may be provided to those officers and employees of the Customs Service and any other constituent unit of the Department of the Treasury who have a need for the records in the performance of their duties. The records may be referred to any other department or agency of the Federal Government upon the request of the head of such department or agency.

Disclosure of this information is mandatory. Failure to provide all or any part of the requested information may subject the currency or monetary instruments to seizure and forfeiture, as well as subject the individual to civil and criminal liabilities.

Disclosure of the social security number is mandatory. The authority to collect this number is 31 CFR 103.25. The social security number will be used as a means to identify the individual who files the record.

The collection of this information is mandatory pursuant to 31 U.S.C. 5316.

Statement Required by 5 CFR 1320.21: The estimated average burden associated with this collection of information is 10 minutes per respondent or recordkeeper depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing the burden should be directed to U.S. Customs Service, Paperwork Management Branch, Washington DC 20229. **DO NOT send completed form(s) to this office.**

Report of Cash Payments Over \$10,000 Received in a Trade or Business

Section 403.0

Form 8300 (Rev. August 1997) Department of the Treasury Internal Revenue Service	Report of Cash Payments Over \$10,000 Received in a Trade or Business ▶ See instructions for definition of cash. ▶ Use this form for transactions occurring after July 31, 1997. Please type or print.	OMB No. 1545-0892
1 Check appropriate box(es) if: a <input type="checkbox"/> Amends prior report; b <input type="checkbox"/> Suspicious transaction.		
Part I Identity of Individual From Whom the Cash Was Received		
2 If more than one individual is involved, check here and see instructions ▶ <input type="checkbox"/>		
3 Last Name	4 First Name	5 M.I. 6 Taxpayer identification number
7 Address (number, street, and apt. or suite no.)		8 Date of birth. ▶ M M D D Y Y Y Y (see instructions)
9 City	10 State 11 ZIP code	12 Country (if not U.S.) 13 Occupation, profession, or business
14 Document used to verify identity: a Describe identification ▶		
b Issued by		c Number
Part II Person on Whose Behalf This Transaction Was Conducted		
15 If this transaction was conducted on behalf of more than one person, check here and see instructions ▶ <input type="checkbox"/>		
16 Individual's last name or Organization's name	17 First Name	18 M.I. 19 Taxpayer identification number
20 Doing business as (DBA) name (see instructions)		Employer identification number
21 Address (number, street, and apt. or suite no.)		22 Occupation, profession, or business
23 City	24 State 25 ZIP code	26 Country (if not U.S.)
27 Alien identification: a Describe identification ▶		
b Issued by		c Number
Part III Description of Transaction and Method of Payment		
28 Date cash received	29 Total cash received	30 If cash was received in more than one payment, check here <input type="checkbox"/>
M M D D Y Y Y Y	\$.00	31 Total price if different from item 29 \$.00
32 Amount of cash received (in U.S. dollar equivalent) (must equal item 29) (see instructions):		
a U.S. currency \$.00 (Amount in \$100 bills or higher \$.00)		
b Foreign currency \$.00 (Country ▶)		
c Cashier's check(s) \$.00		
d Money order(s) \$.00		
e Bank draft(s) \$.00		
f Traveler's check(s) \$.00		
33 Type of transaction		34 Specific description of property or service shown in 33. (Give serial or registration number, address, docket number, etc.) ▶
a <input type="checkbox"/> Personal property purchased		
b <input type="checkbox"/> Real property purchased		
c <input type="checkbox"/> Personal services provided		
d <input type="checkbox"/> Business services provided		
e <input type="checkbox"/> Intangible property purchased		
f <input type="checkbox"/> Debt obligations paid		
g <input type="checkbox"/> Exchange of cash		
h <input type="checkbox"/> Escrow or trust funds		
i <input type="checkbox"/> Bail bond		
j <input type="checkbox"/> Other (specify) ▶		
Part IV Business That Received Cash		
35 Name of business that received cash		36 Employer identification number
37 Address (number, street, and apt. or suite no.)		Social security number
38 City	39 State 40 ZIP code	41 Nature of your business
42 Under penalties of perjury, I declare that to the best of my knowledge the information I have furnished above is true, correct, and complete.		
Signature of authorized official		Title of authorized official
43 Date of signature	44 Type or print name of contact person	45 Contact telephone number
M M D D Y Y Y Y		()
For Paperwork Reduction Act Notice, see page 4.		Cat. No. 62133S Form 8300 (Rev. 8-97)

Multiple Parties

(Complete applicable parts below if box 2 or 15 on page 1 is checked)

Part I Continued—Complete if box 2 on page 1 is checked

3 Last Name			4 First Name		5 M.I.	6 Taxpayer identification number						
7 Address (number, street, and apt. or suite no.)					8 Date of birth. ▶		M	M	D	Y	Y	Y
9 City		10 State	11 ZIP code	12 Country (if not U.S.)		13 Occupation, profession, or business						
14 Document used to verify identity: a Describe identification ▶												
b Issued by						c Number						

3 Last Name			4 First Name		5 M.I.	6 Taxpayer identification number						
7 Address (number, street, and apt. or suite no.)					8 Date of birth. ▶		M	M	D	Y	Y	Y
9 City		10 State	11 ZIP code	12 Country (if not U.S.)		13 Occupation, profession, or business						
14 Document used to verify identity: a Describe identification ▶												
b Issued by						c Number						

Part II Continued—Complete if box 15 on page 1 is checked

16 Individual's last name or Organization's name				17 First Name		18 M.I.	19 Taxpayer identification number				
20 Doing business as (DBA) name (see instructions)							Employer identification number				
21 Address (number, street, and apt. or suite no.)						22 Occupation, profession, or business					
23 City		24 State	25 ZIP code	26 Country (if not U.S.)							
27 Alien identification: a Describe identification ▶											
b Issued by						c Number					

16 Individual's last name or Organization's name				17 First Name		18 M.I.	19 Taxpayer identification number				
20 Doing business as (DBA) name (see instructions)							Employer identification number				
21 Address (number, street, and apt. or suite no.)						22 Occupation, profession, or business					
23 City		24 State	25 ZIP code	26 Country (if not U.S.)							
27 Alien identification: a Describe identification ▶											
b Issued by						c Number					

Form 8300 (Rev. 8-97)

Page 3

Item You Should Note

Clerks of Federal or State courts must now file Form 8300 if more than \$10,000 in cash is received as bail for an individual(s) charged with certain criminal offenses. For these purposes, a clerk includes the clerk's office or any other office, department, division, branch, or unit of the court that is authorized to receive bail. If a person receives bail on behalf of a clerk, the clerk is treated as receiving the bail.

If multiple payments are made in cash to satisfy bail and the initial payment does not exceed \$10,000, the initial payment and subsequent payments must be aggregated and the information return must be filed by the 15th day after receipt of the payment that causes the aggregate amount to exceed \$10,000 in cash. In such cases, the reporting requirement can be satisfied either by sending a single written statement with an aggregate amount listed or by furnishing a copy of each Form 8300 relating to that payer. Payments made to satisfy separate bail requirements are not required to be aggregated. See Treasury Regulations section 1.6050I-2.

Casinos must file Form 8300 for nongaming activities (restaurants, shops, etc.).

General Instructions

Who must file.—Each person engaged in a trade or business who, in the course of that trade or business, receives more than \$10,000 in cash in one transaction or in two or more related transactions, must file Form 8300. Any transactions conducted between a payer (or its agent) and the recipient in a 24-hour period are related transactions. Transactions are considered related even if they occur over a period of more than 24 hours if the recipient knows, or has reason to know, that each transaction is one of a series of connected transactions.

Keep a copy of each Form 8300 for 5 years from the date you file it.

Voluntary use of Form 8300.—Form 8300 may be filed voluntarily for any suspicious transaction (see **Definitions**), even if the total amount does not exceed \$10,000.

Exceptions.—Cash is not required to be reported if it is received:

- By a financial institution required to file Form 4789, Currency Transaction Report.
- By a casino required to file (or exempt from filing) Form 8362, Currency Transaction Report by Casinos, if the cash is received as part of its gaming business.
- By an agent who receives the cash from a principal, if the agent uses all of the cash within 15 days in a second transaction that is reportable on Form 8300 or on Form 4789, and discloses all the information necessary to complete Part II of Form 8300 or Form 4789 to the recipient of the cash in the second transaction.
- In a transaction occurring entirely outside the United States. See **Pub. 1544**, Reporting Cash Payments Over \$10,000 (Received in a Trade or Business),

regarding transactions occurring in Puerto Rico, the Virgin Islands, and territories and possessions of the United States.

- In a transaction that is not in the course of a person's trade or business.

When to file.—File Form 8300 by the 15th day after the date the cash was received. If that date falls on a Saturday, Sunday, or legal holiday, file the form on the next business day.

Where to file.—File the form with the Internal Revenue Service, Detroit Computing Center, P.O. Box 32621, Detroit, MI 48232, or hand carry it to your local IRS office.

Statement to be provided.—You must give a written statement to each person named on a required Form 8300 on or before January 31 of the year following the calendar year in which the cash is received. The statement must show the name, telephone number, and address of the information contact for the business, the aggregate amount of reportable cash received, and that the information was furnished to the IRS. Keep a copy of the statement for your records.

Multiple payments.—If you receive more than one cash payment for a single transaction or for related transactions, you must report the multiple payments any time you receive a total amount that exceeds \$10,000 within any 12-month period. Submit the report within 15 days of the date you receive the payment that causes the total amount to exceed \$10,000. If more than one report is required within 15 days, you may file a combined report. File the combined report no later than the date the earliest report, if filed separately, would have to be filed.

Taxpayer identification number (TIN).—You must furnish the correct TIN of the person or persons from whom you receive the cash and, if applicable, the person or persons on whose behalf the transaction is being conducted. **You may be subject to penalties for an incorrect or missing TIN.**

The TIN for an individual (including a sole proprietorship) is the individual's social security number (SSN). For certain resident aliens who are not eligible to get an SSN and nonresident aliens who are required to file tax returns, it is an IRS Individual Taxpayer Identification Number (ITIN). For other persons, including corporations, partnerships, and estates, it is the employer identification number.

If you have requested but are not able to get a TIN for one or more of the parties to a transaction within 15 days following the transaction, file the report and attach a statement explaining why the TIN is not included.

Exception: *You are not required to provide the TIN of a person who is a nonresident alien individual or a foreign organization if that person does not have income effectively connected with the conduct of a U.S. trade or business and does not have an office or place of business, or fiscal or paying agent, in the United States. See Pub. 1544 for more information.*

Penalties.—You may be subject to penalties if you fail to file a correct and complete Form 8300 on time and you cannot show that the failure was due to reasonable cause. You may also be subject to penalties if you fail to furnish timely a correct and complete statement to each person named in a required report. A minimum penalty of \$25,000 may be imposed if the failure is due to an intentional disregard of the cash reporting requirements.

Penalties may also be imposed for causing, or attempting to cause, a trade or business to fail to file a required report; for causing, or attempting to cause, a trade or business to file a required report containing a material omission or misstatement of fact; or for structuring, or attempting to structure, transactions to avoid the reporting requirements. These violations may also be subject to criminal prosecution which, upon conviction, may result in imprisonment of up to 5 years or fines of up to \$250,000 for individuals and \$500,000 for corporations or both.

Definitions

Cash.—The term "cash" means the following:

- U.S. and foreign coin and currency received in any transaction.
- A cashier's check, money order, bank draft, or traveler's check having a face amount of \$10,000 or less that is received in a **designated reporting transaction** (defined below), or that is received in any transaction in which the recipient knows that the instrument is being used in an attempt to avoid the reporting of the transaction under section 6050I.

Note: *Cash does not include a check drawn on the payer's own account, such as a personal check, regardless of the amount.*

Designated reporting transaction.—A retail sale (or the receipt of funds by a broker or other intermediary in connection with a retail sale) of a consumer durable, a collectible, or a travel or entertainment activity.

Retail sale.—Any sale (whether or not the sale is for resale or for any other purpose) made in the course of a trade or business if that trade or business principally consists of making sales to ultimate consumers.

Consumer durable.—An item of tangible personal property of a type that, under ordinary usage, can reasonably be expected to remain useful for at least 1 year, and that has a sales price of more than \$10,000.

Collectible.—Any work of art, rug, antique, metal, gem, stamp, coin, etc.

Travel or entertainment activity.—An item of travel or entertainment that pertains to a single trip or event if the combined sales price of the item and all other items relating to the same trip or event that are sold in the same transaction (or related transactions) exceeds \$10,000.

Exceptions.—A cashier's check, money order, bank draft or traveler's check is not considered received in a designated

Form 8300 (Rev. 8-97)

Page 4

reporting transaction if it constitutes the proceeds of a bank loan or if it is received as a payment on certain promissory notes, installment sales contracts, or down payment plans. See Pub. 1544 for more information.

Person—An individual, corporation, partnership, trust, estate, association, or company.

Recipient—The person receiving the cash. Each branch or other unit of a person's trade or business is considered a separate recipient unless the branch receiving the cash (or a central office linking the branches), knows or has reason to know the identity of payers making cash payments to other branches.

Transaction—Includes the purchase of property or services, the payment of debt, the exchange of a negotiable instrument for cash, and the receipt of cash to be held in escrow or trust. A single transaction may not be broken into multiple transactions to avoid reporting.

Suspicious transaction—A transaction in which it appears that a person is attempting to cause Form 8300 not to be filed, or to file a false or incomplete form. The term also includes any transaction in which there is an indication of possible illegal activity.

Specific Instructions

You must complete all parts. However, you may skip Part II if the individual named in Part I is conducting the transaction on his or her behalf only.

Item 1—If you are amending a prior report, check box 1a. Complete the appropriate items with the correct or amended information only. Complete all of Part IV. Staple a copy of the original report to the amended report.

To voluntarily report a suspicious transaction (see **Definitions**), check box 1b. You may also telephone your local IRS Criminal Investigation Division or call 1-800-800-2877.

Part I

Item 2—If two or more individuals conducted the transaction you are reporting, check the box and complete Part I for any one of the individuals. Provide the same information for the other individual(s) on the back of the form. If more than three individuals are involved, provide the same information on additional sheets of paper and attach them to this form.

Item 6—Enter the taxpayer identification number (TIN) of the individual named. See **Taxpayer identification number (TIN) under General Instructions** for more information.

Item 8—Enter eight numerals for the date of birth of the individual named. For example, if the individual's birth date is July 6, 1960, enter 07 06 1960.

Item 13—Fully describe the nature of the occupation, profession, or business (for example, "plumber," "attorney," or "automobile dealer"). Do not use general or

nondescriptive terms such as "businessman" or "self-employed."

Item 14—You must verify the name and address of the named individual(s). Verification must be made by examination of a document normally accepted as a means of identification when cashing checks (for example, a driver's license, passport, alien registration card, or other official document). In item 14a, enter the type of document examined. In item 14b, identify the issuer of the document. In item 14c, enter the document's number. For example, if the individual has a Utah driver's license, enter "driver's license" in item 14a, "Utah" in item 14b, and the number appearing on the license in item 14c.

Part II

Item 15—If the transaction is being conducted on behalf of more than one person (including husband and wife or parent and child), check the box and complete Part II for any one of the persons. Provide the same information for the other person(s) on the back of the form. If more than three persons are involved, provide the same information on additional sheets of paper and attach them to this form.

Items 16 through 19—If the person on whose behalf the transaction is being conducted is an individual, complete items 16, 17, and 18. Enter his or her TIN in item 19. If the individual is a sole proprietor and has an employer identification number (EIN), you must enter both the SSN and EIN in item 19. If the person is an organization, put its name as shown on required tax filings in item 16 and its EIN in item 19.

Item 20—If a sole proprietor or organization named in items 16 through 18 is doing business under a name other than that entered in item 16 (e.g., a "trade" or "doing business as (DBA)" name), enter it here.

Item 27—If the person is **NOT** required to furnish a TIN (see **Taxpayer identification number (TIN) under General Instructions**), complete this item. Enter a description of the type of official document issued to that person in item 27a (for example, "passport"), the country that issued the document in item 27b, and the document's number in item 27c.

Part III

Item 28—Enter the date you received the cash. If you received the cash in more than one payment, enter the date you received the payment that caused the combined amount to exceed \$10,000. See **Multiple payments under General Instructions** for more information.

Item 30—Check this box if the amount shown in item 29 was received in more than one payment (for example, as installment payments or payments on related transactions).

Item 31—Enter the total price of the property, services, amount of cash exchanged, etc. (For example, the total cost

of a vehicle purchased, cost of catering service, exchange of currency) if different from the amount shown in item 29.

Item 32—Enter the dollar amount of each form of cash received. Show foreign currency amounts in U.S. dollar equivalent at a fair market rate of exchange available to the public. **The sum of the amounts must equal item 29.** For cashier's check, money order, bank draft, or traveler's check, provide the name of the issuer and the serial number of each instrument. Names of all issuers and all serial numbers involved must be provided. If necessary, provide this information on additional sheets of paper and attach them to this form.

Item 33—Check the appropriate box(es) that describe the transaction. If the transaction is not specified in boxes a–i, check box j and briefly describe the transaction (for example, car lease, boat lease, house lease, aircraft rental).

Part IV

Item 36—If you are a sole proprietorship, you must enter your SSN. If your business also has an EIN, you must provide the EIN as well. All other business entities must enter an EIN.

Item 41—Fully describe the nature of your business, for example, "attorney," "jewelry dealer." Do not use general or nondescriptive terms such as "business" or "store."

Item 42—This form must be signed by an individual who has been authorized to do so for the business that received the cash.

Paperwork Reduction Act Notice

The requested information is useful in criminal, tax, and regulatory investigations, for instance, by directing the Federal Government's attention to unusual or questionable transactions. Trades or businesses are required to provide the information under 26 U.S.C. 6050I.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by Code section 6103.

The time needed to complete this form will vary depending on individual circumstances. The estimated average time is 21 minutes. If you have comments concerning the accuracy of this time estimate or suggestions for making this form simpler, you can write the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. DO NOT send this form to this office. Instead, see **Where To File** on page 3.

Currency Transaction Report by Casinos

(IRS Form 8362)

Section 404.0

Form 8362 (Rev. July 1997)		Currency Transaction Report by Casinos				OMB No. 1506-0005	
Department of the Treasury Internal Revenue Service		▶ Use this revision for reportable transactions occurring after June 30, 1997. ▶ Please type or print. (Complete all applicable parts—see instructions.)					
1 If this Form 8362 (CTRC) is submitted to amend a prior report check here: <input type="checkbox"/> and attach a copy of the original CTRC to this form.							
Part I Person(s) Involved in Transaction(s)							
Section A—Person(s) on Whose Behalf Transaction(s) Is Conducted (Customer)						2 <input type="checkbox"/> Multiple persons	
3 Individual's last name or Organization's name				4 First name		5 M.I.	
6 Permanent address (number, street, and apt. or suite no.)						7 SSN or EIN	
8 City		9 State		10 ZIP code		11 Country (if not U.S.)	
						12 Date of birth M M D D Y Y Y Y	
13 Method used to verify identity: a <input type="checkbox"/> Examined identification credential/document b <input type="checkbox"/> Known customer - information on file c <input type="checkbox"/> Organization							
14 Describe identification credential: a <input type="checkbox"/> Driver's license/State I.D. b <input type="checkbox"/> Passport c <input type="checkbox"/> Alien registration d <input type="checkbox"/> Other							
e Issued by: f Number:							
15 Customer's Account Number							
Section B—Individual(s) Conducting Transaction(s) - If other than above (Agent)						16 <input type="checkbox"/> Multiple agents	
17 Individual's last name				18 First name		19 M.I.	
20 Permanent address (number, street, and apt. or suite no.)						21 SSN	
22 City		23 State		24 ZIP code		25 Country (if not U.S.)	
						26 Date of birth M M D D Y Y Y Y	
27 Method used to verify identity: a <input type="checkbox"/> Examined identification credential/document b <input type="checkbox"/> Known customer - information on file							
28 Describe identification credential: a <input type="checkbox"/> Driver's license/State I.D. b <input type="checkbox"/> Passport c <input type="checkbox"/> Alien registration d <input type="checkbox"/> Other							
e Issued by: f Number:							
Part II Amount and Type of Transaction(s) (Complete all items that apply.)							
31 CASH IN: (in U.S. dollar equivalent)						29 <input type="checkbox"/> Multiple transactions	
a Purchase(s) of casino chips, tokens, and other gaming instruments \$						31 CASH OUT: (in U.S. dollar equivalent)	
b Deposit(s) (front money or safekeeping)						a Redemption(s) of casino chips, tokens, and other gaming instruments \$	
c Payment(s) on credit (including markers)						b Withdrawal(s) of deposit (front money or safekeeping)	
d Bet(s) of currency						c Advance(s) on credit (including markers)	
e Currency received from wire transfer(s) out						d Payment(s) on bet(s) (including slot jackpot(s))	
f Purchase(s) of casino check(s)						e Currency paid from wire transfer(s) in	
g Currency exchange(s)						f Negotiable instrument(s) cashed (including checks)	
h Other (specify)						g Currency exchange(s)	
i Enter total amount of CASH IN transaction(s) ▶ \$						h Travel and complimentary expenses and gaming incentives	
32 Date of transaction M M D D Y Y Y Y (see instructions)						i Payment for tournament, contest or other promotions	
						j Other (specify)	
						k Enter total amount of CASH OUT transaction(s) ▶ \$	
						33 Foreign currency used (Country)	
Part III Casino Reporting Transaction(s)							
34 Casino's trade name				35 Casino's legal name		36 Employer identification number (EIN)	
37 Address (number, street, and apt. or suite no.) where transaction occurred							
38 City						39 State	
						40 ZIP code	
41 Title of approving official				42 Signature of approving official		43 Date of signature M M D D Y Y Y Y	
44 Type or print preparer's name				45 Type or print name of person to contact		46 Contact telephone number ()	
Sign Here ▶							
For Paperwork Reduction Act Notice, see page 2. Cat. No. 622912 Form 8362 (Rev. 7-97)							

Multiple Persons or Multiple Agents

(Complete applicable parts below if box 2 or box 16 on page 1 is checked.)

Part I Continued

Section A—Person(s) on Whose Behalf Transaction(s) Is Conducted (Customer)

3 Individual's last name or Organization's name			4 First name			5 M.I.		
6 Permanent address (number, street, and apt. or suite no.)						7 SSN or EIN		
8 City	9 State	10 ZIP code	11 Country (if not U.S.)		12 Date of Birth			
13 Method used to verify identity: a <input type="checkbox"/> Examined identification credential/document b <input type="checkbox"/> Known customer - information on file c <input type="checkbox"/> Organization								
14 Describe identification credential: a <input type="checkbox"/> Driver's license/State I.D. b <input type="checkbox"/> Passport c <input type="checkbox"/> Alien registration d <input type="checkbox"/> Other _____								
e Issued by: _____ f Number: _____								
15 Customer's Account Number _____								

Section B—Individual(s) Conducting Transaction(s) - If other than above (Agent)

17 Individual's last name			18 First name			19 M.I.		
20 Permanent address (number, street, and apt. or suite no.)						21 SSN		
22 City	23 State	24 ZIP code	25 Country (if not U.S.)		26 Date of Birth			
27 Method used to verify identity: a <input type="checkbox"/> Examined identification credential/document b <input type="checkbox"/> Known customer - information on file								
28 Describe identification credential: a <input type="checkbox"/> Driver's license/State I.D. b <input type="checkbox"/> Passport c <input type="checkbox"/> Alien registration d <input type="checkbox"/> Other _____								
e Issued by: _____ f Number: _____								

Paperwork Reduction Act Notice.—The requested information is useful in criminal, tax, and regulatory investigations and proceedings. Financial institutions are required to provide the information under 31 U.S.C. 5313 and 31 CFR Part 103, commonly referred to as the Bank Secrecy Act (BSA). The BSA is administered by the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN). You are not required to provide the requested information unless a form displays a valid OMB control number.

The time needed to complete this form will vary depending on individual circumstances. The estimated average time is 19 minutes. If you have comments concerning the accuracy of this time estimate or suggestions for improving this form, you may write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. **DO NOT** send this form to this address. Instead, see **When and Where To File** below.

General Instructions

Form 8362.—Use the July 1997 revision of Form 8362 for reportable transactions occurring after June 30, 1997. Use the May 1992 revision of Form 8362 for reportable transactions occurring before July 1, 1997.

Suspicious Transactions.—If a transaction is greater than \$10,000 in currency as well as suspicious, casinos must file a Form 8362 and are encouraged to report suspicious transactions and activities on **Form TDF 90-22.47**, Suspicious Activity Report (SAR). Banks and other depository institutions currently are required to use the SAR to report suspicious activities. A SAR for casinos is under development and, once issued, a casino will use this SAR for reporting a suspicious transaction or activity, rather than reporting such activity on form TDF 90-22.47.

DO NOT use Form 8362 to (1) report suspicious transactions involving \$10,000 or less in currency (OR 2) indicate that a transaction of more than \$10,000 is suspicious.

When a suspicious activity requires immediate attention, casinos should telephone 1-800-800-CTRS, Monday through Friday, from 9:00 a.m. to 6:00 p.m. Eastern Standard Time (EST). An Internal Revenue Service (IRS) employee will direct the call to the local office of the IRS Criminal Investigation Division (CID). In an emergency, consult directory assistance for the local IRS CID office.

Who Must File.—Any organization duly licensed or authorized to do business as a casino or gambling casino in the United States (except casinos located in Nevada) and having gross annual gaming revenues in excess of \$1 million must file Form 8362. This includes the principal headquarters and every domestic branch or place of business of the casino.

Note: Nevada casinos must file Form 8852, Currency Transaction Report by Casinos - Nevada (CTRC-N), to report transactions as required under Nevada Regulation 6A.

What To File.—A casino must file Form 8362 for each transaction involving either currency received (Cash In) or currency disbursed (Cash Out) of more than \$10,000 in a gaming day. A gaming day is the normal business day of the casino by which it keeps its books and records for business, accounting, and tax purposes. Multiple transactions must be treated as a single transaction if the casino has knowledge that: (1) they are made by or on behalf of the same person, and (2) they result in either Cash In or Cash Out by the casino totaling more than \$10,000 during any one gaming day. Reportable transactions may occur at a casino cage, gaming table, and/or

slot machine. The casino should report both Cash In and Cash Out transactions by or on behalf of the same customer on a single Form 8362. **DO NOT** use Form 8362 to report receipts of currency in excess of \$10,000 by nongaming businesses of a casino (e.g., a hotel); instead, use **Form 8300**, Report of Cash Payments Over \$10,000 Received in a Trade or Business.

Exceptions.—A casino does not have to report transactions with domestic banks, currency dealers or exchangers, or commercial check cashers.

Identification Requirements.—All individuals (except employees conducting transactions on behalf of armored car services) conducting a reportable transaction(s) for themselves or for another person must be identified by means of an official or otherwise reliable record.

Acceptable forms of identification include a driver's license, military or military dependent identification cards, passport, alien registration card, state issued identification card, cedular card (foreign), or a combination of other documents that contain an individual's name and address and preferably a photograph and are normally acceptable by financial institutions as a means of identification when cashing checks for persons other than established customers.

For casino customers granted accounts for credit, deposit, or check cashing, or on whom a CTRC containing verified identity has been filed, acceptable identification information obtained previously and maintained in the casino's internal records may be used as long as the following conditions are met. The customer's identity is reverified periodically, any out-of-date identifying information is updated in the internal records, and the date of each reverification is noted on the internal

Form 8362 (Rev. 7-97)

Page 3

record. For example, if documents verifying an individual's identity were examined and recorded on a signature card when a deposit or credit account was opened, the casino may rely on that information as long as it is verified periodically.

When and Where To File.—File each Form 8362 by the 15th calendar day after the day of the transaction with the:

IRS Detroit Computing Center
ATTN: CTCR
P.O. Box 32621
Detroit, MI 48232-5604

A casino must retain a copy of each Form 8362 filed for 5 years from the date of filing.

Penalties.—Civil and/or criminal penalties may be assessed for failure to file a CTCR or supply information, or for filing a false or fraudulent CTCR. See 31 U.S.C. 5321, 5322, and 5324.

Definitions.—For purposes of Form 8362, the terms below have the following meanings:

Agent. Any individual who conducts a currency transaction on behalf of another individual or organization.

Currency. The coin and paper money of the United States or of any other country that is circulated and customarily used and accepted as money.

Customer. Any person involved in a currency transaction whether or not that person participates in the casino's gaming activities.

Person. An individual, corporation, partnership, trust or estate, joint stock company, association, syndicate, joint venture, or any other unincorporated organization or group.

Organization. Person other than an individual.

Transaction In Currency (Currency Transaction). The physical transfer of currency from one person to another.

Negotiable Instruments. All checks and drafts (including business, personal, bank, cashier's, and third-party), traveler's checks, money orders, and promissory notes, whether or not they are in bearer form.

Specific Instructions

Note: Additional information that cannot fit on the front and back of Form 8362 must be submitted on plain paper attached to Form 8362. Type or print the individual's or organization's name and identifying number, date of transaction, and casino's name and employer identification number (i.e., items 3, 4, 5, 7, 32, 34, 35, and 36) as well as identify the specific item number on all additional sheets. This will ensure that if a sheet becomes separated, it will be associated with the appropriate Form 8362.

Item 1. Amends prior report.—Check Item 1 if this Form 8362 amends a previously filed report. Staple a copy of the original report behind the amended one. Complete Part III in its entirety, but complete only those other entries that are being amended.

Part I. Person(s) Involved in Transaction(s)

Note: Section A must be completed in all cases. If an individual conducts a transaction on his/her own behalf, complete only section A; leave Section B BLANK. If a transaction is

conducted by an individual on behalf of another person(s), complete Section A for each person on whose behalf the transaction is conducted; complete Section B for the individual conducting the transaction.

Section A. Person(s) on Whose Behalf Transaction(s) Is Conducted (Customer)

Item 2. Multiple persons.—Check Item 2 if this transaction is being conducted on behalf of more than one person. For example, if John and Jane Doe cash a check made out to them jointly at the casino, more than one individual has conducted the transaction. Enter information in Section A for one of the individuals; provide information for the other individual on page 2, Section A. Attach additional sheets as necessary.

Items 3, 4, and 5. Individual/Organization name.—If the person on whose behalf the transaction(s) is conducted is an individual, put his/her last name in Item 3, first name in Item 4 and middle initial in Item 5. If there is no middle initial, leave them BLANK. If the transaction is conducted on behalf of an organization, enter the name in Item 3 and leave Items 4 and 5 BLANK, but identify the individual conducting the transaction in Section B. If an organization has a separate "doing business as (DBA)" name, enter in Item 3 the organization's legal name (e.g., Smith Enterprises, Inc.) followed by the name of the business (e.g., DBA Smith Casino Tours). In this case, use Items 4 and 5 if more space is needed.

Items 6, 8, 9, 10, and 11. Address.—Enter the permanent street address, city, two-letter state abbreviation used by the U.S. Postal Service, and ZIP code of the person identified in Item 3. Also enter in Item 6 the apartment or suite number and road or route number. Do not enter a P.O. box number unless the person has no street address. If the person is from a foreign country, enter any province name as well as the appropriate two-letter country code (e.g., "CA" for Canada, "JA" for Japan, etc.). If the country is the United States, leave Item 11 BLANK.

Item 7. Social security number (SSN) or Employer identification number (EIN).—Enter the SSN (if an individual) or EIN (if other than an individual) of the person identified in Items 3 through 5. If that individual is a nonresident alien individual who does not have an SSN, enter "NONE" in this space.

Item 12. Date of birth.—Enter the customer's date of birth (DOB) if it is known to the casino through an existing internal record or reflected on an appropriate identification document or credential presented to the casino to verify the customer's identity (see Identification Requirements above). Internal casino records can include those for casino customers granted accounts for credit, deposit, or check cashing, or on whom a CTCR containing verified identity has been filed. If such records do not indicate the DOB, a casino should ask the customer for the DOB. If the DOB is not available from any of these sources, the casino should enter NOT AVAILABLE in the space. Eight numerals must be inserted for each date. Enter the date in the format "mmddyyyy", where "mm" is the month, "dd" is the day, and "yyyy" is the year. Zero (0) should precede any single-digit number. For example, if the

individual's birth date is June 1, 1948, enter "06 01 1948" in Item 12.

Item 13. Method used to verify identity.—If an individual conducts the transaction(s) on his/her own behalf, his/her name and address must be verified by examination of an official credential/document or internal record containing identification information on a known customer (see Identification Requirements above). Check box a if you examined an official identification credential/document. Check box b if you examined an acceptable internal casino record (i.e., credit, deposit, or check cashing account record, or a CTCR worksheet) containing previously verified identification information on a "known customer." Check box c if the transaction is conducted on behalf of an organization. If box a or b is checked, you must complete Item 14. If box c is checked, do not complete Item 14.

Item 14. Describe identification credential.—If a driver's license, passport, or alien registration card was used to verify the individual's identity, check as appropriate box a, b, or c. If you check box d, you must specifically identify the type of document used (e.g., enter "military ID" for a military or military/dependent identification card). A statement such as "known customer" in box d is not sufficient for completion of Form 8362. Enter in Item 14e the two-letter state postal code, two-letter country code, or the name of the issuer for that document, and enter in Item 14f the number shown on that official document.

Item 15. Customer account number.—Enter the account number which corresponds to the transaction being reported and which the casino has assigned to the person whose name is entered in Item 3. If the person has more than one account number affected by the transaction, enter the account number that corresponds to the majority of currency being reported. If the transaction does not involve an account number, enter "NOT APPLICABLE" in the space.

Section B. Individual(s) Conducting Transaction(s) – If Other Than Above (Agent)

Complete Section B if an individual conducts a transaction on behalf of another person(s) listed in Section A. If an individual conducts a transaction on his/her own behalf, leave Section B BLANK.

Item 16. Multiple agents.—If, during a gaming day, more than one individual conducts transactions on behalf of an individual or organization listed in Section A, check this box and complete Section B. List one of the individuals on the front of the form and the other individual(s) on page 2, Section B. Attach additional sheets as necessary.

Item 17, 18, and 19. Name of individual.—Enter the individual's last name in Item 17, first name in Item 18, and middle initial in Item 19. If there is no middle initial, leave Item 19 BLANK. For example, if John Doe, an employee of the Error Free Rock Band, cashes an \$11,000 check for the band, Error Free Rock Band is identified in Section A, and John Doe is identified in Section B.

Items 20, 22, 23, 24, and 25. Address.—Enter the permanent street address, including ZIP code, of the individual conducting the

transaction. If the individual is from a foreign country, enter any province name and the appropriate two-letter country code.

Item 21. Social security number (SSN).—Enter the SSN of the individual identified in Items 17 through 19. If that individual is a nonresident alien who does not have an SSN, enter "NONE" in the space.

Item 26. Date of birth.—Enter the individual's date of birth. For proper format, see the instructions under **Item 12** above.

Item 27. Method used to verify identity.—Any individual listed in Items 17 through 19 must present an official document to verify his/her name and address. See the instructions under **Item 13** above for more information. After completing Item 27, you must also complete Item 28.

Item 28. Describe identification credential.—Describe the identification credential used to verify the individual's name and address. See the instructions under **Item 14** above for more information.

Part II. Amount and Type of Transaction(s)

Part II identifies the type of transaction(s) reported and the amount(s) involved. You must complete all items that apply.

Item 29. Multiple transactions.—Check this box if multiple currency transactions, none of which individually exceeds \$10,000 comprise this report.

Items 30 and 31. Cash in and cash out.—Enter in the appropriate spaces provided in Items 30 and/or 31, the specific currency amount for each "type of transaction" for a reportable Cash In or a Cash Out. If the casino engages in a Cash In or Cash Out transaction that is not listed in Items 30a through 30g or Items 31a through 31i, specify the type of transaction and the amount of currency in Item 30h or 31j, respectively. Enter the total amount of the reportable Cash In transaction(s) in Item 30i. Enter the total amount of the reportable Cash Out transaction(s) in Item 31k.

If less than a full dollar amount is involved, increase the figure to the next higher dollar. For example, if the currency total is \$20,500.25, show it as \$20,501.00.

If there is a currency exchange, list it separately with both the Cash In and Cash Out totals. If foreign currency is exchanged, use the U.S. dollar equivalent on the day of the transaction.

Payment(s) on credit, Item 30c, includes all forms of cash payments made by a customer on a credit account or line credit, or in redemption of markers or counter checks. Currency received from wire transfer(s) out, Item 30e, applies to cash received from a customer when the casino sends a wire transfer on behalf of a customer.

Currency paid from wire transfer(s) in, Item 31e, applies to cash paid to a customer when the casino receives a wire transfer on behalf of a customer. Travel and complimentary expenses and gaming incentives, Item 31h, includes reimbursements for a customer's travel and entertainment expenses and cash complementaries ("comps").

Determining Whether Transactions Meet The Reporting Threshold

Only cash transactions that, alone or when aggregated, exceed \$10,000 should be reported on Form 8362. A casino must report multiple currency transactions when it has knowledge that such transactions have occurred. This includes knowledge gathered through examination of books, records, logs, information retained on magnetic disk, tape or other machine-readable media, or in any manual system, and similar documents and information that the casino maintains pursuant to any law or regulation or within the ordinary course of its business.

Cash In and Cash Out transactions for the same customer are to be aggregated separately and must not be offset against one another. If there are both Cash In and Cash Out transactions which each exceed \$10,000, enter the amounts in Items 30 and 31 and report on a single Form 8362.

Example 1. Person A purchases \$11,000 in chips with currency (one Cash In entry); and later receives currency from a \$6,000 redemption of chips and a \$2,000 slot jackpot win (two Cash Out entries). Complete Form 8362 as follows:

Cash In of "\$11,000" is entered in Item 30a (purchase of chips) and Cash In Total of "\$11,000" is entered in Item 30i. No entry is made for Cash Out. The two Cash Out transactions equal only \$8,000, which does not meet the BSA reporting threshold.

Example 2. Person B deposits \$5,000 in currency to his front money account and pays \$10,000 in currency to pay off an outstanding credit balance (two Cash In entries); receives \$7,000 in currency from a wire transfer (one Cash Out entry); and presents \$2,000 in small denomination U.S. currency to be exchanged for an equal amount in U.S. \$100 bills. Complete Form 8362 as follows:

Cash In of "\$5,000" is entered in Item 30b (deposit), "\$10,000" is entered in Item 30c (payment on credit), "\$2,000" is entered in Item 30g (currency exchange), and Cash In Total of "\$17,000" is entered in Item 30i. In determining whether the transactions are reportable, the currency exchange is aggregated with both the Cash In and the Cash Out amounts. The result is a reportable \$17,000 Cash In transaction. No entry is made for Cash Out. The total Cash Out amount only equals \$9,000, which does not meet the BSA reporting threshold.

Example 3. Person C deposits \$7,000 in currency to his front money account and pays \$9,000 in currency to pay off an outstanding credit balance (two Cash In entries); receives \$2,500 in currency from a withdrawal from a safekeeping account, \$2,500 in currency from a wire transfer and cashes a personal check of \$7,500 (three Cash Out entries); and presents Canadian dollars which are exchanged for \$1,500 in U.S. dollar equivalent. Complete Form 8362 as follows:

Cash In of "\$7,000" is entered in Item 30b (deposit), "\$9,000" is entered in Item 30c (payment on credit), "\$1,500" is entered in Item 30g (currency exchange), and a Cash In total of "\$17,500" is entered in Item 30i. Cash Out of "\$2,500" is entered in Item 31b (withdrawal of deposit), "\$2,500" is entered in Item 31e (wire transfer), "\$7,500" is entered in

Item 31f (negotiable instrument cashed), "\$1,500" is entered in Item 31g (currency exchange) and a Cash Out Total of "\$14,000" is entered in Item 31k. In this example, both the Cash In and Cash Out totals exceed \$10,000, and each must be reflected on Form 8362.

Example 4. Person D purchases \$10,000 in chips with currency and places a \$10,000 cash bet (two Cash In entries); and later receives currency for an \$18,000 redemption of chips and \$20,000 from a payment on a cash bet (two Cash Out entries). Complete Form 8362 as follows:

Cash In of "\$10,000" is entered in Items 30a and 30d and a Cash In Total of "\$20,000" is entered in Item 30i. Cash Out of "\$18,000" is entered in Item 31a (redemption of chips), "\$20,000" is entered in Item 31d (payment on bets) and a Cash Out Total of "\$38,000" is entered in Item 31k. In this example, both the Cash In and Cash Out totals exceed \$10,000, and each must be reflected on Form 8362.

Item 32. Date of transaction.—Enter the gaming day on which the transaction occurred (see **What To File** above). For proper format, see the instruction for **Item 12** above.

Item 33. Foreign currency.—If foreign currency is involved, identify the country of issuance by entering the appropriate two-letter country code. If multiple foreign currencies are involved, identify the country for which the largest amount in U.S. dollars is exchanged.

Part III. Casino Reporting Transaction(s)

Item 34. Casino's trade name.—Enter the name by which the casino does business and is commonly known. Do not enter a corporate, partnership, or other entity name, unless such name is the one by which the casino is commonly known.

Item 35. Casino's legal name.—Enter the legal name as shown on required tax filings, only if different from the trade name shown in Item 34. This name will be defined as the name indicated on a charter or other document creating the entity, and which is identified with the casino's established EIN.

Item 36. Employer identification number (EIN).—Enter the casino's EIN.

Items 37, 38, 39, and 40. Address.—Enter the street address, city, state, and ZIP code of the casino (or branch) where the transaction occurred. Do not use a P.O. box number.

Items 41 and 42. Title and signature of approving official.—The official who is authorized to review and approve Form 8362 must indicate his/her title and sign the form.

Item 43. Date the form is signed.—The approving official must enter the date the Form 8362 is signed. For proper format, see the instructions for **Item 12** above.

Item 44. Preparer's name.—Type or print the full name of the individual preparing Form 8362 (The preparer and the approving official may be different individuals).

Item 45 and 46. Contact person/telephone number.—Type or print the name and commercial telephone number of a responsible individual to contact concerning any questions about this Form 8362.

Report of Foreign Bank and Financial Accounts

(Form TD F 90-22.1)

Section 405.0

Department of the Treasury TD F 90-22.1 (10/92) SUPERSEDES ALL PREVIOUS EDITIONS	Report of Foreign Bank and Financial Accounts For the calendar year 19 Do not file this form with your Federal Tax Return.	Form Approved: OMB No. 1505-0063
This form should be used to report financial interest in or signature authority or other authority over one or more bank accounts, securities accounts, or other financial accounts in foreign countries as required by Department of the Treasury Regulations (31 CFR 103). You are not required to file a report if the aggregate value of the accounts did not exceed \$10,000. Check all appropriate boxes. See instructions on back for definitions. File this form with Dept. of the Treasury, P.O. Box 32621, Detroit, MI 48232.		
1 Name (Last, First, Middle)	2 Social security number or employer identification number if other than individual	3 Name in item 1 refers to <input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Fiduciary
4 Address (Street, City, State, Country, ZIP)		
5 <input type="checkbox"/> I had signature authority over one or more foreign accounts, but had no "financial interest" in such accounts (see instruction J). Indicate these accounts: a Name and social security number or taxpayer identification number of each owner _____ b Address of each owner _____ (Do not complete item 9 for these accounts)		
6 <input type="checkbox"/> I had a "financial interest" in one or more foreign accounts owned by a domestic corporation, partnership or trust which is required to file TD F 90-22.1 (See instruction L). Indicate for these accounts: a Name and taxpayer identification number of each such corporation, partnership or trust _____ b Address of each such corporation, partnership or trust _____ (Do not complete item 9 for these accounts)		
7 <input type="checkbox"/> I had a "financial interest" in one or more foreign accounts but the total maximum value of these accounts (see instruction I) did not exceed \$10,000 at any time during the year. (If you checked this box, do not complete item 9.)		
8 <input type="checkbox"/> I had a "financial interest" in 25 or more foreign accounts. (If you checked this box, do not complete item 9.)		
9 <input type="checkbox"/> If you had a "financial interest" in one or more but fewer than 25 foreign accounts which are required to be reported, and the total maximum value of the accounts exceeded \$10,000 during the year (see instruction I), write the total number of those accounts in the box below: Complete items a through f below for one of the accounts and attach a separate TD F 90-22.1 for each of the others. Items 1, 2, 3, 9, and 10 must be completed for each account.		

Check here if this is an attachment: <input type="checkbox"/>		
a Name in which account is maintained	b Name of bank or other person with whom account is maintained	
c Number and other account designation, if any	d Address of office or branch where account is maintained	
e Type of account. (If not certain of English name for the type of account, give the foreign language name and describe the nature of the account. Attach additional sheets if necessary.) <input type="checkbox"/> Bank Account <input type="checkbox"/> Securities Account <input type="checkbox"/> Other (specify)		
f Maximum value of account (see instruction I) <input type="checkbox"/> Under \$10,000 <input type="checkbox"/> \$10,000 to \$50,000 <input type="checkbox"/> \$50,000 to \$100,000 <input type="checkbox"/> Over \$100,000		
10 Signature	11 Title (Not necessary if reporting a personal account)	12 Date

Privacy Act Notification

Pursuant to the requirements of Public Law 93-579 (Privacy Act of 1974), notice is hereby given that the authority to collect information on TD F 90-22.1 in accordance with 5 U.S.C. 552(e)(3) is Public Law 91-508; 31 U.S.C. 1121; 5 U.S.C. 301, 31 CFR Part 103.

The principal purpose of collecting the information is to assure maintenance of reports or records where such reports or records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. The information collected may be provided to those officers and employees of any constituent unit of the Department of the Treasury who have a need for the records in the performance of their duties. The records may be referred to any other department or agency of the Federal Government upon the request of the head of such department or agency for use in a criminal, tax, or regulatory investigation or proceeding.

Disclosure of this information is mandatory. Civil and criminal penalties, including under certain circumstances a fine of not more than \$500,000 and imprisonment of not more than five years, are provided for failure to file a report, supply information, and for filing a false or fraudulent report.

Disclosure of the social security number is mandatory. The authority to collect this number is 31 CFR 103. The social security number will be used as a means to identify the individual who files the report.

Cat. No. 12996D

TD F 90-22.1 (10/92)

Page 2

Instructions

A. Who Must File a Report.—Each United States person who has a financial interest in or signature authority or other authority over bank, securities, or other financial accounts in a foreign country, which exceeds \$10,000 in aggregate value at any time during the calendar year, must report that relationship each calendar year by filing TD F 90-22.1 with the Department of the Treasury on or before June 30, of the succeeding year.

An officer or employee of a commercial bank which is subject to the supervision of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation need not report that he has signature or other authority over a foreign bank, securities, or other financial account maintained by the bank unless he has a personal financial interest in the account.

In addition, an officer or employee of a domestic corporation whose securities are listed upon national securities exchanges or which has assets exceeding \$1 million and 500 or more shareholders of record need not file such a report concerning his signature authority over a foreign financial account of the corporation, if he has no personal financial interest in the account and has been advised in writing by the chief financial officer of the corporation that the corporation has filed a current report which includes that account.

B. United States Person.—The term "United States Person" means (1) a citizen or resident of the United States, (2) a domestic partnership, (3) a domestic corporation, or (4) a domestic estate or trust.

C. When and Where to File.—This report shall be filed on or before June 30 each calendar year with the Department of the Treasury, Post Office Box 32621, Detroit, MI 48232, or it may be hand carried to any local office of the Internal Revenue Service for forwarding to the Department of the Treasury, Detroit, MI.

D. Account in a Foreign Country.—A "foreign country" includes all geographical areas located outside the United States, Guam, Puerto Rico, and the Virgin Islands.

Report any account maintained with a bank (except a military banking facility as defined in Instruction E) or broker or dealer in securities that is located in a foreign country, even if it is a part of a United States bank or other institution. Do not report any account maintained with a branch, agency, or other office of a foreign bank or other institution that is located in the United States, Guam, Puerto Rico, and the Virgin Islands.

E. Military Banking Facility.—Do not consider an account in a foreign country, an account in an institution known as a "United States military banking facility" (or "United States military finance facility") operated by a United States financial institution designated by the United States Government to serve U.S. Government installations abroad, even if the United States military banking facility is located in a foreign country.

F. Bank, Financial Account.—The term "bank account" means a savings, demand, checking, deposit, loan or any other account maintained with a financial institution or other person engaged in the business of banking. It includes certificates of deposit.

The term "securities account" means an account maintained with a financial institution or other person who buys, sells, holds, or trades stock or other securities for the benefit of another.

The term "other financial account" means any other account maintained with a financial institution or other person who accepts deposits, exchanges or transmits funds, or acts as a broker or dealer for future transactions in any commodity on (or subject to the rules of) a commodity exchange or association.

G. Financial Interest.—A financial interest in a bank, securities, or other financial account in a foreign country means an interest described in either of the following two paragraphs:

1. A United States person has a financial interest in each account for which such person is the owner of records or has legal title, whether the account is maintained for his or her own benefit or for the benefit of others including non-United States persons. If an account is maintained in the name of two persons jointly, or if several persons each own a partial interest in an account, each of those United States persons has a financial interest in that account.

2. A United States person has a financial interest in each bank, securities, or other financial account in a foreign country for which the owner of record or holder of legal title is: (a) a person acting as an agent, nominee, attorney, or in some other capacity on behalf of the U.S. person; (b) a corporation in which the United States person owns directly or indirectly more than 50 percent of the total value of shares of stock; (c) a partnership in which the United States person owns an interest in more than 50 percent of the profit (distributable share of income); or (d) a trust in which the United States person either has a present beneficial interest in more than 50 percent of the assets or from which such person receives more than 50 percent of the current income.

H. Signature or Other Authority Over an Account.

Signature Authority.—A person has signature authority over an account if such person can control the disposition of money or other property in it by delivery of a document containing his or her signature (or his or her signature and that of one or more other persons) to the bank or other person with whom the account is maintained.

Other authority exists in a person who can exercise comparable power over an account by direct communication to the bank or other person with whom the account is maintained, either orally or by some other means.

I. Account Valuation.—For items 7, 9, and Instruction A, the maximum value of an account is the largest amount of currency and non-monetary assets that appear on any quarterly or more frequent account statement issued for the applicable year. If periodic account statements are not so issued, the maximum account asset value is the largest amount of currency and non-monetary assets in the account at any time during the year. Convert foreign currency by using the official exchange rate at the end of the year. In valuing currency of a country that uses multiple exchange rates, use the rate which would apply if the currency in the account were converted into United States dollars at the close of the calendar year.

The value of stock, other securities or other non-monetary assets in an account reported on TD F 90-22.1 is the fair market value at the end of the calendar year, or if withdrawn from the account, at the time of the withdrawal.

For purposes of items 7, 9, and Instruction A, if you had a financial interest in more than one account, each account is to be valued separately in accordance with the foregoing two paragraphs.

If you had a financial interest in one or more but fewer than 25 accounts, and you are unable to determine whether the maximum value of these accounts exceeded \$10,000 at any time during the year, check item 9 (do not check item 7) and complete item 9 for each of these accounts.

J. United States Persons with Authority Over but No Interest in an Account.—Except as provided in Instruction A and the following paragraph, you must state the name, address, and identifying number of each owner of an account over which you had authority, but if you check item 5 for more than one account of the same owner, you need identify the owner only once.

If you check item 5 for one or more accounts in which no United States person had a financial interest, you may state on the first line of this item, in lieu of supplying information about the owner, "No U.S. person had any financial interest in the foreign accounts." This statement must be based upon the actual belief of the person filing this form after he or she has taken reasonable measures to endure its correctness.

If you check item 5 for accounts owned by a domestic corporation and its domestic and/or foreign subsidiaries, you may treat them as one owner and write in the space provided, the name of the parent corporation, followed by "and related entities," and the identifying number and address of the parent corporation.

K. Consolidated Reporting.—A corporation which owns directly or indirectly more than 50 percent interest in one or more other entities will be permitted to file a consolidated report on TD F 90-22.1, on behalf of itself and such other entities provided that a listing of them is made part of the consolidated report. Such reports should be signed by an authorized official of the parent corporation.

If the group of entities covered by a consolidated report has a financial interest in 25 or more foreign financial accounts, the reporting corporation need only note that fact on the form, it will, however, be required to provide detailed information concerning each account when so requested by the Secretary or his delegate.

L. Avoiding Duplicate Reporting.—If you had financial interest (as defined in instruction G2(b), (c), or (d)) in one or more accounts which are owned by a domestic corporation, partnership or trust which is required to file TD F 90-22.1 with respect to these accounts in lieu of completing item 9 for each account you may check item 6 and provide the required information.

M. Providing Additional Information.—Any person who does not complete item 9, shall when requested by the Department of the Treasury provide the information called for in item 9.

N. Signature (Item 10).—This report must be signed by the person named in item 1. If the report is being filed on behalf of a partnership, corporation, or fiduciary, it must be signed by an authorized individual.

O. Penalties.—For criminal penalties for failing to file a report, supply information, and for filing a false or fraudulent report, see 31 U.S.C. 5322(a), 31 U.S.C. 5322(b), and 18 U.S.C. 1001.

The estimated average burden associated with this collection of information is 10 minutes per respondent or recordkeeper depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing the burden should be directed to the Department of the Treasury, Office of Financial Enforcement, Room 5000 Treasury Annex Building, Washington, DC 20220, and to the Office of Management and Budget, Paperwork Reduction Project (1505-0063), Washington, DC 20503.

Suspicious Activity Report

(Federal Reserve Form 2230)

Section 406.0

Suspicious Activity Report		<div style="border: 1px solid black; padding: 2px; display: inline-block;">1</div>	
ALWAYS COMPLETE ENTIRE REPORT		FRB: FR 2230 OMB No. 7100-0212 FDIC: 6710/06 OMB No. 3064-0077 OCC: 8010-9,8010-1 OMB No. 1557-0180 OTS: 1601 OMB No. 1550-0003 NCUA: 2362 OMB No. 3133-0084 TREASURY: TD F 90-22.47 OMB No. 1506-0001	
Expires September 30, 1998			
1 Check appropriate box: a <input type="checkbox"/> Initial Report b <input type="checkbox"/> Corrected Report c <input type="checkbox"/> Supplemental Report			
Part I Reporting Financial Institution Information			
2 Name of Financial Institution			3 Primary Federal Regulator
4 Address of Financial Institution			a <input type="checkbox"/> Federal Reserve d <input type="checkbox"/> OCC b <input type="checkbox"/> FDIC e <input type="checkbox"/> OTS c <input type="checkbox"/> NCUA
5 City	6 State	7 Zip Code	8 EIN or TIN
9 Address of Branch Office(s) where activity occurred			10 Asset size of financial institution \$ _____ .00
11 City	12 State	13 Zip Code	14 If institution closed, date closed (MMDDYY) ____/____/____
15 Account number(s) affected, if any a _____ b _____	16 Have any of the institution's accounts related to this matter been closed? a <input type="checkbox"/> Yes b <input type="checkbox"/> No If yes, identify _____		
Part II Suspect Information			
17 Last Name or Name of Entity		18 First Name	19 Middle Initial
20 Address			21 SSN, EIN, TIN (as applicable)
22 City	23 State	24 Zip Code	25 Country
26 Date of Birth (MMDDYY) ____/____/____			
27 Phone Number - Residence (include area code) ()		28 Phone Number - Work (include area code) ()	
29 Occupation			
30 Forms of Identification of Suspect:			
a <input type="checkbox"/> Driver's License b <input type="checkbox"/> Passport c <input type="checkbox"/> Alien Registration d <input type="checkbox"/> Other _____ e Number _____ f Issuing Authority _____			
31 Relationship to Financial Institution:			
a <input type="checkbox"/> Accountant d <input type="checkbox"/> Attorney g <input type="checkbox"/> Customer j <input type="checkbox"/> Officer b <input type="checkbox"/> Agent e <input type="checkbox"/> Borrower h <input type="checkbox"/> Director k <input type="checkbox"/> Shareholder c <input type="checkbox"/> Appraiser f <input type="checkbox"/> Broker i <input type="checkbox"/> Employee l <input type="checkbox"/> Other _____			
32 Is insider suspect still affiliated with the financial institution? a <input type="checkbox"/> Yes If no, specify { c <input type="checkbox"/> Suspended e <input type="checkbox"/> Resigned b <input type="checkbox"/> No d <input type="checkbox"/> Terminated		33 Date of Suspension, Termination, Resignation (MMDDYY) ____/____/____	
		34 Admission/Confession a <input type="checkbox"/> Yes b <input type="checkbox"/> No	

Part III Suspicious Activity Information				2
35 Date of suspicious activity (MMDDYY) _____/_____/____		36 Dollar amount involved in known or suspicious activity \$ _____ .00		
37 Summary characterization of suspicious activity:				
a <input type="checkbox"/> Bank Secrecy Act/Structuring/ Money Laundering	g <input type="checkbox"/> Counterfeit Check	m <input type="checkbox"/> False Statement		
b <input type="checkbox"/> Bribery/Gratuity	h <input type="checkbox"/> Counterfeit Credit/Debit Card	n <input type="checkbox"/> Misuse of Position or Self-Dealing		
c <input type="checkbox"/> Check Fraud	i <input type="checkbox"/> Counterfeit Instrument (other)	o <input type="checkbox"/> Mortgage Loan Fraud		
d <input type="checkbox"/> Check Kiting	j <input type="checkbox"/> Credit Card Fraud	p <input type="checkbox"/> Mysterious Disappearance		
e <input type="checkbox"/> Commercial Loan Fraud	k <input type="checkbox"/> Debit Card Fraud	q <input type="checkbox"/> Wire Transfer Fraud		
f <input type="checkbox"/> Consumer Loan Fraud	l <input type="checkbox"/> Defalcation/Embezzlement			
r <input type="checkbox"/> Other _____				
38 Amount of loss prior to recovery (if applicable) \$ _____ .00		39 Dollar amount of recovery (if applicable) \$ _____ .00		40 Has the suspicious activity had a material impact on or otherwise affected the financial soundness of the institution? a <input type="checkbox"/> Yes b <input type="checkbox"/> No
41 Has institution's bonding company been notified? a <input type="checkbox"/> Yes b <input type="checkbox"/> No				
42 Has any law enforcement agency already been advised by telephone, written communication, or otherwise? If so, list the agency and local address. Agency _____				
43 Address				
44 City		45 State	46 Zip Code	
Part IV Witness Information				
47 Last Name		48 First Name		49 Middle Initial
50 Address				51 SSN
52 City		53 State	54 Zip Code	55 Date of Birth (MMDDYY) _____/_____/____
56 Title		57 Phone number (include area code) ()		58 Interviewed a <input type="checkbox"/> Yes b <input type="checkbox"/> No
Part V Preparer Information				
59 Last Name		60 First Name		61 Middle Initial
62 Title		63 Phone Number (include area code) ()		64 Date (MMDDYY) _____/_____/____
Part VI Contact for Assistance (If different than Preparer Information in Part V)				
65 Last Name		66 First Name		67 Middle Initial
68 Title		69 Phone Number (include area code) ()		
70 Agency (if applicable)				

Part VII Suspicious Activity Information Explanation/Description	3
<p>Explanation/description of known or suspected violation of law or suspicious activity. This section of the report is critical. The care with which it is written may make the difference in whether or not the described conduct and its possible criminal nature are clearly understood. Provide below a chronological and complete account of the possible violation of law, including what is unusual, irregular or suspicious about the transaction, using the following checklist as you prepare your account. If necessary, continue the narrative on a duplicate of this page.</p> <p>a Describe supporting documentation and retain for 5 years.</p> <p>b Explain who benefited, financially or otherwise, from the transaction, how much, and how.</p> <p>c Retain any confession, admission, or explanation of the transaction provided by the suspect and indicate to whom and when it was given.</p> <p>d Retain any confession, admission, or explanation of the transaction provided by any other person and indicate to whom and when it was given.</p>	<p>e Retain any evidence of cover-up or evidence of an attempt to deceive federal or state examiners or others.</p> <p>f Indicate where the possible violation took place (e.g., main office, branch, other).</p> <p>g Indicate whether the possible violation is an isolated incident or relates to other transactions.</p> <p>h Indicate whether there is any related litigation; if so, specify.</p> <p>i Recommend any further investigation that might assist law enforcement authorities.</p> <p>j Indicate whether any information has been excluded from this report; if so, why?</p> <p>For Bank Secrecy Act/Structuring/Money Laundering reports, include the following additional information:</p> <p>k Indicate whether currency and/or monetary instruments were involved. If so, provide the amount and/or description.</p> <p>l Indicate any account number that may be involved or affected.</p>

Paperwork Reduction Act Notice: The purpose of this form is to provide an effective and consistent means for financial institutions to notify appropriate law enforcement agencies of known or suspected criminal conduct or suspicious activities that take place at or were perpetrated against financial institutions. This report is required by law, pursuant to authority contained in the following statutes. Board of Governors of the Federal Reserve System: 12 U.S.C. 324, 334, 611a, 1844(b) and (c), 3105(c) (2) and 3106(a). Federal Deposit Insurance Corporation: 12 U.S.C. 93a, 1818, 1881-84, 3401-22. Office of the Comptroller of the Currency: 12 U.S.C. 93a, 1818, 1881-84, 3401-22. Office of Thrift Supervision: 12 U.S.C. 1463 and 1464. National Credit Union Administration: 12 U.S.C. 1766(a), 1786(q). Financial Crimes Enforcement Network: 31 U.S.C. 5318(g). Information collected on this report is confidential (5 U.S.C. 552(b)(7) and 552a(k)(2), and 31 U.S.C. 5318(g)). The Federal financial institutions regulatory agencies and the U.S. Departments of Justice and Treasury may use and share the information. Public reporting and recordkeeping burden for this information collection is estimated to average 36 minutes per response, and includes time to gather and maintain data in the required report, review the instructions, and complete the information collection. Send comments regarding this burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503 and, depending on your primary Federal regulatory agency, to Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551; or Assistant Executive Secretary, Federal Deposit Insurance Corporation, Washington DC 20429; or Legislative and Regulatory Analysis Division, Office of the Comptroller of the Currency, Washington, DC 20219; or Office of Thrift Supervision, Enforcement Office, Washington DC 20552; or National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314; or Office of the Director, Financial Crimes Enforcement Network, Department of the Treasury, 2070 Chain Bridge Road, Vienna, VA 22182.

**Suspicious Activity Report
Instructions**

Safe Harbor Federal law (31 U.S.C. 5318(g)(3)) provides complete protection from civil liability for all reports of suspected or known criminal violations and suspicious activities to appropriate authorities, including supporting documentation, regardless of whether such reports are filed pursuant to this report's instructions or are filed on a voluntary basis. Specifically, the law provides that a financial institution, and its directors, officers, employees and agents, that make a disclosure of any possible violation of law or regulation, including in connection with the preparation of suspicious activity reports, "shall not be liable to any person under any law or regulation of the United States or any constitution, law, or regulation of any State or political subdivision thereof, for such disclosure or for any failure to notify the person involved in the transaction or any other person of such disclosure."

Notification Prohibited Federal law (31 U.S.C. 5318(g)(2)) requires that a financial institution, and its directors, officers, employees and agents who, voluntarily or by means of a suspicious activity report, report suspected or known criminal violations or suspicious activities may not notify any person involved in the transaction that the transaction has been reported.

In situations involving violations requiring immediate attention, such as when a reportable violation is ongoing, the financial institution shall immediately notify, by telephone, appropriate law enforcement and financial institution supervisory authorities in addition to filing a timely suspicious activity report.

WHEN TO MAKE A REPORT:

1. All financial institutions operating in the United States, including insured banks savings associations, savings association service corporations, credit unions, bank holding companies, nonbank subsidiaries of bank holding companies, Edge and Agreement corporations, and U.S. branches and agencies of foreign banks, are required to make this report following the discovery of:
 - a. **Insider abuse involving any amount.** Whenever the financial institution detects any known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the financial institution or involving a transaction or transactions conducted through the financial institution, where the financial institution believes that it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the financial institution was used to facilitate a criminal transaction, and the financial institution has a substantial basis for identifying one of its directors, officers, employees, agents or other institution-affiliated parties as having committed or aided in the commission of a criminal act regardless of the amount involved in the violation.
 - b. **Violations aggregating \$5,000 or more where a suspect can be identified.** Whenever the financial institution detects any known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the financial institution or involving a transaction or transactions conducted through the financial institution and involving or aggregating \$5,000 or more in funds or other assets, where the financial institution believes that it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the financial institution was used to facilitate a criminal transaction, and the financial institution has a substantial basis for identifying a possible suspect or group of suspects. If it is determined prior to filing this report that the identified suspect or group of suspects has used an "alias," then information regarding the true identity of the suspect or group of suspects, as well as alias identifiers, such as drivers' licenses or social security numbers, addresses and telephone numbers, must be reported.
 - c. **Violations aggregating \$25,000 or more regardless of a potential suspect.** Whenever the financial institution detects any known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the financial institution or involving a transaction or transactions conducted through the financial institution and involving or aggregating \$25,000 or more in funds or other assets, where the financial institution believes that it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the financial institution was used to facilitate a criminal transaction, even though there is no substantial basis for identifying a possible suspect or group of suspects.
 - d. **Transactions aggregating \$5,000 or more that involve potential money laundering or violations of the Bank Secrecy Act.** Any transaction (which for purposes of this subsection means a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or

sale of any stock, bond, certificate of deposit, or other monetary instrument or investment security, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected) conducted or attempted by, at or through the financial institution and involving or aggregating \$5,000 or more in funds or other assets, if the financial institution knows, suspects, or has reason to suspect that:

- i. The transaction involves funds derived from illegal activities or is intended or conducted in order to hide or disguise funds or assets derived from illegal activities (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any law or regulation or to avoid any transaction reporting requirement under Federal law;
- ii. The transaction is designed to evade any regulations promulgated under the Bank Secrecy Act; or
- iii. The transaction has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the financial institution knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

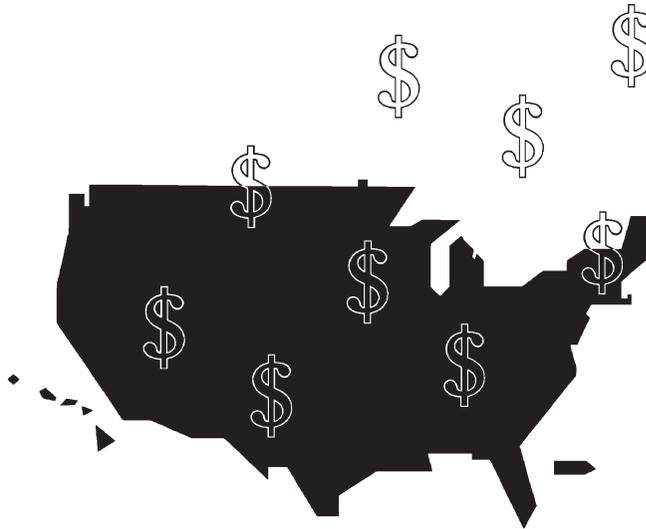
The Bank Secrecy Act requires all financial institutions to file currency transaction reports (CTRs) in accordance with the Department of the Treasury's implementing regulations (31 CFR Part 103). These regulations require a financial institution to file a CTR whenever a currency transaction exceeds \$10,000. If a currency transaction exceeds \$10,000 and is suspicious, the institution must file both a CTR (reporting the currency transaction) and a suspicious activity report (reporting the suspicious or criminal aspects of the transaction). If a currency transaction equals or is below \$10,000 and is suspicious, the institution should only file a suspicious activity report.

2. A financial institution is required to file a suspicious activity report no later than 30 calendar days after the date of initial detection of facts that may constitute a basis for filing a suspicious activity report. If no suspect was identified on the date of detection of the incident requiring the filing, a financial institution may delay filing a suspicious activity report for an additional 30 calendar days to identify a suspect. In no case shall reporting be delayed more than 60 calendar days after the date of initial detection of a reportable transaction.
3. This suspicious activity report does not need to be filed for those robberies and burglaries that are reported to local authorities, or (except for savings associations and service corporations) for lost, missing, counterfeit or stolen securities that are reported pursuant to the requirements of 17 CFR 240.17f-1.

HOW TO MAKE A REPORT:

1. Send each completed suspicious activity report to:
 FinCEN, Detroit Computing Center, P.O. Box 33980, Detroit, MI 48232
 2. For items that do not apply or for which information is not available, leave blank.
 3. Complete each suspicious activity report in its entirety, even when the suspicious activity report is a corrected or supplemental report.
 4. Do not include supporting documentation with the suspicious activity report. Identify and retain a copy of the suspicious activity report and all original supporting documentation or business record equivalent for 5 years from the date of the suspicious activity report. All supporting documentation must be made available to appropriate authorities upon request.
 5. If more space is needed to complete an item (for example, to report an additional suspect or witness), a copy of the page containing the item should be used to provide the information.
 6. Financial institutions are encouraged to provide copies of suspicious activity reports to state and local authorities, where appropriate.
-

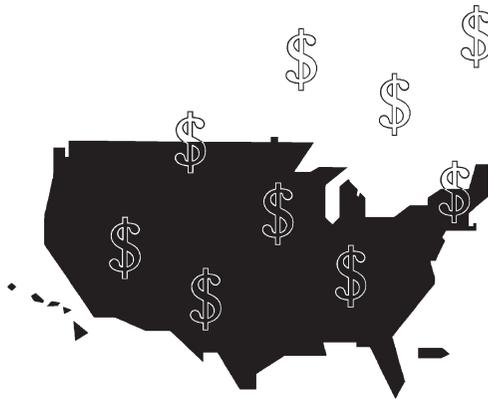
Currency and Foreign Transactions Reporting Act



Exemption Handbook



Currency and Foreign Transactions Reporting Act



Exemption Handbook

Department of the Treasury
Office of Financial Enforcement
and
Internal Revenue Service

TABLE OF CONTENTS

	<i>Page</i>		
Introduction	1	1. General Criteria	7
I. Determining Which Customers to Exempt	3	2. Nonexemptible Entities	8
A. EXCEPTED TRANSACTIONS	3	D. CTR REPORTING ON CERTAIN TRANSACTIONS BY EXEMPTED CUSTOMERS	8
B. UNILATERAL EXEMPTIONS	3	II. How to Exempt Customers	9
1. Retail and Other Specified Businesses	3	A. REVIEW OF BANK RECORDS	9
a. Retail Businesses	3	1. Two Consecutive Months of Activity	9
i. Definition of retail type of business	3	2. Review of Other Available Information	9
ii. Payment in currency	3	B. PREPARATION OF EXEMPTION STATEMENTS	10
iii. United States operation	4	1. Statements for Customers Exempted After October 27, 1986	10
iv. Nonexemptible retail business accounts	4	2. Statements for Customers Exempted on or Before October 27, 1986	10
b. Specified Businesses	4	3. Form for Exemption Statements	10
i. Sports arena	4	4. Customer Information and Signature	10
ii. Race track	4	5. Completion of Exemption Statement	11
iii. Amusement park	4	C. EXEMPTION LIMITS	11
iv. Bar	4	1. General Criteria	11
v. Restaurant	4	2. Seasonal and "Monday-Only" Limits	12
vi. Hotel	4	D. MULTIPLE-ESTABLISHMENT CUSTOMERS	13
vii. Licensed check cashing service	4	E. SPECIAL EXEMPTION REQUESTS	14
viii. Vending machine company	5	III. Recordkeeping for Exempted Customers	15
ix. Theater	5	A. EXEMPTION LIST	15
x. Regularly scheduled passenger carrier	5	B. EXEMPTION STATEMENTS	15
xi. Public utility	5	IV. Monitoring Exemptions and Discovery of Improper Exemptions	17
c. Multi-Faceted Businesses	5	A. MONITORING EXEMPTIONS	17
d. Limitations on Exemptions for Accounts of Retail and Other Specified Businesses	5	B. DISCOVERY OF IMPROPER EXEMPTIONS	17
i. "Deposits or withdrawals of currency"	6	V. Conclusion	18
ii. "Existing account by an established depositor"	6	Appendix A	19
• "Existing account"	6	Appendix B	24
• "Established depositor"	6		
iii. "United States resident"	6		
2. Government Agencies	7		
3. Payroll Withdrawals	7		
C. SPECIAL EXEMPTIONS	7		

INTRODUCTION

The Bank Secrecy Act ("BSA"), 31 U.S.C. §5311-5324, and the BSA regulations, 31 C.F.R. Part 103, that the Department of the Treasury ("Treasury") has issued, require domestic financial institutions (other than casinos and the U.S. Postal Service) to file a report of each single or multiple "deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to such financial institution which involves a transaction in currency of more than \$10,000." 31 CFR 103.22(a)(1). These reports, which are filed on IRS Form 4789, the Currency Transaction Report ("CTR"), have a high degree of usefulness in criminal, tax, and regulatory investigations and proceedings. Information from CTRs is routinely used in a wide variety of criminal and tax investigations and prosecutions, as investigative leads, intelligence for the tracking of currency flows, corroborating information, and probative evidence.*

Treasury's experience in enforcing the BSA, however, has shown that certain legitimate businesses engage in regular and frequent currency transactions with domestic banks. The routine reporting of these transactions is less likely to be useful to law enforcement agencies. Treasury has therefore included in the BSA regulations provisions that permit banks to exempt government agencies and the accounts of certain customers from the CTR reporting requirements. In some instances, banks may unilaterally exempt government agencies and the accounts of particular customers without prior approval from Treasury or the Internal Revenue Service ("IRS"). In other instances, banks must obtain additional authority from the IRS, through the IRS Data Center in Detroit, Michigan, to grant exemptions to particular accounts of customers. The IRS has been delegated this authority from Treasury.

* One of the more prominent examples of the reports' utility is *United States v. Badalamenti*, (794F.2d 821 (2d Cir. 1986), appeal pending, No. 87-1303 (2d Cir., filed June 29, 1987), informally known as the "Pizza Connection" case. This case involved heroin smuggling into the United States by Italian and U.S. organized crime groups. During the investigation, Federal authorities discovered a number of BSA reports that indicated that a Swiss national was making large cash transactions. These reports led authorities to an extensive money laundering opera-

Treasury encourages banks to make full use of the exemption provisions. The use of the exemption provisions can yield substantial benefits for banks and Treasury. By eliminating CTR reporting on properly exempted accounts and certain transactions by government agencies, banks can reduce the cost of filing CTRs. These costs can be substantial, particularly for larger banks in major metropolitan areas that have many accounts by businesses and transactions by government agencies that are exemptible. The reduction in the number of CTRs filed by the banks, in turn, reduces Treasury's and IRS's cost of processing, computerizing, and storing CTRs. In addition, by reducing the number of CTRs which are not of value to law enforcement, Treasury can more effectively analyze and utilize the remaining CTR information.

For these same reasons, Treasury and the IRS have implemented procedures which allow banks to magnetically file CTRs. Treasury and IRS believe that magnetic filings will, likewise, reduce the costs to the banks and the government of complying with the BSA, while assuring a complete and accurate data base which can be utilized effectively to combat crime.

The exemption provisions specify the procedures and categories of accounts and government agencies for which a bank may grant unilateral exemptions, or obtain additional authority from the IRS to grant special exemptions. This booklet is intended to help banks understand the exemption provisions and improve compliance with the exemption requirements. It will explain how to determine whether a particular customer's account or government agency qualifies for an exemption, the process for exempting that account or agency, and the actions the bank should take after granting an exemption.

tion that involved the transfer of tens of millions of dollars through banks and investment houses in New York City to financial institutions in Switzerland and Italy. Ultimately, 20 defendants were convicted in Federal court for heroin conspiracy, racketeering, and BSA violations. All received prison sentences, and 15 defendants received sentences ranging from 15-45 years. In addition, the Swiss national was convicted and imprisoned by Swiss authorities for violations of Swiss law relating to his money laundering activities.

These guidelines address questions frequently asked by banks about the exemption provisions. Treasury welcomes your comments and invites you to submit suggestions for improvements in future editions of these guidelines to:

Director
FinCEN
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220
(202) 622-0400

In addition, if you have a question that is not addressed by these guidelines, Treasury

strongly encourages you to call or write FinCEN above or:

Compliance Review Group
IRS Data Center
P.O. Box 32063
Detroit, Michigan 48232
(313) 234-1613

This booklet is intended only to provide advice on the exemption process and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

I. DETERMINING WHICH CUSTOMER ACCOUNTS OR GOVERNMENT AGENCIES TO EXEMPT

A. EXCEPTED TRANSACTIONS

In developing exemption policies and procedures, banks should be aware that two types of transactions are specifically excepted from the CTR reporting requirements. (See Appendix A.) This means that a bank simply does not have to file CTRs on the following transactions and, therefore, need not exempt them:

1. Transactions with Federal Reserve Banks or Federal Home Loan Banks. This category includes all types of cash receipts or disbursements at Federal Reserve Banks or Federal Home Loan Banks.
2. Transactions between domestic banks. This category includes all types of currency transactions between "banks" as defined in 31 C.F.R. 103.11(a) (e.g., commercial banks, savings and loan associations, and credit unions). This category does *not* permit banks to except transactions with *nonbank* financial institutions (e.g., casinos, currency exchanges, securities brokers). In addition, with the exception of the U.S. Postal Service and certain check cashing agencies, nonbank financial institutions may not be exempted from the reporting requirements. Thus, banks *must* file CTRs on their transactions with foreign banks and with all nonbank financial institutions other than the U.S. Postal Service or check cashing services that have been granted an exemption (as described below).

B. UNILATERAL EXEMPTIONS

The regulations establish certain categories of business accounts and transactions of customers and government agencies that a bank may unilaterally exempt without having to obtain advance approval from Treasury or the IRS: (1) Retail and other specified businesses; (2) government agencies; and (3) payroll withdrawals.

1. Retail and Other Specified Businesses

A bank may unilaterally exempt "(d)eposits or withdrawals of currency from an existing account by an established depositor who is a United States resident and operates a retail type of business in the United States." 31 CFR

103.22(b)(2)(i). A bank also may unilaterally exempt "(d)eposits or withdrawals of currency from an existing account by an established depositor who is a United States resident and operates a sports arena, race track, amusement park, bar, restaurant, hotel, check cashing service licensed by state or local governments, vending machine company, theater, regularly scheduled passenger carrier or any public utility." 31 CFR 103.22(b)(2)(ii).

a. Retail Businesses

i. Definition of retail type of business

The term "retail type of business" means "a business primarily engaged in providing goods to ultimate consumers and for which the business is paid in substantial portions by currency . . ." 31 CFR 103.22(b)(2)(i). A business that is primarily engaged in providing *services*, rather than *goods*, to ultimate consumers (e.g., a car wash, a dry cleaning store, an appliance repair shop, or a health spa) does not come within the scope of this exemption. In addition, a business that is primarily engaged in selling goods wholesale rather than retail, is not within the scope of this exemption. If a business provides both goods and services to ultimate consumers or sells goods both wholesale and retail, a bank may exempt that business account only if more than 50% of the business' gross revenues at the time of the exemption is attributable to the retail sale of goods to ultimate consumers. Thus, a store that sells women's clothing off the rack and that also offers custom alterations on the premises may have its accounts exempted under these provisions if more than 50% of its gross revenues are attributable to the store's sale of clothing and not to the custom alterations. Similarly, if a bakery sells baked goods to ultimate consumers and to supermarkets for purposes of resale, the bank may exempt the bakery's account only if more than 50% of its gross revenues are from the sale of baked goods to ultimate consumers. (See Appendix A.)

ii. Payment in currency

The phrase "for which the business is paid in substantial portions by currency" is intended

to limit this exemption to businesses that, in the ordinary course of business, routinely receive currency in payment for the goods that they offer (e.g., a bookstore or a drug store). To qualify, the business must be paid in currency on a regular and frequent basis.

iii. United States operation

The term "operates a retail type of business in the United States" is intended to limit this exemption to retail businesses that actually are doing business in the United States. A foreign citizen or corporation operating a retail business solely outside the United States could establish an account at a U.S. bank, but could not have transactions involving that account exempted under these provisions. On the other hand, a corporation whose shares are owned by foreign individuals or corporations, but which is organized and is doing a retail business in the United States, could have its transactions involving that account exempted under these provisions.

iv. Nonexemptible retail business accounts

It is important to remember that accounts of "dealerships which buy or sell motor vehicles, vessels, or aircraft," while retail sellers of goods, may not be exempted by either unilateral or special exemption from the CTR reporting requirements. 31 CFR 103.22(b)(2)(i). This applies to all types of motor vehicles, vessels, and aircraft, including airplanes, automobiles, boats, construction equipment (e.g., road graders and backhoes), farm equipment (e.g., combines and tractors), mopeds, motorcycles, recreational vehicles, sailplanes, scooters, ships, snowmobiles, trucks, and yachts.

b. Specified Businesses

In addition to permitting an exemption for the accounts of retail types of businesses, the regulations permit unilateral exemptions for the following types of businesses: sports arenas, race tracks, amusement parks, bars, restaurants, hotels, licensed check cashing services, vending machine companies, theaters, regularly scheduled passenger services and public utilities. (See Appendix A.) Each of these businesses is discussed briefly below.

i. Sports arena

This includes a stadium or arena that regularly accommodates either a single sport (e.g., base-

ball, football, ice skating, jai alai, riding, soccer, or tennis) or multiple sports that are open to attendance or participation by the general public. A promoter who arranges for the presentation of sporting or other entertainment events at a sports arena does not come within the scope of this provision.

ii. Race track

This includes all tracks that hold races of bicycles, dogs, horses, or motor vehicles on a *regular* basis, whether or not betting on these races is permitted at the tracks, and that are open to attendance by the general public. A business organized to handle commercial activities for an automobile race that occurs once a year in a particular city (e.g., a grand prix) does not come within the scope of this provision.

iii. Amusement park

This includes any business that derives more than 50% of its gross revenues from rides and games (other than gambling devices) and the sale of food, drink, and souvenirs. It does not include traveling carnivals.

iv. Bar

This includes any business that serves food or drink to its patrons for consumption on or off the premises, and that derives more than 50% of its gross revenues from the sale of alcoholic beverages for consumption on the premises.

v. Restaurant

This includes any business that serves food or drink to its patrons for consumption on or off the premises, and that derives more than 50% of its gross revenues from the sale of food for consumption on or off the premises.

vi. Hotel

This includes any business (other than a cruise ship) that derives more than 50% of its gross revenues from providing temporary lodging to its patrons.

vii. Licensed check cashing service

This currently includes any business that, for a fee, cashes checks for its customers and that is specifically licensed to do so by an agency or instrumentality of a state or local government. (But see Appendix A.) A check cashing service

that is unlicensed, or that has only a general business license, does not come within the scope of this provision. If a bank wishes to grant a unilateral exemption to a licensed check cashing service it should do so only for withdrawals of currency, not deposits, because currency deposits are generally not attributable to check cashing activities of the business.

viii. Vending machine company

This includes any business that operates vending devices which provide either a product (e.g., beverages, candy, food, newspapers, or change) or a service (e.g., a coin-operated laundry) when activated by inserting coins or small-denomination currency.

A business that primarily operates coin-operated juke boxes, or coin-operated video games that do not constitute gambling devices, is within the scope of this provision. A business that operates coin-operated gambling devices of the type used in casinos (e.g., slot machines or video poker) does not come within the scope of this provision.

ix. Theater

This includes any theater that shows films or that presents live entertainment.

x. Regularly scheduled passenger carrier

This includes any business that is principally engaged in providing transportation of passenger by airplane, boat, bus, limousine, ferry, or train on a regular and publicly available schedule. A business that is principally engaged in operating a taxicab or limousine service, or transporting passengers on a charter basis by airplane, bus, or train, does not come within the scope of this exemption.

xi. Public utility

This includes any business that is principally engaged in operating a public utility (e.g., electric power, telephone service, or water).

c. Multi-Faceted Businesses

In some cases, a particular business entity may offer more than one type of good or service to the public. So long as more than 50% of the gross revenues of the customer whose account is being considered for an exemption is derived from a unilaterally exemptible business

or businesses (e.g., bar and restaurant) and the remainder of the business is derived from a business for which the bank may obtain authority from the IRS to grant a special exemption, the bank may unilaterally grant an exemption for the account. Thus, for instance, if a bakery were to sell its baked goods to ultimate consumers (retail) and to supermarkets (wholesale), the bank would be able to unilaterally exempt the bakery's account only if the bakery derived more than 50% of its gross revenues from the retail business and not the wholesale operation.

If more than 50% of the gross revenues is derived from a type of business that cannot be unilaterally exempted, but that may be granted a special exemption, the bank may not grant that account a unilateral exemption. For example, if a bank has knowledge that one of its customers, a local bar, has been deriving the majority of its gross revenues from operating an unlicensed check cashing service, it may not unilaterally exempt the customer's account. Instead, the bank should contact the IRS to request a special exemption.

Finally, if the bank's customer is a business entity that operates *exemptible and nonexemptible* (as opposed to unilaterally exemptible and specially exemptible) businesses and the funds from both types of businesses (e.g., auto parts department and a car dealer) are commingled in the same account, the bank may not grant the account of that customer a unilateral exemption and should not write to the IRS in Detroit to request a special exemption. This is true even if more than 50% of the gross revenues is derived from the exemptible business. If the bank has any questions, it should contact FinCEN at Treasury for guidance, at the address listed on page 2 above.

d. Limitations on Exemptions for Retail and Other Specified Businesses

There are three limitations that apply to all exemptions for accounts of retail or other specified businesses: (1) they may only be granted for "deposits or withdrawals of currency," (2) they may only be granted for "an existing account by an established customer," and (3) they may only be granted for a "United States resident." These limitations are explained in more detail below. 31 CFR 103.22(b)(2)(i), (ii).

i. *"Deposits or withdrawals of currency"*

The term "(d)eposits or withdrawals of currency" limits these exemptions to currency deposits or withdrawals or both, involving the account of a properly exempted customer. Thus, under these exemption provisions, a bank may *not* exempt any other type of transaction involving that account (e.g., the purchase of cashier's checks or money orders, exchanges of currency, or cash disbursement of loan proceeds). In addition, if a bank customer presents several third-party checks and obtains "cash back" without actually depositing the checks into an account, that transaction is not considered a deposit or withdrawal under these exemptions. This is true even if the bank has granted a unilaterally exemptible business (e.g., a retail business or licensed check casher) an exemption for currency deposits into and withdrawals from that account; it still must file CTRs on any "cash back" transaction by that customer that does not involve the actual deposit of the checks into, and the actual withdrawal of more than \$10,000 in cash from, the customer's account.

ii. *"Existing account by an established depositor"*

• *Existing Account*

Banks frequently ask whether they should grant a unilateral exemption for each separate account of a customer that has multiple accounts or for the customer (i.e., an exemption that covers multiple accounts of the same customer with a single taxpayer identification number (TIN)). The term "existing account" means that for this type of exemption, the bank can only grant a unilateral exemption for an individual *account*, *not* for an individual customer. If a particular customer has separate accounts at the bank, each account should be considered separately by the bank to determine whether an exemption should be granted. The bank should *not* grant a single exemption covering multiple accounts of that customer, even if those accounts have the same TIN. If the bank has already granted any of its customers a single exemption covering multiple accounts, the bank should contact FinCEN at the address listed on page 2 for guidance. In addition, if the bank determines that it wants to grant exemptions for more than one account, it should prepare an exemption statement for each account

and establish a separate exemption limit. (See pp. 10–11 below.)

Thus, for example, if three fast-food restaurants owned by the same corporation each have separate deposit accounts at the same bank, that bank may not grant one exemption that covers all three accounts. Instead, the bank should consider each account separately for an exemption. If the bank decides that all three accounts should be exempted, the bank should prepare three separate exemption statements and establish separate exemption limits for each account.

• *Established Depositor*

The term "established depositor" is intended to make clear that a bank may not exempt the account of a business at the time that the business opens the account. As these guidelines will later explain, a bank must establish a dollar limit for an exemption in an amount that does not exceed an amount "commensurate with the customary conduct of the lawful, domestic business of that customer. . . ." 31 CFR 103.22(c). If a bank has not had a prior account relationship with a customer, it cannot determine, from a history of its transactions with that customer, what dollar limit would be commensurate with that customer's lawful, domestic business.

For this reason, the bank generally should not unilaterally exempt the account of a business for at least the first two months of that business' depositor relationship with the bank. After reviewing at least two months of currency transactions of the account being considered for exemption, the bank may then set a limit. If the customer has had an account at the bank for more than two months, the bank generally should review at least the most recent two months of transactions involving that account, unless those months are not representative of the customary conduct of the customer's lawful domestic business. (See p.9 below).

iii. *"United States resident"*

The term "United States resident" is intended to limit these exemptions to accounts of business entities that are physically residing in the United States at the time of the exemption. The term includes a sole proprietorship oper-

ated by a U.S. citizen or permanent resident, alien, a corporation, a partnership, an association, or any other form of corporate organization, which is physically located in and doing business in the United States. The term does not include a foreign embassy or consulate in the United States, or a foreign business entity that does business, but does not have a place of business, in the United States.

2. Government Agencies

The regulations permit a bank unilaterally to exempt "(d) deposits or withdrawals, exchanges of currency or other payments and transfers by local or state governments, or the United States or any of its agencies or instrumentalities." 31 CFR 103.22(b)(2)(iii). By its terms, this exemption applies to all types of currency transactions conducted by the Federal Government or any of its agencies or instrumentalities, as well as any state or local (e.g., county or municipal) government or any of its agencies or instrumentalities whether or not through an account. Government agencies and instrumentalities do not have to be "established depositors" as described above. The only restriction on these types of exemptions is that the exemptions must be "in amounts which are customary and commensurate with the authorized activities of the agency or instrumentality." 31 CFR 103.22(c). (See discussion p.9 below.)

A bank may therefore exempt the cash transactions involving any government agency (e.g., the Treasury Department, the Justice Department, and Federal law enforcement agencies) or government instrumentality (e.g., state-supported colleges and universities), even if that agency or instrumentality does not constitute "an established depositor," as defined on page 6 above. If the government agency (e.g., state-supported college) has a privately owned business (e.g., bookstore) that is operated on its grounds, the business may not be exempted under this exemption but may be exempted under another exemption (e.g., retail business). A union or fraternal association whose membership consists of officials or employees of a government agency or instrumentality also does not come within the scope of these provisions.

Although the regulations generally do not permit banks to exempt their transactions with

nonbank financial institutions (see page 8 below), a bank may use this exemption to exempt its transactions with the U.S. Postal Service, which the regulations have designated as a nonbank financial institution with respect to its sales of postal money orders.

3. Payroll Withdrawals

The regulations also permit a bank unilaterally to exempt "(w) withdrawals for payroll purposes from an existing account by an established depositor who is a United States resident and operates a firm that regularly withdraws more than \$10,000 in order to pay its employees in currency." 31 CFR 103.22(b)(2)(iv). This exemption is limited to *withdrawals* of currency by an employer that actually pays its employees with the currency it has withdrawn. It does not include an employer that pays its employees by check, but then cashes employees' paychecks and presents the employees' checks at a bank to receive "cash back." Similarly, an employer that withdraws cash to offer a check-cashing service to its employees does *not* come within the scope of this exemption.

The terms "existing account by an established depositor" and "United States resident" have the same scope as those terms described on page 6 above.

C. SPECIAL EXEMPTIONS

1. General Criteria

Even if a particular customer's account does not come within one of the categories of exemptions that a bank may unilaterally grant, the bank may still be able to exempt the deposits and withdrawals of cash of that customer's account that exceed \$10,000 from the CTR reporting requirements. If a bank determines that one of its customers appears to be operating a legitimate business, and the customary conduct of the lawful domestic business of that customer involves regular and frequent currency deposits or withdrawals, the bank may apply to the IRS for additional authority to exempt deposits or withdrawals involving an account of that customer. If the bank receives additional authority from the IRS, it may then grant a "special exemption."

Because there are numerous types of businesses that may qualify for special exemptions, Treasury has refrained from developing a com-

prehensive list of those businesses. However, Appendix A contains a list of some of the types of businesses that have been approved in the past for special exemptions. The IRS will not grant additional authority for special exemptions of businesses such as automobile clubs that offer travelers' checks for sale, precious metal or coin dealers, scrap metal dealers, and gambling operations, whether charitable or for profit.

2. Nonexemptible Entities

Transactions by certain types of businesses may not be the subject of a unilateral or special exemption under any circumstances: (See Appendix A).

- a. Transactions by a bank with nonbank financial institutions (e.g., casinos, currency exchanges, issuers of traveler's checks, and securities brokers or dealers) other than the U.S. Postal Service and check-cashing services.
- b. Transactions between a domestic bank and a foreign bank.
- c. Transactions by a bank with commodities brokers and dealers.
- d. Transactions by a bank with a motor vehicle, vessel, or aircraft dealer, as described above.
- e. Transactions by a bank with a foreign

government, or any agency, instrumentality, or office thereof (e.g., foreign embassies and consulates).

D. CTR REPORTING ON CERTAIN TRANSACTIONS BY EXEMPTED CUSTOMERS

In using the exemption provisions of the regulations, banks must bear in mind that their granting of exemptions to certain accounts and customers does not mean that they will *never* have to file CTRs on those accounts and customers. Even after granting an exemption and setting a dollar limit for that exemption, a bank must continue to file CTRs on two types of currency transactions:

1. All currency transactions that are of the type exempted, but that exceed the dollar limit. Thus, if the exemption limit on a particular customer's account is for daily deposits that do not exceed \$20,000 when aggregated, the bank still must report the total amount of deposits into that account if the total of all deposits in the same banking day exceeds \$20,000 (e.g., \$20,000.01).
2. All non-exempted currency transactions involving an account. Thus, if the account is the subject of an exemption for currency *withdrawals* up to \$19,000, the bank must report any and all currency *deposits* into that account that exceed \$10,000.

II. HOW TO EXEMPT CUSTOMERS

Once a bank has determined that the account of a particular customer may qualify for a unilateral or special exemption, it is encouraged to initiate the process for granting the exemption. Under the regulations, only the bank (and not the customer) has the authority to grant unilateral exemptions or to apply to Treasury for special exemptions. In general, if a business customer specifically requests an exemption before the bank has contacted it, the bank should carefully scrutinize the customer's activity at the bank before deciding whether to grant an exemption. This is because the customer may be seeking the exemption to hide its transactions from the government.

A. REVIEW OF BANK RECORDS

As the first step, the bank should review the customer's transaction history, including its cash deposit or withdrawal transactions. This review is necessary to determine whether the customary conduct of a business entity's lawful domestic business involves currency deposits or withdrawals exceeding \$10,000 that occur regularly and frequently (e.g., daily or several times per week, or in some cases, weekly or biweekly). If the bank's records do not indicate that that entity has had regular and frequent currency deposits or withdrawals exceeding \$10,000, then the bank should not proceed any further with the exemption process, notwithstanding the nature of the customer's business.

1. Two Consecutive Months of Activity

The bank should review at least two consecutive months of transactions, including currency deposits or withdrawals, by its customer. The two months of deposits or withdrawals should be the most recent months unless those months are not truly representative of the customary conduct of the customer's lawful domestic business. For example, if the currency deposits or withdrawals of an established customer during the months of November and December far exceed that customer's currency deposits or withdrawals in other months because of seasonal shopping trends, the bank should review deposits or withdrawals that occurred in two consecutive months that do not include either November or December.

While the regulations do not require that a government agency or instrumentality be an "established depositor," the bank may still find it helpful to review at least the most recent two months' account activity of that agency, to aid in establishing an exemption limit that is "commensurate with the authorized activities of the agency or instrumentality." 31 CFR 103.22(c). However, if the customer whose account is being considered for exemption is a government law enforcement agency that opened the account for deposits of seized cash for transactions conducted in relation to criminal investigations or similar types of transactions, the bank need not review two consecutive months of account activity. These types of transactions are by their nature less regular and frequent than other transactions by other government agencies.

2. Review of Other Available Information

In addition, the bank should review any other information that it has concerning its customer which might assist the bank in reviewing that customer's transaction history. If the customer has a longstanding depositor relationship with the bank, the bank may have made extensions of credit or conducted other business with the customer that generated additional records about the customer's business. If the customer is a government agency or instrumentality, the bank should also ask for official identification from the person who is opening the account or conducting the transaction as a representative of that agency. These steps not only are consistent with a bank's marketing strategy of "knowing its customer," but also may aid in the determination of whether the customer, in fact, comes within one of the categories of exemptible businesses.

In some cases, criminals have succeeded in having a "front" company placed on the exemption list. Often, the address given to the bank was a vacant lot or a storefront where legitimate business could not be carried on. Treasury therefore encourages banks to know their customers. If a bank is not familiar with a particular business entity that it is considering for an exemption, Treasury urges the bank to take some steps to see if the customer appears

to be conducting a legitimate business by checking the telephone directory to verify the business' address and telephone number, or preferably by walking or driving past the business. The bank also may want to maintain a record of all of the steps that it took in determining whether the customer was eligible for an exemption.

B. PREPARATION OF EXEMPTION STATEMENTS

1. Statements for Customers Exempted After October 27, 1986

After the bank has reviewed the customer's transaction history and other information, and determined that the customer appears to be eligible for an exemption, it must then prepare a separate "exemption statement" for each account of the customer to be exempted. Pursuant to a 1986 amendment to the Bank Secrecy Act, the regulations state that after October 27, 1986 (the date on which the amendment became law), "a bank may not place any customer on its exempt list without first preparing a written statement, signed by the customer, describing the customary conduct of the lawful domestic business of that customer and a detailed statement of reasons why such person is qualified for an exemption." 31 CFR 103.22(d).

2. Statements for Customers Exempted on or before October 27, 1986

For customers granted an exemption on or before October 27, 1986, the bank should prepare an exemption statement if there is any change in the business or in the type of exemption other than a change in address or in the dollar amount of the existing exemption. These instances would include a change in the name of the business, a change from one form of entity to another (e.g., sole proprietorship to corporation), a change from one type of business to another (e.g., a retail type of business to a restaurant), a change in ownership of the customer's business, or a change in the nature of the existing exemption (e.g., from withdrawals to deposits or from withdrawals only to withdrawals and deposits). The exemption statement should reflect the current information about the customer.

3. Form for Exemption Statements

Treasury has not issued a form that all banks are required to use for their exemption state-

ments. Instead, in response to many inquiries, Treasury has developed model form (see Appendix B) that banks may use. As stated at page 6 above, the bank must prepare a separate exemption statement for each customer account to be exempted. However, any exemption statement that a bank prepares must, under the regulations, include the following items:

- a. The name, address (i.e., complete street address), nature of business, taxpayer identification number, and account number of the customer being exempted. In addition, in order to ensure that an account is being properly exempted under 103.22(a), it is recommended that the customer also confirm that the funds being deposited into the account being exempted do indeed come from the business for which the account was established.
- b. A statement, following the information in paragraph "a" above, that reads as follows: "The information contained above is true and correct to the best of my knowledge and belief. I understand that this information will be read and relied upon by the Government."
- c. A space, following that statement, for the signature of the person who is attesting to the accuracy of the information concerning the name, address, nature of business, and tax identification number of the customer. This space must also list the signer's title and position (i.e., the office or division of the customer in which the person signing is employed), and should include the date of the signature.
- d. An indication by the bank whether the exemption covers deposits, withdrawals, or both, as well as the dollar limit of the exemption for both deposits and withdrawals.
- e. An indication by the bank whether the exemption is limited to certain types of deposits or withdrawals (e.g., withdrawals for payroll purposes).

4. Customer Information and Signature

To prepare the exemption statement, the bank, after compiling whatever information it needs for reviewing the customer's transaction history and other information, should contact the

customer, explain the need for the statement and its relationship to the exemption, obtain from the customer the information listed in item 3a on page 10 above, and have the customer place an original signature on the statement. Facsimile signatures are not acceptable for completion of the statement.

The signature on the statement need not be that of the highest ranking officer or employee of the business (or government agency) whose transactions are to be exempted. However, the bank should inform the customer that the signature should be that of an appropriate supervisory-level officer or employee who has personal knowledge of (and can therefore attest to the accuracy of) the information listed in item 3a above. In the case of an account established for the local store of a multiple-establishment business (e.g., fast food) or the local office of a government agency, the bank may accept the signature of a supervisory-level officer or employee in that local store or office.

5. Completion of Exemption Statement

After obtaining the customer's signature on the exemption statement, the bank should then complete the remainder of the statement. The regulations require that the statement include not only a description of "the customary conduct of the lawful domestic business of that customer," but also "a detailed statement of reasons why such person is qualified for an exemption." 31 CFR 103.22(d). Summary statements such as "retail," "qualified under 103.22(b)(2)(ii)," or "government" will not suffice to describe the business.

The following are examples of descriptions of businesses that will suffice:

1. retail women's shoe store;
2. retail and wholesale bakery with 70% of the gross revenues attributable to the retail business; and
3. a restaurant/bar with check cashing services that derives 80% of its gross revenues from the restaurant/bar.

The statement should include the period covered by the transaction history that the bank reviewed, the range (i.e., the maximum and minimum amounts) of the transactions during that period, and any other information that the bank may have about the business or its account activity. The bank must indicate in

the statement whether the exemption covers deposits, withdrawals, or both, and the dollar limit of the exemption. 31 CFR 103.22(d). This information should note whether the transactions exempted are limited to a certain type (e.g., withdrawals for payroll purposes). Finally, the bank should note on the statement the date on which it granted the exemption.

C. EXEMPTION LIMITS

1. General Criteria

In conjunction with its review of the customer's account activity, the bank must also determine for the exempted account the applicable dollar limit for the exempted deposits or withdrawals. 31 CFR 103.22(d). This determination requires the bank to establish two types of dollar limits for the currency transactions that are exempted:

- a. For exemptions pertaining to government agencies or instrumentalities, the dollar limits must be "in amounts which are customary and commensurate with the authorized activities of the agency or instrumentality." 31 CFR 103.22(c).
- b. For all other categories of unilateral exemptions, the dollar limits must be "in amounts that the bank may reasonably conclude do not exceed amounts commensurate with the customary conduct of the lawful domestic business of that customer." 31 CFR 103.22(c).

This language indicates that there must be a reasonable relationship between the maximum amounts of the currency transactions that the bank reviewed and the dollar limit that it sets for a particular exemption. If, for example, the majority of the currency transactions reviewed range from \$20,000 to a maximum of \$25,000, the bank must not arbitrarily set the dollar limit at an amount so high (e.g., \$60,000) that no CTRs will ever be filed on the exempted account.

The bank must therefore carefully review the transaction history of the exempted account, to determine what limit would bear a reasonable relationship to the currency transactions reviewed. If one transaction amount recurs more frequently than any other, the bank may simply set the dollar limit at that amount, or at the amount of other transactions that do not substantially exceed that amount. Thus, for

example, if the bank had reviewed at least two months of currency transactions, and saw that the following pattern of transactions in a particular month was representative of the number and dollar amounts in all months reviewed,

March 1 - \$15,000	March 18 - \$45,000
March 2 - \$43,000	March 21 - \$30,000
March 4 - \$40,000	March 22 - \$28,000
March 7 - \$42,000	March 23 - \$35,000
March 8 - \$18,000	March 25 - \$40,000
March 9 - \$38,000	March 28 - \$40,000
March 11 - \$45,000	March 29 - \$20,000
March 15 - \$40,000	March 30 - \$41,000
March 16 - \$30,000	March 31 - \$40,000

it could select \$40,000 as the exemption limit because that amount recurs more frequently than any other and most of the other amounts are within a \$35,000 to \$45,000 range. However, Treasury suggests an exemption limit of \$45,000, as that amount occurs twice; it is not substantially greater than \$40,000; and there are other transactions (i.e., \$41,000, \$42,000, and \$43,000) that fall between \$40,000 and \$45,000.

To aid in its review of a customer's currency transactions, a bank may find it helpful to develop a chart that shows the number of currency transactions that fall within certain ranges. If the bank reviewing the transaction history set forth above had used this method, the chart of the transactions under review would look like this:

<u>\$10,001 - \$15,000</u>	<u>X</u>
<u>\$15,001 - \$20,000</u>	<u>XX</u>
<u>\$20,001 - \$25,000</u>	
<u>\$25,001 - \$30,000</u>	<u>XXX</u>
<u>\$30,001 - \$35,000</u>	<u>X</u>
<u>\$35,001 - \$40,000</u>	<u>XXXXXX</u>
<u>\$40,001 - \$45,000</u>	<u>XXXXX</u>
<u>\$45,001 - \$50,000</u>	

This chart graphically demonstrates that while the bank could select \$40,000 as the exemption limit, \$45,000 would be an appropriate exemption limit in this case because of the grouping of the transactions from \$35,000 to \$45,000.

If no amount recurs frequently enough to serve as a guide for the exemption limit, the bank may still establish an exemption limit based upon the range of any currency transac-

tions that it has reviewed. Thus, for example, if a bank had reviewed at least two months of transactions, and saw that the following pattern of currency transactions in a particular month was representative of the number and dollar amounts in all months reviewed,

April 1 - \$12,000	April 14 - \$13,000
April 4 - \$25,500	April 18 - \$21,500
April 5 - \$15,000	April 21 - \$26,000
April 7 - \$22,500	April 22 - \$12,300
April 8 - \$19,000	April 25 - \$21,000
April 11 - \$22,000	April 27 - \$24,000
April 13 - \$17,000	April 29 - \$25,000

it could select the highest amount, \$26,000, as the exemption limit. This is because most of the transactions are between \$15,000 and \$26,000, and \$26,000 does not substantially exceed the \$24,000, \$25,000, and \$25,500 transactions, as demonstrated below:

<u>\$10,001 - \$15,000</u>	<u>XXXX</u>
<u>\$15,001 - \$20,000</u>	<u>XX</u>
<u>\$20,001 - \$25,000</u>	<u>XXXXXX</u>
<u>\$25,001 - \$30,000</u>	<u>XX</u>

On the other hand, if the highest currency transaction or transactions substantially exceed the amount of most of the currency transactions, the bank should not establish the exemption limit at the amount of the highest transaction. Thus, for example, if the highest transaction in the last example had been \$46,000 rather than \$26,000, the bank should not select an amount that is higher than \$25,500 as the exemption limit. This is true even if there were two or more higher transactions (i.e., \$46,000 and \$65,000), as these amounts are substantially greater than the other currency transactions and they do not occur frequently or regularly. The key is to make sure that the amount selected as the exemption limit is commensurate with the customary conduct of the customer's lawful domestic business and that those amounts that are unusual (i.e., higher than the customary transactions) can be easily detected and reported on CTRs.

2. Seasonal and "Monday-Only" Limits

Banks should take note of two special situations in establishing and setting dollar limits for exempted currency transactions. If a bank is dealing with a business account that can be

exempted either unilaterally or specially, and that business is seasonal in nature (e.g., a hotel on the beach), the bank may establish an exemption that covers only the season in which that business has its peak activity, or that sets a high dollar limit for the business' peak season and a lower dollar limit for the other months of the year. Similarly, if an exemptible business proves to have a higher amount of currency transactions on a particular day (i.e., Monday or the day after a holiday, Friday, or the first and fifteenth of the month), than on other days of the week or month (i.e., because of greater business activity on weekends, more currency deposits made through night deposits or automated teller machines, or factory paydays), the bank may establish an exemption that covers only currency transactions posted on that day, or that sets a higher dollar limit for currency transactions on that day and a lower dollar limit for other days of the week.

Thus, for example, if the bank had reviewed at least two months of currency transactions, and saw that the following pattern of transactions in a particular month was representative of the number and dollar amounts in all months reviewed,

April 1 - \$15,000	April 14 - \$17,000
April 4 - \$46,000	April 18 - \$53,000
April 5 - \$ 5,000	April 21 - \$22,000
April 7 - \$19,000	April 22 - \$26,000
April 8 - \$24,000	April 25 - \$50,000
April 11 - \$52,000	April 27 - \$25,000
April 13 - \$21,000	April 29 - \$22,000

the bank should try to determine whether the higher amount of currency transactions reflected activity on the same day of the week every week (i.e., Mondays). If it did, it may be appropriate for the bank to set two exemption limits: (1) a daily exemption limit of \$26,000; and (2) a Monday or the day after a holiday limit of \$53,000.

D. MULTIPLE-ESTABLISHMENT CUSTOMERS

Another special situation of which banks should take note is the process of exempting multiple-establishment customers. For purposes of the regulations, a multiple-establishment customer is a customer that falls into one of the following categories:

1. An operator of the same type of exemptible business at several geographic locations

(e.g., a fast-food restaurant with the same trade name), which has established a single account that all of the locations use to make deposits and withdrawals;

2. An operator of several different types of exemptible businesses at one or more geographic locations which has established a single account that all of the businesses it operates use to make deposits and withdrawals;

3. An operator of the same type of exemptible business at several geographic locations, when each location has its own separate account; and

4. An operator of several different types of exemptible businesses at one or more geographic locations, when each location has its own separate account.

In the first two situations above, which involve only a single account, the bank should establish a single exemption for that account and set a single dollar limit that will apply to all transactions of the type exempted that involve that account.

In the latter two situations described above, which involve separate accounts for each location, the bank should establish a separate exemption for each account and separate dollar limit for each exemption. Because section 103.22(b)(2)(i), (ii), and (iv) of the regulations provides for exemption from an existing account by an established depositor who is a United States resident, the bank should grant a separate unilateral exemption for each individual account, not for each individual customer or business. If one customer has an account for each of its business establishments, the bank should separately consider each individual account (but not the customer) for an exemption. A single exemption should not be granted that covers multiple accounts, even if they have the same taxpayer identification number. If the bank has any questions about this, it should contact the FinCEN at the address listed on page 2. In addition, if the bank decides that it wants to grant an exemption for more than one account, a separate exemption statement should be obtained for each account and a separate dollar limit established.

E. SPECIAL EXEMPTION REQUESTS

Finally, if a bank wishes to exempt deposits into or withdrawals from an account by a customer that does not fall within one or more of the categories of unilaterally exemptible customers, it must apply to the IRS Data Center in Detroit, Michigan, for additional authority to exempt that account under the regulations. See 31 CFR 103.22(e). To apply for such additional authority, the bank must submit its request to:

Chief
Currency and Banking Reports Division
Compliance Review Group
Internal Revenue Service Data Center
P.O. Box 32063
Detroit, Michigan 48232

The request must be accompanied by a statement of the circumstances that the bank believes warrant a special exemption, as well as a

copy of the exemption statement (signed by the customer whose account is proposed for the special exemption) that meets all of the requirements described above for exemption statements for unilaterally exempted accounts. The request should also include a listing of daily amounts of currency deposited and withdrawn during the two-month period reviewed, what percentage of the amount of the deposits or withdrawals is ordinarily in \$100 bills or greater, a suggested dollar limit for the exemption, and the name and telephone number of the bank official whom the IRS may contact for further information concerning the exemption request. The request, if complete, will then be reviewed by the Compliance Review Group of the Data Center. A bank may *not* exempt a customer's account that does not qualify for a unilateral exemption until it has received notice from the IRS that it has granted the bank the additional authority to do so.

III. RECORDKEEPING FOR EXEMPTED CUSTOMERS

After it has granted an exemption involving a particular account of a customer, the bank is responsible for keeping two principal types of records pertaining to that exemption: (1) a centralized exemption list and (2) exemption statements.

A. EXEMPTION LIST

The bank must keep "(a) record of each exemption granted . . . and the reason therefore. . . in a centralized list." 31 CFR 103.22(f). This list, known as the "exemption list" or "exempt list," must include the name, complete street address, type of business, taxpayer identification number, and account number of each customer (whether a business entity or a government agency) whose transactions have been exempted, as well as an indication of whether the exemption covers withdrawals, deposits, or both, and the dollar limit of that exemption. For a special exemption, the bank should include the date the exemption was granted by Treasury or the IRS. For banks that manually revise their exemption lists, Treasury suggests the following format for the required information:

1. ABC Supermarket, Inc.
1234 Dixie Highway
Clear Springs, Florida 33123
Retail Grocery
Account Number: 123456
Deposits Exemption Limit: \$20,000
Withdrawals Exemption Limit: \$25,000
TIN: 59-2345678
2. BCD Citrus Growers
Route 5
Clear Springs, Florida 33123
Orange Grower
Account Number: 1234567
Withdrawals for Payroll Exemption Limit: \$25,000
TIN: 59-1234567
3. Jones Beverage Co.
5432 Main Street
Clear Springs, Florida 33123
Beer Wholesaler
Account Number: 2345678
Deposits Exemption Limit: \$20,000
(Special exemption authority granted 3/21/87)
TIN: 59-3456789

4. Clear Springs National Bank
5420 Main Street
Clear Springs, Florida 33123

The last entry on the sample format reflects the requirement in the Bank Secrecy Act regulations that a bank must also include on its exemption list the names and addresses of all domestic banks with which the bank conducts currency transactions that are exempted from the CTR reporting requirements. See 31 CFR 103.22(f). As stated on page 3 above, transactions between domestic banks are exempted from those reporting requirements. Even if the bank does not have an exemption list, it still must maintain the names and addresses of such domestic banks on a centralized list.

Again, because the bank's transactions with domestic banks are not included within the reporting requirement, the bank does not have to decide whether to exempt those transactions or to set an exemption dollar limit for them. Accordingly, the bank should not include a dollar limit for those domestic banks that it places on the exemption list.

Whenever a bank generates a list of its exempted customers, it must retain either the original or a copy of that list for a period of five years. The retention period for an exemption list begins on the day on which the original of that list was generated, either manually or through the use of an automated system. See 31 CFR 103.38(d). In addition, the regulations require that the exemption lists, like other records required to be retained under the Bank Secrecy Act regulations, "be filed or stored in such a way as to be accessible within a reasonable period of time, taking into consideration the nature of the record, and the amount of time expired since the record was made." 31 CFR 103.38(d).

B. EXEMPTION STATEMENTS

The second principal category of records that a bank must keep concerning an exempted account is the exemption statement that the bank has obtained from a customer whose transactions involving that account have been exempted. After the bank has obtained such a statement, it must retain the original of the statement for a unilateral exemption (or a copy

of the statement for a special exemption) as long as the customer is on the exemption list, and for a period of five years after that cus-

tomers has been removed from the exemption list. 31 CFR 103.22(d).

IV. MONITORING EXEMPTIONS AND DISCOVERY OF IMPROPER EXEMPTIONS

A. MONITORING EXEMPTIONS

Banks should also continue to monitor the exemptions they have granted. A company that was appropriate for an exemption at one time may go out of business and be used as a "front" to conceal the movement of illegally obtained funds. It also may experience some other significant change in its operations, such as expansion of its business activities, that changes the nature of its business or that requires it to move to a new location. In addition, improvements or declines in the company's business may make the originally granted exemption limit inappropriate. Over time, the exemption limit for a particular account and customer may need to be increased or decreased so that it remains at a level that the bank may reasonably conclude does not "exceed amounts commensurate with the customary conduct of the lawful domestic business of that customer." 31 CFR 103.22(d).

For these reasons, Treasury recommends that a bank review its exemption list at least once a year, and preferably once every six months. In keeping with the general policy that banks should know their customers, each review should include a contact with the customer of each exempted account to determine whether there are any changes in the customer's situation (such as the customer's name, address, or nature of business) since the last date of review. If the bank learns, either directly from the customer or through any other means, that any of the information to which that customer attested on the exemption statement has changed, it should obtain a new exemption statement from that customer that correctly reflects the relevant information from that customer. If that customer's account was granted a special exemption, the bank must then send a copy of the new exemption state-

ment to the IRS Data Center in Detroit and request additional authority for continuing that special exemption in light of the new information to which the customer has attested.

If the only item on a customer's exemption statement that a bank determines is no longer appropriate is the exemption dollar limit (an item to which the customer does not attest), the bank may increase or decrease the dollar limit unilaterally if the customer was unilaterally exempted, and need not obtain a new exemption statement from the customer. If the customer's account was the subject of a special exemption, the bank must obtain permission from the IRS Data Center before increasing the dollar limit.

B. DISCOVERY OF IMPROPER EXEMPTIONS

If a bank discovers that it has improperly exempted one or more customer accounts, it should promptly take several actions. The bank should first rescind all of the exemptions that it determines were improperly granted, and immediately remove those exemptions from the exemption list. It should then contact:

Director
FinCEN
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220
(202) 622-0400

The bank should *not* begin to backfile CTRs on the currency transactions it determines were improperly exempted until it obtains guidance from FinCEN. That office may request additional information concerning those exemptions and currency transactions to determine whether the bank should be directed to backfile CTRs on particular customers.

V. CONCLUSION

This set of guidelines should cover most of the issues that banks are likely to encounter in using the exemption provisions of the regulations. For further guidance on the exemption provisions, banks are encouraged to consult with IRS contact representatives at:

Compliance Review Group
IRS Data Center
P.O. Box 32063
Detroit, Michigan 48232
(313) 234-1613

or the FinCEN, Department of the Treasury at:

Director
FinCEN
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220
(202) 622-0400

As new situations arise that, in Treasury's judgment, are likely to be of general interest to the banking community concerning the proper use of exemptions, Treasury will issue specific administrative rulings to deal with those situations, and may also amend these guidelines in appropriate circumstances.

APPENDIX A

The following lists identify various types of business accounts and their general exemption status under section 103.22 of the Bank Secrecy Act regulations or the Department of the Treasury's exemption policy. In the case of accounts of businesses that are unilaterally or specially exemptible, the bank must make sure that the customer meets all of the exemption criteria outlined in section 103.22 and conducts currency transactions exceeding \$10,000 on a regular and frequent basis. These items are discussed elsewhere in this booklet.

The lists are not all inclusive and are not necessarily determinative of whether a particular business account qualifies for an exemption. They are meant to provide guidance to banks and provide examples of the types of business accounts that may be appropriately exempted from the CTR reporting requirements. If a bank has a question regarding the exemptibility of a customer, it should contact the Compliance Review Group at the Internal Revenue Service Data Center in Detroit, Michigan.

EXCEPTED TRANSACTIONS

Currency transactions with the following financial institutions are automatically excepted from the reporting requirements. Thus, banks should not file CTRs on their transactions with these banks. However, banks must maintain the name and address of any domestic bank with which they conduct currency transactions on their exemption list.

The Federal Reserve Bank and Federal Home Loan Bank which provide currency and coin service should not be listed on the exemption list.

- Commercial Bank (Domestic)
- Cooperative Bank (Domestic)
- Credit Union (Domestic)
- Federal Home Loan Bank
- Federal Reserve Bank
- Savings and Loan (Domestic)
- Savings Bank (Domestic)

EXEMPTIBLE BY BANK UNILATERALLY

The following is a list of businesses which a bank generally may unilaterally exempt. In some instances, the businesses listed below may sell both retail and wholesale goods or may sell retail goods and provide a service. Such business accounts may be unilaterally exempted only if more than 50% of the gross revenues of the business are derived from the retail sale of goods and the remainder of their business is eligible for either a unilateral or special exemption. If the remainder of the business is of a type that may not be granted a unilateral or special exemption (e.g., an auto parts store that sells cars) the account of the business may *not* be granted either a unilateral or special exemption.

FinCEN is currently reviewing the exemption status of check cashing services. If it is decided that an exemption will no longer be allowed, notice will be published in the *Federal Register* and banks having received additional authority to grant special exemptions in the past may be notified directly.

Airline/Commercial (Scheduled)

Amusement Park

Appliance Store

Art Supply Store

Auto Parts Store

Bakery

Bar

Book Store

Building Materials (Retail)

Bus Line (Commercial)

Candy Store

Car Wash (Coin Operated)

Check Cashing (Licensed)

Clothing Store

College/State or Local Government

Community College/State or Local Government

Computer Store

Concession/Food (Retail)

Convenience Store

Delicatessen

Department Store

Drug Store

Dry Goods Merchandise (Misc.)

Duty Free Shop

Electric Utility

Electronics Store

Fast Food Restaurant

Film Sales

Fish Market

Florist

Furniture Sales

Garden Center

Gas Company (Utility)

Gas/Oil Retail Sales

General Store

Gift Shop

Government Agency

Grocery Store

Hardware Store

Health Food Store

Hotel

Ice Cream Store

Laundry (Coin Operated)

Law Enforcement Agency

Liquor Store

Lumber Store

Meat Market

Motel

Movie (Stage or Theater)

Musical Instrument Store

Newspapers (Retail Sales)

Paint Store

Petroleum (Home Heating)

Public Transportation

Race Track

Railroad (Passenger Service)

Record Store

Resort/Hotel

Restaurant

School (Public)

Seafood Store

Shoe Store

Sporting Goods Store

Sports Arena
Stationery Store
Supermarket
Telephone Company
Television Video Rentals
Tobacco Store

Toy Store
Uniform Store
U.S. Postal Service
University (State Supported)
Vending Machine Company
Water Company

SPECIAL EXEMPTION—REQUIRES IRS APPROVAL

If the following types of businesses conduct regular and frequent cash transactions, a bank should request additional authority from the IRS to grant a special exemption for the customer's account. IRS is receptive to requests for special exemptions involving service-type businesses.

Auto Repair
 Bakery Distributor
 Beauty Supplies Distributor
 Beverage Distributor
 Boat Tours
 Bowling Alley
 Bowling League
 Bus Line (Chartered)
 Cable TV
 Candy (Wholesale)
 Car Rentals
 Car Wash
 Cheese Distributor
 Church
 College (Private)
 Cosmetics Distributor
 Country Club
 Dairy Distributor
 Delivery Service
 Dry Cleaners
 Electrical Supplies Distributor
 Farming
 Ferry Service
 Film Processor
 Fireworks Distributor
 Flower Distributor
 Food Catering

Food Distributor
 Food Processor
 Food Service
 Frozen Food/Wholesale
 Garage (Parking)
 Gas/Oil Distributor
 Golf Course
 Hospital
 Insurance Company
 Limousine Service
 Liquor Distributor
 Lumber Mill
 Lumber Distributor
 Meat/Wholesale
 Medical Clinic
 Museum (Admission fees, gift shop)
 Nonprofit Organization
 Off Track Betting (NY only)
 Parking Facility
 Petroleum Distributor
 Poultry Distributor
 Private Mail Carrier
 Produce Distributor/Wholesaler
 Professional Sports Teams
 Property Management
 Real Estate Management
 Recreational Camps-Schools
 Religious Organization
 School (Private)
 Shoe Distributor
 Ski Resort
 Taxi Cab Company
 Ticket Agency (Entertainment/sports)
 Tobacco Distributor
 University (Private)
 Warehouse Rental

NOT EXEMPTIBLE

The following types of business accounts may not be exempted unilaterally and will not be granted a special exemption.

- Accountants
- Aircraft Sales
- Attorneys
- Auction House
- Automobile Clubs with Travelers Check Services
- Auto Dealer
- Bank/Foreign
- Bingo
- Boat Sales
- Card Clubs
- Casino
- Charter Ships, Airplanes, Buses
- Check Cashing (Unlicensed)
- Commodity Brokers/Dealers
- Cruise Lines (Ships)
- Currency Exchanger
- Doctors
- Embassy

- Escrow Company
- Farm Equipment Sales
- Foreign Bank
- Foreign Currency Exchange
- Individuals
- Investment Advisor
- Investment Banker
- Boat Dealer
- Mobile Home Sales
- Money Order Company
- Motorcycle Dealer
- Pawn Shops
- Real Estate Broker
- Recreational Vehicle Dealer
- Scrap Metal Dealer
- Securities Brokers/Dealers
- Telegraph Company
- Title Company
- Travelers Check Issuer/Seller/Redeemer
- Truck Dealer
- Unions
- Wire Transmitters of Funds

**APPENDIX B
MODEL CUSTOMER EXEMPTION STATEMENT**

**Part I: Identity of Customer
(To be completed by customer)**

- 1. Legal Name of Customer: _____
- 2. Trade Name of Customer (if different from legal name): _____
- 3. Complete Street Address(es) of Customer (Include street, city, state, and zip code for all street addresses of customer's locations using account to be exempted): _____

- 4. Taxpayer Identification Number of Customer: _____
- 5. Type and Number of Account To Be Exempted: _____

- 6. Nature of Business (Please include complete description): _____

- 7. The monies deposited into the account described in No. 5 are funds generated solely from the business described in No. 6.

Yes No

The information contained above is true and correct to the best of my knowledge and belief. I understand that this information will be read and relied upon by the Government.

Signature of Authorized Official

Date Signed

Name of Authorized Official
(Please type or print)

Title/Position of Official

**Part II: Information on Customer and Account to Be Exempted
(To be completed by bank only)**

8. Period of Account Activity Reviewed (Should include at least two consecutive months of transactions, as set forth in bank's records, that are representative of the customary conduct of the lawful domestic business of customer): _____

9. Highest Cash Transactions During Period Reviewed (Complete all that apply to account to be exempted): Deposits: _____ Withdrawals: _____ Withdrawals for Payroll Purposes: _____
10. Lowest Cash Transactions During Period Reviewed (Complete all that apply to account to be exempted): Deposits: _____ Withdrawals: _____ Withdrawals for Payroll Purposes: _____
11. Additional Information on Account Activity: _____

12. Reason(s) Customer Qualified for Exemption (Should include detailed description of type of business and relation of cash transactions to that business): _____

13. (For special exemption only) Date on Which Treasury/IRS Granted Additional Authority to Exempt: _____

Based upon an independent verification of the activity of account _____ (using available bank records pertaining to that account), and a review of the information to which the customer has certified in Part I above, I have determined that the following types of currency transactions involving account _____ are eligible for exemption from the requirements of the Bank Secrecy Act regulations pertaining to Currency Transaction Reports:

(Check one or more boxes, and fill in amounts, as appropriate)

- Daily deposits not exceeding \$ _____
- Daily withdrawals not exceeding \$ _____
- Daily withdrawals for payroll purposes not exceeding \$ _____
- Other exemptible transactions (e.g., government agency, Monday-only deposits, seasonal) not exceeding \$ _____ (Please specify type of customer and transactions exempted) _____

The dollar limits of these types of transactions do not exceed amounts commensurate with the customary conduct of the lawful domestic business of the customer.

Signature of Bank Official	Date of Signature
Name of Bank Official (Please type or print)	Title/Position of Bank Official

Part III: Identification of Exempting Bank
(To be completed by bank only)

- 14. Name of Bank: _____
- 15. Complete Street Address of Bank (Include street, city, state, and zip code): _____

- 16. Employer Identification Number of Bank: _____
- 17. MICR Number of Bank: _____
- 18. Supervisory Agency (check one):
 OCC FDIC FRS FHLBB NCUA
 Other (specify): _____

U.S. Government Printing Office: 1988-202-014/94503

FEDERAL REGISTER
Vol. 61, No. 80

Rules and Regulations

DEPARTMENT OF THE
TREASURY
Financial Crimes Enforcement
Network (FinCEN)

31 CFR Part 103

RIN 1506-AA10; 1506-AA11

Amendment to the Bank Secrecy Act
Regulations—Exemptions From the
Requirement To Report Transactions
in Currency

Part III

61 FR 18204

DATE: Wednesday, April 24, 1996

ACTION: Interim rule with request for
comments.

SUMMARY: This document contains an interim rule eliminating the requirement to report transactions in currency in excess of \$10,000, between depository institutions and certain classes of “exempt persons” defined in the rule. The interim rule applies to currency transactions occurring after April 30, 1996. It is adopted as a major step in reducing the burden imposed upon financial institutions by the Bank Secrecy Act and increasing the cost-effectiveness of the counter-money laundering policies of the Department of the Treasury. The interim rule is part of a process to achieve the reduction set by the Money Laundering Suppression Act of 1994 in the number of currency transaction reports filed annually by depository institutions.

DATES: *Effective date.* The interim rule is effective May 1, 1996.

Comment deadline. Comments must be received by August 1, 1996.

Applicability. This interim rule applies to transactions in currency occurring after April 30, 1996.

ADDRESSES: Written comments should be submitted to: Office of Regulatory Policy and Enforcement, Financial Crimes Enforcement Network, Department of the Treasury, 2070 Chain Bridge Road, Vienna, Virginia 22182-2536, Attention: Interim CTR Exemption Rule.

Submission of comments. An original and four copies of any comment must be submitted. All comments will be available for public inspection and copying, and no material in any such comments, including the name of any person submitting comments, will be recognized as confidential. Accordingly, material not intended to be disclosed to the public should not be submitted.

Inspection of comments. Comments may be inspected at the Department of the Treasury between 10:00 a.m. and 4:00 p.m., in the Financial Crimes Enforcement Network (“FinCEN”) reading room, on the third floor of the Treasury Annex, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220. Persons wishing to inspect the comments submitted should request an appointment by telephoning (202) 622-0400.

FOR FURTHER INFORMATION CONTACT: Pamela Johnson, Assistant Director, Office of Financial Institutions Policy, FinCEN, at (703) 905-3920; Charles Klingman, Office of Financial Institutions Policy, FinCEN, at (703) 905-3920; Stephen R. Kroll, Legal Counsel, FinCEN, at (703) 905-3590; or Cynthia A. Langwiser, Office of Legal Counsel, FinCEN, at (703) 905-3590.

SUPPLEMENTARY INFORMATION

I. Introduction

This document adds, as an interim rule, a new paragraph (h) (the “Interim Rule”) to 31 CFR 103.22. The Interim Rule exempts, from the requirement for the reporting of transactions in currency in excess of \$10,000, transactions occurring after April 30, 1996, between depository institutions¹ and certain classes of exempt persons defined in the Interim Rule. The Interim Rule is adopted to implement the terms of 31 U.S.C. 5313(d) (and related provisions of 31 U.S.C. 5313 (f) and (g)), which were added to

¹ As explained below, the text of the rule itself uses the term “bank,” which as defined in 31 CFR 103.11 (c) includes both banks and other classes of depository institutions.

the Bank Secrecy Act by section 402(a) of the Money Laundering Suppression Act of 1994 (the “Money Laundering Suppression Act”), Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103-325 (September 23, 1994).

II. Background

A. Statutory Provisions

The Bank Secrecy Act, Titles I and II of Pub. L. 91-508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5330, authorizes the Secretary of the Treasury, *inter alia*, to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, and to implement counter-money laundering programs and compliance procedures. Regulations implementing Title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311-5330) appear at 31 CFR Part 103. The authority of the Secretary to administer Title II of the Bank Secrecy Act has been delegated to the Director of FinCEN.

The reporting by financial institutions of transactions in currency in excess of \$10,000 has long been a major component of the Department of the Treasury’s implementation of the Bank Secrecy Act. The reporting requirement is imposed by 31 CFR 103.22, a rule issued under the broad authority granted to the Secretary of the Treasury by 31 U.S.C. 5313(a) to require reports of domestic coin and currency transactions.

Four new provisions (31 U.S.C. 5313 (d) through (g)) concerning exemptions were added to 31 U.S.C. 5313 by the Money Laundering Suppression Act. Subsection (d)(1) provides that the Secretary of the Treasury shall exempt a depository institution from the requirement to report currency transactions with respect to transactions between the depository institution and the following categories of entities:

(A) Another depository institution.

(B) A department or agency of the United States, any State, or any political subdivision of any State.

(C) Any entity established under the laws of the United States, any State, or any political subdivision of any State, or under an interstate compact between 2 or more States, which exercises governmental authority on behalf of the

United States or any such State or political subdivision.

(D) Any business or category of business the reports on which have little or no value for law enforcement purposes.

Subsection (d)(2) states that:

The Secretary of the Treasury shall publish in the Federal Register at such times as the Secretary determines to be appropriate (but not less frequently than once each year) a list of all of the entities whose transactions with a depository institution are exempt under this subsection from the [currency transaction] reporting requirements.

The companion provisions of 31 U.S.C. 5313(e) authorize the Secretary to permit a depository institution to grant additional, discretionary, exemptions from currency transaction reporting. Subsection (f) places limits on the liability of a depository institution in connection with a transaction that has been exempted from reporting under either subsection (d) or subsection (e) and provides for the coordination of any exemption with other Bank Secrecy Act provisions, especially those relating to the reporting of suspicious transactions. New subsection (g) defines “depository institution” for purposes of the new exemption provisions.

Section 402(b) of the Money Laundering Suppression Act states simply that in administering the new statutory exemption procedures:

the Secretary of the Treasury shall seek to reduce, within a reasonable period of time, the number of reports required to be filed in the aggregate by depository institutions pursuant to section 5313(a) of title 31 by at least 30 percent of the number filed during the year preceding [September 23, 1994.] the date of enactment of [the Money Laundering Suppression Act].

During the period September 24, 1993 through September 23, 1994, approximately 11.2 million currency transaction reports were filed. Of that number, approximately 10.9 million reports were filed by depository institutions. Thus the statute contemplates a reduction of at least approximately 3.3 million filings per annum.

B. Shortcomings of the Present Exemption System

The enactment of 31 U.S.C. 5313 (d) through (g) reflects a Congressional intention to “reform the

procedures for exempting transactions between depository institutions and their customers.” See H.R. Rep. 103-652, 103d Cong., 2d Sess. 186 (August 2, 1994). The administrative exemption procedures at which the statutory changes are directed are found in 31 CFR 103.22(b)(2) and (c) through (f); those procedures have not succeeded in eliminating routine currency transactions by businesses from the operation of the currency transaction reporting requirement.

Several reasons have been given for this lack of success. The first is the retention by banks of liability for making incorrect exemption determinations. The risk of potential liability is made more serious by the complexity of the administrative exemption procedures (which require banks, for example, to assign dollar limits to each exemption based on the amounts of currency projected to be needed for the customary conduct of the exempt customer’s lawful business). Finally, advances in technology have made it less costly for some banks to report all currency transactions rather than to incur the administrative costs (and risks) of exempting customers and then administering the terms of particular exemptions properly.

The problems created by the administrative exemption system include that system’s failure to provide the Treasury with information needed for thoughtful administration of the Bank Secrecy Act. Although banks are required to maintain a centralized list of exempt customers and to make that list available upon request, see 31 CFR 103.22 (f) and (g), there is no way short of a bank-by-bank request for lists (with the time and cost such a request would entail both for banks and government) for Treasury to learn the extent to which routine transactions are effectively screened out of the system or (for that matter) the extent to which exemptions have been granted in situations in which they are not justified.

In crafting the 1994 statutory provisions relating to mandatory and discretionary exemptions, Congress sought to alter the burden of liability and uncertainty that the administrative exemption system created. The statutory provisions embraced several categories of transactions that were either already partially exempt or plainly eligible for exemption under the administrative exemption system.² In addition, Con-

gress authorized the Treasury to exempt under the mandatory rules, as indicated above, “[a]ny business or category of business the reports on which have little or no value for law enforcement purposes.” 31 U.S.C. 5313 (d)(1)(D).

C. Objectives of the Interim Rule

As indicated above, the Interim Rule is the first step in the use of section 402 of the Money Laundering Suppression Act to transform the Bank Secrecy Act provisions relating to currency transaction reporting. That transformation has four objectives.

The first is to reduce the burden of currency transaction reporting. That reduction comes in part through the issuance of a blanket regulatory exemption covering transactions in currency between one depository institution and another within the United States and between depository institutions and government departments and agencies at all levels. But at least an equal (and likely a significantly greater) part of the reduction comes from the decision to treat as being of little interest to law enforcement transactions in currency between depository institutions and corporations whose common stock is listed on certain national stock exchanges.

That decision reflects a second, related objective of the Interim Rule: to begin the process of limiting currency transaction reports to transactions for which the benefits of the reporting requirement (both providing usable information to enforcement officials and creating a deterrent against attempts to misuse the financial system) justify the costs of supplying the information to the Treasury. It is unlikely that reports of routine currency transactions for a company of sufficient size to be traded on a national securities exchange can be of significant use, by themselves, to law enforcement, regulatory, or tax authorities.

The third objective is to focus the Bank Secrecy Act reporting system on transactions that signal matters of clear interest to law enforcement and regulatory authorities. In publishing the final rule relating to the reporting of

2. Thus, as noted below, transactions in currency between domestic banks are already exempt from reporting, see 31 CFR 103.22(b)(1)(ii), and “[d]eposits or withdrawals,

exchanges of currency or other payments and transfers by local or state governments, or the United States or any of its agencies or instrumentalities” are one of the categories of transactions specifically described as eligible for exemption by banks. See 31 CFR 103.22(b)(2)(iii).

suspicious transactions under the Bank Secrecy Act, Treasury stated “its judgment that reporting of suspicious transactions in a timely fashion is a key component of the flexible and cost-efficient compliance system required to prevent the use of the nation’s financial system for illegal purposes.” See 61 FR 4326, 4327 (February 5, 1996). The Interim Rule re-enforces the central importance of suspicious transaction reporting to Treasury’s counter-money laundering program; expanded suspicious transaction reporting forms a basis for steps to reduce sharply the extent to which routine currency transactions by ongoing businesses are required to be reported. Currency transactions, like non-currency transactions, are required to be reported under the terms of new 31 CFR 103.21, if they constitute suspicious transactions as defined in that section; nothing in the Interim Rule reduces or alters the obligations imposed by 31 CFR 103.21. See 31 U.S.C. 5313(f)(2)(B).

The relationship between required suspicious transaction reporting and expanded and simplified exemptions from routine currency transaction reporting is a strong one; each rule forms an integral part of the policy of the other. The substitution of suspicious transaction reporting for routine reporting of all currency transactions by exempt persons in effect defines what a routine transaction for an exempt person is. That is, a routine currency transaction, in the case of an exempt person, is a transaction that does not trigger the suspicious transaction reporting requirements, because the transaction does not, for example, give the bank a reason to suspect money laundering, a violation of a reporting requirement, or the absence of a business purpose. See 31 CFR 103.21(a)(2)(i)–(iii).

The fourth objective of the Interim Rule is to create an exemption system that works. Thus choices have been made with an eye to achieving ease of administration and comprehensibility—the very factors whose absence hindered the prior administrative exemption process.

FinCEN has attempted to craft a rule that will be easily understood by the banking professionals who must apply it. That meant painting with a broad brush; any general exemption rule will almost certainly include within its terms some results that are not optimal when viewed in isolation.

FinCEN understands that the changeover to the new system will require an initial period of effort by both the Treasury and banking

institutions; it is impossible to reduce the volume of currency transaction reports to the extent that the Interim Rule tries to do without creating some small degree of temporary inconvenience as the terms of the system change. FinCEN believes, however, that the transition period will be relatively short and that the new greatly streamlined exemption procedures, once in place, will be self-sustaining and will produce a leaner, less burdensome, and more cost effective exemption system than now exists.

FinCEN is eager to improve the terms of the rule as necessary to eliminate temporary incongruities. Comments on ways in which the rule could be improved in this regard are specifically invited.

D. Additional Relief Under Study

The Interim Rule is the first result of FinCEN’s work to put in place the new exemption system contemplated by the provisions of 31 U.S.C. 5313 (d) through (g). The goal of FinCEN’s work in this area, like the Congress’ goal in shaping the Money Laundering Suppression Act provisions on exemptions, is to reduce the cost of Bank Secrecy Act compliance and to further a fundamental restructuring of the Bank Secrecy Act. The restructuring emphasizes cost-effective collection of only that information that is likely to benefit law enforcement and regulatory authorities.

In solving the issues posed by implementation of the new statutory exemption rules, FinCEN has consulted regularly with banking industry representatives. For example, under the auspices of Bank Secrecy Act Advisory Group it convened a working session of bank officials to discuss possible structures for the new exemption system and the constraints that bank operating procedures posed for broad-scale relief from unnecessary currency transaction reporting.

In this connection, FinCEN is aware that the Interim Rule and any final rule resulting therefrom may well affect the operation of large banks in urban areas more than the operation of smaller community-based institutions, if only because larger companies tend to do business with larger banks and because the Interim Rule does not simplify the exemption system with respect to transactions by privately held companies, large and small, whose banking history

and business would also justify a simplified exemption system.

Accordingly, FinCEN is working now on a notice of proposed rulemaking implementing the discretionary exemption authority contained in 31 U.S.C. 5313(e) and will at the appropriate time consult with the banking community in shaping proposals to implement that authority. Meanwhile, banks will still be able to maintain any exemptions properly granted under the current administrative system. Commenters on this Interim Rule are invited to include in their comments any suggestions on the projected second stage of the exemption effort.

III. Specific Provisions

A. 103.22(a). Reports of Currency Transactions

A new sentence is added following the first sentence of paragraph (a) of 31 CFR 103.22 to provide a cross-reference in that paragraph to the provisions of new paragraph (h) added by the Interim Rule.

B. 103.22(h)(1). Currency Transactions of Exempt Persons With Banks Occurring After April 30, 1996

Paragraph (h)(1) states the general effect of the Interim Rule. That is, simply and directly: no currency transaction report is required to be filed by a bank for a transaction in currency by an exempt person occurring after April 30, 1996.

The Interim Rule uses the term “bank” rather than “depository institution” to define the class of financial institutions to which the Interim Rule applies. Although 31 U.S.C. 5313(d) speaks of exemptions for transactions with “depository institutions” (as the latter term is defined in 31 U.S.C. 5313(g)), FinCEN believes that the broad definition of bank contained in 31 CFR 301.11(c) includes all of the categories of institutions included in the statutory “depository institution” definition; because the term “bank” is familiar to bank officials who work with the Bank Secrecy Act, substitution of a new term whose effect is the same does not appear either necessary or advisable.

The Interim Rule applies only to transactions between exempt persons and banks, to reflect

the terms of 31 U.S.C. 5313(d); it does not apply to transactions between exempt persons and financial institutions other than banks. Comments are invited about whether the rule should extend to transactions with such other classes of financial institutions.

Although 31 U.S.C. 5313(d) speaks of “mandatory” exemptions, the Interim Rule does not affirmatively prohibit banks from continuing to report routine currency transactions with exempt persons. Treasury believes that the incentives created by the Interim Rule are, as Congress intended them to be, sufficiently great to lead banks to take advantage of the new exemption system to a far greater extent than they took advantage of the prior administrative exemption system.

The Interim Rule, however, is not simply a regulatory relief measure. As indicated above, it is part of a fundamental restructuring of the Bank Secrecy Act’s administration. Treasury hopes and expects that banks will be willing to undertake the one-time effort necessary to make the new, substantially different system work.

C. 103.22(h)(2). Exempt Person

Under the Interim Rule, the crucial exemption determinant is whether a particular entity is an “exempt person.” That term is defined in new paragraph (h)(2).

The first three categories of exempt persons specified in paragraph (h)(2) are those to whom exemption is required to be granted by 31 U.S.C. 5313(d)(1)(A)–(C).³

Banks. The first category of exempt person is banks themselves, with the result that transactions between banks will not require reporting. In most cases, no reporting is required at present for such transactions; 31 CFR 103.22(b)(1)(ii) states flatly that the currency transaction reporting requirement does not “require reports of transactions between domestic banks.” The definition is limited to banking operations and transactions within the United States. Thus a transfer of currency by a bank inside the United States to a bank outside the United States is not exempt under the Interim Rule.

3. The language of 31 U.S.C. 5313(d)(1)(A)–(C) is quoted in section IIA of this Supplementary Information section, above.

Departments and Agencies of the United States and of States and Their Political Subdivisions

The second category of exempt person includes departments and agencies of the United States, of any state, and of any political subdivision of any state. The definition of “United States” used in 31 CFR 103.11 includes not only the states but also the District of Columbia and the various territories and insular possessions of the United States. See 31 CFR 103.11(nn); as of August 1, 1996, the definition will also include the Indian lands. See 61 FR 7054, 7056 (February 23, 1996). Thus departments and agencies of the governments of these areas are also classified as exempt persons under the definition.

Entities Exercising Governmental Authority

The third category of exempt person includes any entity established under the laws of the United States,⁴ of any state, or of any political subdivision of any state, or under an interstate compact between two or more states, that exercises governmental authority on behalf of the United States or any such state or political subdivision. Operating rules for making determinations about the governmental entities are included in paragraph (h)(4), discussed below.

Listed Corporations

The fourth category of person subject to mandatory exemption under 31 U.S.C. 5313(d) is “any business or category of business the reports on which have little or no value for law enforcement purposes.” Treasury is making use of that provision to treat as an exempt person any corporation whose common stock (i) is listed on the New York Stock Exchange or the American Stock Exchange (but not including stock listed on the Emerging Company Marketplace of the American Stock Exchange), or (ii) has been designated as a Nasdaq National Market Security listed on the Nasdaq Stock Market (but not including stock listed under the separate “Nasdaq Small-Cap Issues” category). For convenience, this class of exempt persons is referred to in this discussion as “listed corporations.”

The “listed corporation” formulation has been adopted for several reasons. First, Treasury believes that the formulation is a convenient and accurate way of describing many, if not most, large-scale enterprises that make extensive routine use of currency in their normal business operations. Second, the list of corporations described in the formulation is readily available and is published in general circulation newspapers each morning. Finally, the scale of enterprises listed on the nation’s largest securities exchanges, and the variety of internal and external controls to which they are subject—whether as a matter of market discipline or government regulation—make their use for the sort of money laundering or tax evasion marked by anomalous transactions in currency, or that could be detected by a simple examination of currency transaction reports, sufficiently unlikely that the benefits of a uniform formulation far exceed the apparent risks of such a formulation. This is especially true because of the continuing applicability of the suspicious transaction reporting rules to all (non-currency and currency) transactions between listed corporations and banks.

The determination whether a company is a corporation for purposes of the Interim Rule depends solely upon the formal manner of its organization; if the company has a corporate charter, it is a corporation, and if it does not, it is not a corporation, for purposes of the Interim Rule. The sort of “corporate equivalence” analysis required, for example, for certain purposes to determine an entity’s status under the Internal Revenue Code is neither called for nor permitted by the Interim Rule.⁵

At present the Interim Rule applies only to corporations, even though Treasury understands that the equity interests of some partnerships and business trusts are also listed on the named securities exchanges. Comments are invited as to whether the definition of exempt person should be extended to all persons whose equity interests are so listed.

5. Again, there may be a limited group of entities, listed on the national securities exchanges but organized abroad, for which such a distinction raises issues of interpretation that cannot be dealt with effectively in the Interim Rule. Guidance is requested on whether such issues exist and, if so, how they should be resolved.

4. Again, the broad definition of “United States” applies.

Consolidated Subsidiaries of Listed Corporations

Many, if not most, listed corporations include groups of subsidiary operating corporations whose treatment under the Interim Rule raises significant issues. Such subsidiaries are not named in stock exchange listings, but the policy of the statute and Interim Rule cannot be effectively implemented without the inclusion of such subsidiaries in the exempt person category.

That fact raises an issue of what might be called the “burden” of reducing regulatory burden. Many definitions of parent-subsidiary relationship are quite technical and of importance only to legal, accounting, and investment specialists; even definitions phrased only in terms of stock ownership often devolve into questions of direct or indirect stock ownership that can be extremely difficult to resolve.

In that context, mindful of the need to provide as simple a formulation as possible, the Interim Rule treats as a subsidiary any corporation that files a consolidated income tax return with a listed corporation. The choice of this standard was not any easy one; its chief rationale is that the fact of consolidation (as opposed to, say, eligibility for consolidation) is relatively easy to determine by asking corporate customers (and by asking corporate officials to ask their tax or accounting departments if necessary).

Franchisees of listed corporations (or of their subsidiaries) are not included within the definition of exempt person, unless such franchisees are independently exempt as listed corporations or listed corporation subsidiaries. A local corporation that holds a McDonald’s franchise, for example, is not an exempt person simply because McDonald’s Corporation is a listed corporation; a McDonald’s outlet owned by McDonald’s Corporation directly, on the other hand, would be an exempt person, because McDonald’s Corporation’s common stock is listed on the New York Stock Exchange.

Still, the definition is not optimal. It introduces a note of complexity into the Interim Rule, and Internal Revenue Service (“IRS”) statistics indicate that at best only 70 to 80 percent of the companies eligible to file consolidated income tax returns with their parent companies actually do so. The success of the Interim Rule in reducing the volume of currency transaction reports will depend in part upon the effectiveness and acceptance of the definition of subsidiary company, and comments are encour-

aged about the appropriateness of the definition. FinCEN would especially welcome ideas about other formulations, based upon sound banking practice, that bank employees would find easy to apply and that would accomplish the goals of the Interim Rule more effectively than a definition based upon consolidation for income tax filing purposes.

D. 103.22(h)(3). Designation of Exempt Persons

The Interim Rule imposes one condition on a bank’s exemption of currency transactions of a customer who satisfies the definition of exempt person. That condition is that a single form be filed designating the exempt person and the bank that recognizes it as such. The designation is to be made by a bank by filing for each exempt person a single Internal Revenue Service Form 4789 (the form now used by banks and others to report a transaction in currency) that is marked (in the Form’s line 36) to indicate its purpose and that provides identifying information about the exempt person and bank involved.

The designation requirement must be satisfied, for existing customers, on or before August 15, 1996. The requirement is a condition subsequent; that is, a bank may recognize a customer as an exempt person on April 30, and stop filing currency transaction reports as permitted by the Interim Rule, even though it does not satisfy the designation requirement for the customer until August 15, 1996.

The designation of new customers as exempt persons must be made no later than 30 days following the first transaction in currency in excess of \$10,000 between a bank and the new customer. (Because persons may become new customers during the period April 30–August 15, 1996, a new customer to whom the 30 day designation rule applies is, technically, a customer who satisfies the exempt person definition and who becomes a customer, or who seeks to engage in its first transaction in currency, after July 15, 1996.)

Under the Interim Rule, each bank that deals with an exempt person must satisfy the designation requirement. FinCEN hopes to be able to use the results of the designation filings to compile a list of exempt persons that can itself be published in the Federal Register, as contemplated by 31 U.S.C. 5313(d)(2), in place of the

shorter descriptive notice of exempt persons that is published contemporaneously with the publication of the Interim Rule. The designation filings will also be used to review the effectiveness of the Interim Rule (and of any final rule that is derived from it) and the extent to which its terms are understood and used by banks.

E. 103.22(h)(4). Operating Rules for Applying Definition of Exempt Person

The Interim Rule contains several provisions that are designed to assist banks in applying the definition of “exempt person.”

1. General Rule

As indicated above, every effort has been made to craft a rule that is as simple to understand and to administer as its broad objective will permit. Application of the Interim Rule requires instead that banks simply make one or more determinations about the status of particular customers. The rule does not specify detailed procedures for making or documenting the determinations required. (Indeed, one defect of the administrative exemption system was its need for detailed procedural steps for authorizing exemptions. See 31 CFR 103.22(d).) Instead, paragraph (h)(4)(i) explains that banks are expected to perform the same degree of due diligence in determining whether a customer is an exempt person (and documenting that determination) that a reasonable and prudent bank would perform in the conduct of its own business in avoiding losses from fraud or misstatement. In other words, FinCEN’s objective is to leave it to bankers, who have already designed business procedures and protocols to deal with similar problems, to adapt their present procedures to achieve the results sought by the Interim Rule.

An assessment of compliance with the terms of the Interim Rule will focus not on whether a bank necessarily makes every judgment perfectly, but on whether it takes the steps a reasonable and prudent banker would take to create systems to apply the Interim Rule’s terms. Such an approach is a corollary to the limitations on liability set by 31 U.S.C. 5318(f)(1) and repeated in paragraph (h)(6) of the Interim Rule; under the liability limitations a bank remains subject to penalties if, inter alia, it has a reason to believe that a particular customer or trans-

action does not meet the criteria established for the granting of an exemption.

2. Government Status

Paragraph (h)(4)(ii) permits a bank to determine the status of a customer as a government department, agency, or instrumentality based on its name or community knowledge, much like the so-called “eyeball test,” cf. Treas. Reg. 1.6049-4(c)(1)(ii), for the determination of exempt recipient status for the purposes of information reporting and withholding with respect to interest payments under applicable provisions of the Internal Revenue Code.

The determination whether an entity exercises “governmental authority” is unfortunately not amenable to such a simple test, and the second sentence of paragraph (h)(4)(ii) states a general definition of governmental authority for use by banks.

3. Status as Listed Corporation

Paragraph (h)(4)(iii) permits a bank to rely on any New York, American, or Nasdaq Stock Market listing published in a newspaper of general circulation. Such listings are easily identified. For example, in the Wall Street Journal, which is published and distributed nationally, the listings are entitled, respectively, “NEW YORK STOCK EXCHANGE COMPOSITE TRANSACTIONS,” “AMERICAN STOCK EXCHANGE COMPOSITE TRANSACTIONS,” AND “NASDAQ NATIONAL MARKET ISSUES.” Because such listings often make use of the trading symbols (abbreviated company names) for each stock, banks may also rely on any commonly accepted or published stock symbol guide in reviewing the newspaper listings to determine if the listings include their customers.

4. Consolidated Return Status

The treatment of a corporation as an exempt person because it is included in the consolidated income tax return of a listed corporation presents one of the more difficult issues of administration in the Interim Rule. The corporations included on any consolidated return are required to be shown on Internal Revenue Service Form 851 (Affiliation Schedule) filed with the

return; a bank may rely upon any reasonably authenticated photocopy of Form 851 (or the equivalent thereof for the appropriate tax year) in determining the status of a particular corporation, or it may rely upon any other reasonably authenticated information (for example, an officer's certificate) relating to a corporation's filing status.

F. 103.22(h)(5). Limitation on Exemption

The exemption for transactions by an exempt person applies only with respect to transactions involving that person's own funds. The exemption does not apply to situations in which an exempt person is engaging in a transaction as an agent on behalf of another, beneficial owner of currency. (If the principal for whom the agent is acting is itself an exempt person, the exempt status of the principal is what causes the transaction to be exempt.) In other words, an exempt person cannot lend its status, for a fee or otherwise, to another person's transactions.

G. 103.22(h)(6). Effect of Exemption; Limitation on Liability

The designation requirement applies equally to exempt persons who have previously been the subject of bank-initiated exemptions under the administrative exemption system as it does to other customers.

Once a bank has complied with the terms of the Interim Rule, it is generally protected, by 31 U.S.C. 5313(f) and paragraph (h)(6) of the Interim Rule, from any penalty for failure to file a currency transaction report with respect to a currency transaction by an exempt person. The protection does not apply if the bank knowingly files false or incomplete information relating to the exempt person (for example on an designation filing) or with respect to the transaction (for example on a suspicious activity report). The protection also does not apply if the bank has reason to believe at the time the exemption is granted that the customer does not satisfy the definition of exempt person or if the transaction is not a transaction of the exempt person.

It is anticipated that the Interim Rule will supersede the administrative exemption system with respect to categories of exempt persons named in the Interim Rule, 60 days after a final rule based on the Interim Rule is published. At

that time, transactions in currency with exempt persons after April 30, 1996 will be exempt from reporting by banks only to the extent that the new terms are satisfied.

H. 103.22(h)(7). Obligation To File Suspicious Activity Reports, etc.

The provisions of the Interim Rule create an exemption only with respect to the currency transaction reporting requirement. The Interim Rule does not create any exemption, and in fact has no effect of any kind, on the requirement that banks file suspicious activity reports with respect to transactions, including currency and non-currency transactions, that satisfy the requirements of the rules of FinCEN and the federal bank supervisory agencies relating to suspicious activity reporting.⁶ (Indeed, as indicated above, the reduction in currency transaction report volume reflects in part Treasury policy to rely to the greatest extent possible on reports of truly suspicious activity.)

For example, multiple exchanges of small denominations of currency into large denominations of currency or currency transactions that are not (or whose amounts are not) commensurate with the stated business or other activity of the exempt person conducting the transaction, or on whose behalf the transaction is conducted, may indicate the need to file suspicious activity reports with respect to transactions in currency. Similarly a sudden need for currency by a business that never before had such a need can form a basis for the determination that a suspicious activity report is due. In all cases, whether such a report is required is governed by the rules of 31 CFR 103.21, rules on whose application the Interim Rule has no effect.

I. 103.22(h)(8). Revocation

The Interim Rule makes clear that the status of an exempt person as such may be revoked at any time by the Treasury Department. Revocation

6. See 61 FR 4326, 4332, 4338 (February 5, 1996) (FinCEN, Office of the Comptroller of the Currency and Federal Reserve Board); 61 FR 6095, 6100 (February 16, 1996) (Federal Deposit Insurance Corporation and Office of Thrift Supervision); and 61 FR 11526 (March 21, 1996) (National Credit Union Administration).

will be prospective in all cases except those to which the protections of liability conferred by 31 U.S.C. 5313(f) and 31 CFR 103.22(h)(6) do not apply.

IV. Regulatory Matters

A. Executive Order 12866

The Department of the Treasury has determined that this interim rule is not a significant regulatory action under Executive Order 12866.

B. Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995 (“Unfunded Mandates Act”), Pub. L. 104-4 (March 22, 1995), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that it is not required to prepare a written statement under section 202 and has concluded that on balance this interim rule provides the most cost-effective and least burdensome alternative to achieve the objectives of the rule.

C. Administrative Procedure Act

Because the Interim Rule implements the statute and grants significant relief from existing regulatory requirements, it is found to be impracticable to comply with notice and public procedure under 5 U.S.C. 553(b). Because the Interim Rule grants exemptions to current requirements, it may be made effective before 30 days have passed after its publication date. See 5 U.S.C. 553(d).

D. Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flex-

ibility analysis (5 U.S.C. 604) are not applicable to this Interim Rule because the agency was not required to publish a notice of proposed rule-making under 5 U.S.C. 553 or any other law.

E. Paperwork Reduction Act

This Interim Rule is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). By expanding the applicable exemptions from an information collection that has been reviewed and approved by the Office of Management and Budget (OMB) under control number 1505-0063, the Interim Rule significantly reduces the existing burden of information collection under 31 CFR 103.22. Thus, although the Interim Rule advances the purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, et seq., and its implementing regulations, 5 CFR Part 1320, the Paperwork Reduction Act does not require FinCEN to follow any particular procedures in connection with the promulgation of the Interim Rule.

F. Compliance With 5 U.S.C. 801

Prior to the date of publication of this document in the Federal Register, FinCEN will have submitted to each House of the Congress and to the Comptroller General the information required to be submitted or made available with respect to the Interim Rule by the provisions of 5 U.S.C. 801 (a)(1)(A) and (a)(1)(B).

List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Banks, banking, Currency, Foreign Banking, Foreign currencies, Gambling, Investigations, Law enforcement, Penalties, Reporting and record-keeping requirements, Securities, Taxes.

Amendment

For the reasons set forth above in the preamble, 31 CFR Part 103 is amended as set forth below:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for Part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5330.

2. Section 103.22 is amended by adding a new sentence immediately following the first sentence in paragraph (a)(1) and by adding a new paragraph (h) to read as follows:

§ 103.22—Reports of currency transactions.

(a)(1) * * * Transactions in currency by exempt persons with banks occurring after April 30, 1996, are not subject to this requirement to the extent provided in paragraph (h) of this section. * * *

* * * * *

(h) No filing required by banks for transactions by exempt persons occurring after April 30, 1996.

(1) Currency transactions of exempt persons with banks occurring after April 30, 1996. Notwithstanding the provisions of paragraph (a)(1) of this section, no bank is required to file a report otherwise required by paragraph (a)(1) of this section, with respect to any transaction in currency between an exempt person and a bank that is conducted after April 30, 1996.

(2) Exempt person. For purposes of this section, an exempt person is:

(i) A bank, to the extent of such bank's domestic operations;

(ii) A department or agency of the United States, of any state, or of any political subdivision of any state;

(iii) Any entity established under the laws of the United States, of any state, or of any political subdivision of any state, or under an interstate compact between two or more states, that exercises governmental authority on behalf of the United States or any such state or political subdivision;

(iv) Any corporation whose common stock is listed on the New York Stock Exchange or the American Stock Exchange (except stock listed on the Emerging Company Marketplace of the American Stock Exchange) or whose common

stock has been designated as a Nasdaq National Market Security listed on the Nasdaq Stock Market (except stock listed under the separate "Nasdaq Small-Cap Issues" heading); and

(v) Any subsidiary of any corporation described in paragraph (h)(2)(iv) of this section whose federal income tax return is filed as part of a consolidated federal income tax return with such corporation, pursuant to section 1501 of the Internal Revenue Code and the regulations promulgated thereunder, for the calendar year 1995 or for its last fiscal year ending before April 15, 1996.

(3) Designation of exempt persons.

(i) A bank must designate each exempt person with whom it engages in transactions in currency, on or before the later of August 15, 1996, and the date 30 days following the first transaction in currency between such bank and such exempt person that occurs after April 30, 1996.

(ii) Designation of an exempt person shall be made by a single filing of Internal Revenue Service Form 4789, in which line 36 is marked "Designation of Exempt Person" and items 2-14 (Part I, Section A) and items 37-49 (Part III) are completed. The designation must be made separately by each bank that treats the person in question as an exempt person. (For availability, see 26 CFR 601.602.)

(iii) This designation requirement applies whether or not the particular exempt person to be designated has previously been treated as exempt from the reporting requirements of paragraph (a) of this section under the rules contained in paragraph (b) or (e) of this section.

(4) Operating rules for designating exempt persons.

(i) Subject to the specific rules of this paragraph (h), a bank must take such steps to assure itself that a person is an exempt person (within the meaning of applicable provisions of paragraph (h)(2) of this section) that a reasonable and prudent bank would take to protect itself from loan or other fraud or loss based on misidentification of a person's status.

(ii) A bank may treat a person as a governmental department, agency, or entity if the name of such person reasonably indicates that it is described in paragraph (h)(2)(ii) or (h)(2)(iii) of this section, or if such person is known generally in the community to be a State, the District of Columbia, a tribal government, a Territory or Insular Possession of the United States, or a political subdivision or a wholly-owned agency

or instrumentality of any of the foregoing. An entity generally exercises governmental authority on behalf of the United States, a State, or a political subdivision, for purposes of paragraph (h)(2)(iii) of this section, only if its authorities include one or more of the powers to tax, to exercise the authority of eminent domain, or to exercise police powers with respect to matters within its jurisdiction.

(iii) In determining whether a person is described in paragraph (h)(2)(iv) of this section, a bank may rely on any New York Stock Exchange, American Stock Exchange, or Nasdaq Stock Market listing published in a newspaper of general circulation and on any commonly accepted or published stock symbol guide.

(iv) In determining whether a person is described in paragraph (h)(2)(v) of this section, a bank may rely upon any reasonably authenticated corporate officer's certificate or any reasonably authenticated photocopy of Internal Revenue Service Form 851 (Affiliation Schedule) or the equivalent thereof for the appropriate tax year.

(5) Limitation on exemption. A transaction carried out by an exempt person as an agent for another person who is the beneficial owner of the funds that are the subject of a transaction in currency is not subject to the exemption from reporting contained in paragraph (h)(1) of this section.

(6) Effect of exemption; limitation on liability.

(i) FinCEN may in the future determine by amendment to this part that the exemption contained in this paragraph (h) shall be the only basis for exempting persons described in paragraph (h)(2) of this section from the reporting requirements of paragraph (a) of this section.

(ii) No bank shall be subject to penalty under this part for failure to file a report required by paragraph (a) of this section with respect to a currency transaction by an exempt person with respect to which the requirements of this paragraph (h) have been satisfied, unless the bank:

(A) Knowingly files false or incomplete information with respect to the transaction or the customer engaging in the transaction; or

(B) Has reason to believe at the time the exemption is granted that the customer does not meet the criteria established by this paragraph (h) for treatment of the transactor as an exempt person or that the transaction is not a transaction of the exempt person.

(iii) A bank that files a report with respect to a currency transaction by an exempt person

rather than treating such person as exempt shall remain subject with respect to each such report to the rules for filing reports, and the penalties for filing false or incomplete reports, that are applicable to reporting of transactions in currency by persons other than exempt persons. A bank that continues for the period permitted by paragraph (h)(6)(i) of this section to treat a person described in paragraph (h)(2) of this section as exempt from the reporting requirements of paragraph (a) of this section on a basis other than as provided in this paragraph (h) shall remain subject in full to the rules governing an exemption on such other basis and to the penalties for failing to comply with the rules governing such other exemption.

(7) Obligation to file suspicious activity reports, etc. Nothing in this paragraph (h) relieves a bank of the obligation, or alters in any way such bank's obligation, to file a report required by 103.21 with respect to any transaction, including, without limitation, any transaction in currency, or relieves a bank of any other reporting or recordkeeping obligation imposed by this part (except the obligation to report transactions in currency pursuant to paragraph (a) of this section to the extent provided in this paragraph (h)).

(8) Revocation. The status of any person as an exempt person under this paragraph (h) may be revoked by FinCEN by written notice, which may be provided by publication in the Federal Register in appropriate situations, on such terms as are specified in such notice. In addition, and without any action on the part of the Treasury Department:

(i) The status of a corporation as an exempt person pursuant to paragraph (h)(2)(iv) of this section ceases once such corporation ceases to be listed on the applicable stock exchange; and

(ii) The status of a subsidiary as an exempt person under paragraph (h)(2)(v) of this section ceases once such subsidiary ceases to be included in a consolidated federal income tax return of a person described in paragraph (h)(2)(iv) of this section.

* * * * *

Dated: April 16, 1996.

Stanley E. Morris,
Director, Financial Crimes Enforcement
Network.

[FR Doc. 96-9798 Filed 4-23-96; 8:45 am]
BILLING CODE 4820-03-P

INTRODUCTION

One of the most important, if not the most important, means by which financial institutions can hope to avoid criminal exposure to the institution by “customers” who use the resources of the institution for illicit purposes is to have a clear and concise understanding of the “customers’” practices. The adoption of “know your customer” guidelines or procedures by financial institutions has proven extremely effective in detecting suspicious activity by “customers” of the institution in a timely manner.

Even though not presently required by regulation or statute, it is imperative that financial institutions adopt “know your customer” guidelines or procedures to ensure the immediate detection and identification of suspicious activity at the institution. The concept of “know your customer” is, by design, not explicitly defined so that each institution can adopt procedures best suited for its own operations. An effective “know your customer” policy must, at a minimum, contain a clear statement of management’s overall expectations and establish specific line responsibilities. While the officers and staff of smaller banks, Edge corporations, and foreign branches or agencies may have more frequent and direct contact with customers than large urban institutions, it is incumbent upon all institutions to adopt and follow policies appropriate to their size, location, and type of business.

OBJECTIVES OF “KNOW YOUR CUSTOMER” POLICY

- A “know your customer” policy should increase the likelihood that the financial institution is in compliance with all statutes and regulations and adheres to sound and recognized banking practices.
- A “know your customer” policy should decrease the likelihood that the financial institution will become a victim of illegal activities perpetrated by its “customers.”
- A “know your customer” policy that is effective will protect the good name and reputation of the financial institution.

- A “know your customer” policy should not interfere with the relationship of the financial institution with its good customers.

CONTENTS OF “KNOW YOUR CUSTOMER” POLICY

In developing an effective “know your customer” policy it is important to note that appearances can be deceiving. Potential customers of a financial institution may appear to be legitimate, but in reality are conducting illicit activities through the financial institution. Likewise, legitimate customers may be turned away from the institution because their activities are perceived to have a criminal tone. It is also important to realize that various influences on legitimate customers may transform such customers into wrongdoers.

At the present time there are no statutorily mandated procedures requiring a “know your customer” policy or specifying the contents of such a policy. However, in order to develop and maintain a practical and useful policy, financial institutions should incorporate the following principles into their business practices:

- Financial institutions should make a reasonable effort to determine the true identity of all customers requesting the bank’s services;
- Financial institutions should take particular care to identify the ownership of all accounts and of those using safe-custody facilities;
- Identification should be obtained from all new customers;
- Evidence of identity should be obtained from customers seeking to conduct significant business transactions;
- Financial institutions should be aware of any unusual transaction activity or activity that is disproportionate to the customer’s known business.

An integral part of an effective “know your customer” policy is a comprehensive knowledge of the transactions carried out by the customers of the financial institution. Therefore, it is necessary that the “know your customer” procedures established by the institution allow for the collection of sufficient information to

develop a “customer profile.” The primary objective of such procedures is to enable the financial institution to predict with relative certainty the types of transactions in which a customer is likely to be engaged. The customer profile should allow the financial institution to understand all facets of the customer’s intended relationship with the institution, and, realistically, determine when transactions are suspicious or potentially illegal. Internal systems should then be developed for monitoring transactions to determine if transactions occur which are inconsistent with the “customer profile.” A “know your customer” policy must consist of procedures that require proper identification of every customer at the time a relationship is established in order to prevent the creation of fictitious accounts. In addition, the bank’s employee education program should provide examples of customer behavior or activity which may warrant investigation.

IDENTIFYING THE CUSTOMER

As a general rule, a business relationship with a financial institution should never be established until the identity of a potential customer is satisfactorily established. If a potential customer refuses to produce any of the requested information, the relationship should not be established. Likewise, if requested follow-up information is not forthcoming, any relationship already begun should be terminated. The following is an overview of general principles to follow in establishing customer relationships:

Personal Accounts

1. No account should be opened without satisfactory identification, such as:
 - a driver’s license with a photograph issued by the State in which the bank is located; or
 - a U.S. passport or alien registration card, together with:
 - a college photo identification card;
 - a major credit card (verify the current status);
 - an employer identification card;
 - an out-of-State driver’s license; and/or
 - electricity, telephone.

2. Consider the customer’s residence or place of business. If it is not in the area served by the bank or branch, ask why the customer is opening an account at that location.
3. Follow up with calls to the customer’s residence or place of employment thanking the customer for opening the account. Disconnected phone service or no record of employment warrant further investigation.
4. Consider the source of funds used to open the account. Large cash deposits should be questioned.
5. For large accounts, ask the customer for a prior bank reference and write a letter to the bank asking about the customer.
6. Check with service bureaus for indications the customer has been involved in questionable activities such as kiting incidents and NSF situations.
7. The identity of a customer may be established through an existing relationship with the institution such as some type of loan or other account relationship.
8. A customer may be a referral from a bank employee or one of the bank’s accepted customers. In this instance, a referral alone is not sufficient to identify the customer, but in most instances it should warrant less vigilance than otherwise required.

Business Accounts

1. Business principals should provide evidence of legal status (e.g. sole proprietorship, partnership, or incorporation or association) when opening a business account.
2. Check the name of a commercial enterprise with a reporting agency and check prior bank references.
3. Follow up with calls to the customer’s business thanking the customer for opening the account. Disconnected phone service warrants further investigation.
4. When circumstances allow, perform a visual check of the business to verify the actual existence of the business and that the business has the capability of providing the services described.
5. Consider the source of funds used to open the account. Large cash deposits should be questioned.
6. For large commercial accounts, the following information should be obtained:

- a financial statement of the business;
- a description of the customer’s principal line of business;
- a list of major suppliers and customers and their geographic locations;
- a description of the business’s primary trade area, and whether international transactions are expected to be routine; and
- a description of the business operations i.e., retail versus wholesale, and the anticipated volume of cash sales.

LOAN TRANSACTIONS

It is important to realize that relationships with a financial institution that take a form other than deposit accounts can be used for illicit purposes. Loan transactions have become a common vehicle for criminal enterprises that wish to take advantage of the proceeds of their illegal activities. Therefore, prudent financial institutions should apply their “know your customer” policy to customers requesting credit facilities from the institution.

SUSPICIOUS CONDUCT AND TRANSACTIONS

In making a determination as to the validity of a customer, there are certain categories of activities that are suspicious in nature and should alert financial institutions as to the potential for the customer to conduct illegal activities at the institution. The categories, broadly defined, are:

- Insufficient, false, or suspicious information provided by the customer.
- Cash deposits which are not consistent with the business activities of the customer.
- Purchase and/or deposits of monetary instruments which are not consistent with the business activities of the customer.
- Wire transfer activity which is not consistent with the business activities of the customer.
- Structuring of transactions to evade record-keeping and/or reporting requirements.
- Funds transfers to foreign countries.

The general categories, delineated above, can be broken down into various functions of the financial institution. Set forth below are more specific suspicious activities as related to the various functions of the financial institution:

Tellers and Lobby Personnel

- Customer is reluctant to provide any information requested for proper identification.
- Customer opens a number of accounts under one or more names and subsequently makes deposits of less than \$10,000 in cash in each of the accounts.
- Customer is reluctant to proceed with a transaction after being informed that a Currency Transaction Report (CTR) will be filed, or withholds information necessary to complete the form.
- Customer makes frequent deposits or withdrawals of large amounts of currency for no apparent business reason, or for a business which generally does not involve large amounts of cash.
- Customer exchanges large amounts of currency from small to large denomination bills.
- Customer makes frequent purchases of monetary instruments for cash in amounts less than \$10,000.
- Customers who enter the bank simultaneously and each conduct a large currency transaction under \$10,000 with different tellers.
- Customer who makes constant deposits of funds into an account and almost immediately requests wire transfers to another city or country, and that activity is inconsistent with the customer’s stated business.
- Customer who receives wire transfers and immediately purchases monetary instruments for payment to another party.
- Traffic patterns of a customer change in the safe deposit box area possibly indicating the safekeeping of large amounts of cash.
- Customer discusses CTR filing requirements with the apparent intention of avoiding those requirements or makes threats to an employee to deter the filing of a CTR.
- Customer requests to be included on the institution’s exempt list.

Bookkeeping and Wire Transfer Operations

- Customer who experiences increased wire activity when previously there has been no regular wire activity.

- International transfers for accounts with no history of such transfers or where the stated business of the customer does not warrant such activity.
- Customer receives many small incoming wire transfers or deposits of checks and money orders then requests wire transfers to another city or country.
- Customer uses wire transfers to move large amounts of money to a bank secrecy haven country.
- Request from nonaccountholder to receive or send wire transfers involving currency from nonaccountholder near the \$10,000 limit or that involve numerous monetary instruments.
- Nonaccountholder receives incoming wire transfers under instructions to the bank to "Pay Upon Proper Identification" or to convert the funds to cashier's checks and mail them to the nonaccountholder.

Loan Officers and Credit Administration Personnel

- Customer's stated purpose for the loan does not make economic sense, or customer proposes that cash collateral be provided for a loan while refusing to disclose the purpose of loan.
- Requests for loans to offshore companies, or loans secured by obligations of offshore banks.
- Borrower pays down a large problem loan suddenly, with no reasonable explanation of the source of funds.
- Customer purchases certificates of deposit and uses them as loan collateral.
- Customer collateralizes loan with cash deposit.
- Customer uses cash collateral located offshore to obtain loan.
- Loan proceeds are unexpectedly channeled off-shore.

INTRODUCTION

As financial institutions, law enforcement agencies, and financial regulators have increased their scrutiny of cash transactions, money launderers have become more sophisticated in using all services and tools available to launder cash and move funds, including the wire transfer systems. This section will provide some background and information on how the different wire transfer systems work, how these systems are used by money launderers, and how examiners should review a bank's wire transfers operations as part of the examination for compliance with the Bank Secrecy Act.

WIRE TRANSFER SYSTEMS

There are three wire transfer systems used in the United States by financial institutions—Fedwire, CHIPS, and S.W.I.F.T. All three systems share the same characteristics of high dollar value of the individual transfers, a real time system, and a widely distributed network of users. There are important differences, however, and these will be discussed below. In order to examine an institution's wire transfer function thoroughly, it is important to understand how the system(s) works. Each of the three wire transfer systems will be looked at below.

Fedwire

Fedwire is the funds transfer system operated by the Federal Reserve System. The Fedwire system may be used by any institution holding an account with a Federal Reserve Bank and it is principally domestic in orientation. It is a real-time system characterized by the instantaneous, irrevocable transfer of funds. As a "wholesale" wire transfer system, Fedwire is primarily used to transfer funds between financial institutions and their major corporate customers. There are no restrictions on the minimum dollar size of Fedwire transfers, and individuals and small businesses can and do use Fedwire by going through their financial institution.

A financial institution can originate a Fedwire message in one of two ways—"on-line" or

"off-line." On-line institutions have an electronic connection to the Federal Reserve, and off-line institutions have no such connection and usually telephone the Federal Reserve to initiate a transfer. The large, high volume institutions use a direct computer-to-computer connection with Fed to originate funds transfers over Fedwire, and the other on-line institutions use a leased line connection or a telephone dial-up system to connect a PC to the Fedwire system. Because the settlement of all Fedwire transfers is made through reserve accounts maintained at the Federal Reserve Banks, all transfers go through a Reserve Bank for routing and settlement.

Off-line institutions usually telephone the Fed and give instructions over the phone using a prearranged codeword. The Fed verifies the codeword and enters the message into the electronic system for processing and sending to the receiving institution. Fedwire transfers sent to an off-line institution are credited immediately, and the institution is either notified by phone from the Fed or by copy of the Fedwire message sent to the institution the next day.

The actual transfer of funds in the Fedwire system takes place on the books of the Federal Reserve. For a transfer to an institution in the same Federal Reserve District, the Federal Reserve Bank, upon receiving the Fedwire instructions from the originating institution, debits the account of the originator and credits the account of the receiving institution. For inter-district transfers, the "local" FR Bank debits the account of the originator and credits the account of the "receiving" FR Bank, which, in turn, credits the account of the receiving institution.

CHIPS

CHIPS (Clearing House Interbank Payments System) is a privately owned and operated funds transfer system. It is owned and operated by the New York Clearing House Association. CHIPS currently has 128 members who are primarily money center banks in New York, Chicago, and San Francisco as well as large international banks.

CHIPS has its own communications network and processes its own messages for member institutions. During the day CHIPS maintains

the net credit and debit positions of members while routing messages from sender to receiver. Although used primarily for international transfers, CHIPS is used to a small extent for domestic transfers between U.S. banks and can be used as an alternative to Fedwire if both the sending and receiving institutions are CHIPS members.

In CHIPS the transfer of funds does not occur with the sending of the message. Rather, at the end of each day any of the 30 CHIPS settlement participants that are in a net debit position wire funds by Fedwire to the CHIPS account at the New York Fed and CHIPS sends these funds to the banks in a net credit position by Fedwire. This end of day settlement feature is the biggest difference between Fedwire and CHIPS, and it also puts CHIPS participants at risk if a participating bank should fail or is unable to cover its position.

S.W.I.F.T.

SWIFT stands for the Society for Worldwide Interbank Financial Telecommunications. It is a cooperatively owned, non-profit organization which was founded in 1973 to serve the data processing and telecommunications needs of its members. SWIFT currently has members in most countries throughout the world. The membership base is very broad and includes commercial banks, investment banks, securities broker/dealers, and other financial institutions.

As its name implies, SWIFT handles all sorts of telecommunications for its member institutions. Transfers of funds are only one use of SWIFT, others being securities transfers, letters of credit, advices of collection, foreign exchange, and free format information messages. All messages are sent through the SWIFT network, SWIFT's privately owned, worldwide telecommunications network. Because of the availability of Fedwire and CHIPS, SWIFT is used almost exclusively by U.S. banks for international funds transfers and messages.

A SWIFT funds transfer message is simply notification that funds are being transferred. The actual movement of funds is independent of the message, and transfers are effected in two common ways. The first method is to transfer the funds by transferring balances through mutual correspondent banks, and the second method is to settle through Fedwire or CHIPS.

A bank's SWIFT operations are usually located in its international department, although additional terminals with SWIFT access could be located in the foreign exchange department or the securities trading department.

HOW A COMMERCIAL BANK'S WIRE ROOM WORKS

In order to examine the Fedwire operations of a commercial bank, it is important to understand how the "wire room" of a commercial bank operates. In the larger banks with a significant volume of wire traffic, there may be a department dedicated to this function. In most banks, however, the Fedwire volume does not justify a full time staff or person, and the sending and receiving of wires may be part-time responsibilities for one or several people. Every bank has its own procedures for handling wires, but there are enough features in common to allow for generic descriptions for large and small banks.

Large Banks

Large banks with a Fedwire volume of several hundred messages per day will most likely use dedicated computer resources for Fedwire—either part of the bank's host computer or a separate minicomputer. These banks utilize a computer-to-computer (computer interface) electronic link with the Fed, which allows for faster transmission of high volumes. The software used for wire transfers, either developed in-house or purchased from a vendor, allows for automatic posting to DDA and general ledger.

The wire room may receive payment orders from several different sources, including authorized personnel from within the bank and corporate customers who may either call the bank, fax instructions, or even have an on-line connection with the bank to send wire instructions and access other bank services. Phone calls to the wire room are recorded for security and audit reasons, and the tapes are usually maintained for a 30 day period. The bank should have procedures in place to verify payment orders. These procedures usually include the use of code words, call backs, and corporate resolutions authorizing certain employees to send wires. Verification and security procedures are

extremely important in light of the potential for high losses.

After a payment order is received, a Fedwire message is entered into the bank's system at an on-line terminal. Before the wire is sent to the Fed, it is sent to a second terminal to be verified for accuracy as well as proper authorization. Only after the payment order is reviewed by the second staff member is it sent to the Fed for processing. This separation of duties is extremely important to ensure security.

The bank's software will maintain data on each day's transfers in several different ways. These might include a listing by wires sent and received, wires listed by amount, wires listed by sequence number, and wires listed by account holder. Most software systems maintain the work of several previous days, often the last 5 to 7 days, to allow for on-line access to trace errors and problems. After the 5 to 7 days, the data may be maintained on microfiche or paper listing.

Smaller Banks

Smaller banks with a low volume of Fedwire transactions will typically have one or several staff members handling the sending and receiving of wires over a connection from the bank's PC to the Fed's mainframe. The PC connection is called Fedline, and the software is supplied by the Fed. The basic procedures for sending and receiving wires are similar to those for the large banks, but the degree of sophistication and separation of duties is not as great. A financial institution should have other back-up controls in place if separation of duties is a problem. These controls can include rotation of duties and officer review of all transactions.

Payment orders to send a wire are received from bank personnel and corporate customers. Individuals who wish to wire funds usually go through their loan officer or account representative who notifies the wire room. Here again, verification is an important security procedure, and records should be kept of all payment order requests, by tapes of phone calls, written records of requests, or other means.

After receiving the payment order, the terminal operator keys the wire message into the PC. Before the message can be sent, it must be verified by a second person (this is the recommended procedure—some small banks allow the

same person to key in the wire and verify for sending). Most on-line PC connections to the Fed have two printers attached, one which prints copies of the outgoing messages and the other which prints incoming messages. The bank should maintain the copies of these messages in the continuous paper form for recordkeeping purposes. The unbroken sheet ensures that all messages are accounted for; however, the sequence numbers of the messages should also be checked because messages can occasionally be skipped because of communication problems. In addition, each incoming and outgoing message is assigned a sequence number that also provides an audit trail ensuring that all messages are accounted for.

How Money Launderers Use the Wire System

While there are many ways for money launderers to use the wire system, the objective for most money launderers is to aggregate funds from different accounts and move those funds through accounts at different banks until the origins of the funds cannot be traced. Most often this involves moving the funds out of the country, through a bank account in a country with strict bank secrecy laws, and possibly back into the U.S. Money laundering schemes uncovered by law enforcement agencies, for instance through Operation Polar Cap, show that money launderers use the wire system to aggregate funds from multiple accounts at the same bank, wire those funds to accounts held at other U.S. banks, consolidate funds from these larger accounts, and ultimately wire the funds to offshore accounts in countries such as Panama.

Unlike cash transactions, which are closely monitored, Fedwire transactions and banks' wire rooms are designed to quickly process approved transactions. Wire room personnel usually have no knowledge of the customer or the purpose of the transaction. Therefore, once cash has been deposited into the banking system, money launderers use the wire system because of the likelihood that transactions will be processed with little or no scrutiny.

HOW TO READ A WIRE TRANSFER MESSAGE

A wire transfer message contains, by design, a

minimal amount of information. As discussed in more detail below, Fedwire messages must contain primary information consisting of the sender's and receiver's name and ABA routing number, the amount of the transfer, a reference number, and certain other control information. These messages may contain certain supplementary information, such as the name of the originating party, the name of the beneficiary, the beneficiary's account number, a reference message for the beneficiary, and other related information.

For the purposes of these examination procedures, it is important to be able to identify certain information on the message. The supplementary information is identified using three letter codes. These codes are identified below, but not all information will appear in all messages. In some messages, there may not be any supplementary information at all.

Product Codes—These codes identify the type of transfer and are followed by a backslash.

BTR/ *Bank Transfer*, the beneficiary is a bank.
 CTR/ *Customer Transfer*, the beneficiary is a non bank.
 DEP/ *Deposit to Sender's Account*
 DRW/ *Drawdown*
 FFR/ *Fed Funds Returned*
 FFS/ *Fed Funds Sold*

Field Tags—These codes identify certain supplementary information about the transfer and consist of three letters followed by an equals sign.

ORG= *Originator*, initiator of the transfer.
 OGB= *Originator's Bank*, bank acting for the originator of the transfer.
 IBK= *Intermediary Bank*, the institution(s) between the receiving institution and the beneficiary's institution through which the transfer must pass, if specified by the sending institution.
 BBK= *Beneficiary's Bank*, the bank acting as financial agent for the beneficiary of the transfer.
 BNF= *Beneficiary*, the ultimate party to be credited or paid as a result of a transfer.
 RFB= *Reference for the Beneficiary*, reference information enabling the beneficiary to identify the transfer.
 OBI= *Originator to Beneficiary Information*, information to be conveyed from the originator to the beneficiary.

BBI= *Bank to Bank Information*, miscellaneous information pertaining to the transfer.

INS= *Instructing Bank*, the institution that instructs the sender to execute the transaction.

Identifier Codes—Two letter codes preceded by a backslash and followed by a hyphen used to identify or designate a number important to the transfer.

/AC- Account number
 /BC- Bank identifier code
 /CH- CHIPS universal identifier
 /CP- CHIPS participant identifier
 /FW- Federal Reserve routing number
 /SA- SWIFT address

Advice Method Codes—Three letter codes preceded by a backslash used to identify the method of advising the beneficiary of transfer.

/PHN advise by telephone
 /LTR advise by letter
 /WRE advise by wire
 /TLX advise by telex

The following sample message illustrates the format of a Fedwire message and the use of the above codes:

mode	status	mdc	error-intercept
PRODUCTION	FT	INCOMING	MSG
rcvr	type		
121000358	1040		
sndr	ref #	amt	
021000089	4092	\$1,000,000.00	
CITIBANK NYC/ORG=J.DOE, LONDON OGB=BANK OF THE NORTH, LONDON			
BANK AMER SF/CTR/IBK=B OF A LOS ANGELES BBK=BK OF SAN PEDRO, CA			
BNF=H.L. INDUSTRIES/AC-12-34567/PHN/(415)555-1212 RFB=INV8123			
OBI=EQUIP PURCH			
imad	omad		
0504 B1Q0216K	209 05041233 FTB1	0504 L1Q11339K	1391 05041235

This Fedwire message shows a transfer from Citibank, NYC, to Bank of America, San Francisco, for \$1,000,000.00. Under the "rcvr" heading is Bank of America's routing number,

and under the “sndr” is Citibank’s routing number. The transfer was originated by J. Doe in London through his bank (the originating bank), the Bank of the North, London. Bank of the North sent the funds to Citibank, which in turn sent the funds to Bank of America. The funds will be sent to the intermediary bank, Bank of America’s Los Angeles bank for credit to the bank of the beneficiary, Bank of San Pedro, San Pedro, CA. The beneficiary of the transfer is H. L. Industries, and the message contains instructions to credit the amount to H. L. Industries’ account and advise the company by phone

of receipt of the transfer. Mr. Doe sends information that the wire is for payment of invoice number 8123, which was for the purchase of equipment. The “imad” and “omad” numbers at the bottom of the message are added by the Fed and identify the date, time, and receiving and sending terminal.

For the purposes of examining for money laundering, most of the important information will be contained in the supplementary portion of the message with the field tags. Bank personnel can help decipher messages.

Effective January 27, 1987, section 208.14 is added to read as follows:

**SECTION 208.14—PROCEDURES
FOR MONITORING BANK
SECRECY ACT COMPLIANCE**

(a) *Purpose.* This section is issued to ensure that all state member banks establish and maintain procedures reasonably designed to ensure and monitor their compliance with the provisions of subchapter II of chapter 53 of title 31, United States Code, the Bank Secrecy Act, and the implementing regulations promulgated thereunder by the Department of Treasury at 31 CFR part 103, requiring recordkeeping and reporting of currency transactions.¹³

* The complete regulation as amended effective January 27, 1987, consists of—

- a regulation pamphlet dated May 1942 and
- this slip sheet.

13. Recordkeeping requirements contained in this section have been approved by the Board under delegated authority from the Office of Management and Budget under the provisions of chapter 35 of title 44, United States Code, and have been assigned OMB No. 7100-0196.

(b) *Establishment of compliance program.* On or before April 27, 1987, each bank shall develop and provide for the continued administration of a program reasonably designed to ensure and monitor compliance with the recordkeeping and reporting requirements set forth in subchapter II of chapter 53 of title 31, United States Code, the Bank Secrecy Act, and the implementing regulations promulgated thereunder by the Department of Treasury at 31 CFR part 103. The compliance program shall be reduced to writing, approved by the board of directors, and noted in the minutes.

(c) *Contents of compliance program.* The compliance program shall, at a minimum—

- (1) provide for a system of internal controls to ensure ongoing compliance;
- (2) provide for independent testing for compliance to be conducted by bank personnel or by an outside party;
- (3) designate an individual or individuals responsible for coordinating and monitoring day-to-day compliance, and
- (4) provide training for appropriate personnel.

Essential to the financial institution's ability to comply with the rules and regulations of the Bank Secrecy Act and ensure that the institution does not become involved in illicit activities, is an effective internal compliance program. It should be noted that, by statute (12 U.S.C. 1818(s)), Federal banking agencies are required to issue orders requiring an institution to "cease and desist from its violation" when an institution has failed to establish and maintain adequate internal compliance procedures or an institution has failed to correct any problem with the internal compliance procedures that were previously identified as being deficient.

At a minimum, an internal compliance program must:

- Provide for a system of internal controls to ensure ongoing compliance;
- Provide for independent testing of compliance;
- Designate an individual responsible for day-to-day coordination and monitoring of compliance; and
- Provide training for appropriate personnel.

These items are the basic elements of a good compliance program. In order to maintain a program that ensures compliance on an ongoing basis and helps to prevent abuse of the institution by those who might wish to use the institution for illegal purposes, financial institutions must involve several areas of operation and administration.

SENIOR MANAGEMENT

Senior management must show a commitment to compliance by the financial institution by:

- Establishing a strong compliance plan that is fully implemented and approved by the board of directors of the institution;
- Requiring that senior management be kept informed of compliance efforts, audit reports and any compliance failures with corrective measures instituted;
- Including regulation compliance within the job description and job performance evaluation of institution personnel; and
- Conditioning employment on regulation compliance.

INTERNAL AUDITORS

An internal auditing department within the financial institution should be established with responsibilities which include:

- Performing transaction testing to ensure that the institution is following proscribed regulations;
- Performing testing of employees to assess knowledge of regulations and procedures;
- Reviewing written procedures and training programs for completeness and accuracy; and
- Reporting all findings to senior management.

LARGE CURRENCY INTERNAL CONTROL

Financial institutions should have the ability to detect and monitor large currency transactions occurring at the financial institution to ensure that such transactions are not being conducted for illegitimate purposes. With the advent of the "\$3,000 rule" imposing recordkeeping requirements for cash purchases of certain monetary instruments of between \$3,000 and \$10,000, the same principles of currency transaction monitoring should be applied to this function, as well.

EXEMPTION PROCEDURES

For those financial institutions that maintain exemptible customers from the CTR reporting requirements under the existing rules (as opposed to the interim exemption rule), it is imperative that regular monitoring of the exemption process be undertaken. The institution must be able to ensure that exempted customers are complying with the limitations of their exemption and that, on a regular basis, exempted customers transactions are reviewed. Any abnormalities in the exemption process by the institution or the customer should be readily identifiable through the internal compliance program.

TRAINING

Financial institution personnel should be trained in all aspects of regulatory and internal policies

and procedures. An effective training program should include:

- All compliance officers, audit and/or independent review personnel and other customer contact personnel, including tellers, customer service representatives, lending officers and private or personal banking officers, should be trained regarding policies and procedures, as well as common money laundering schemes and patterns;

Continuous and updated training to ensure personnel is provided with the most current and up to date information.

COMPLIANCE RESPONSIBILITY

An individual should be designated as a compliance contact, with day-to-day responsibility for the compliance program.

The Bank Secrecy Act and Money Laundering Statutes were passed by Congress to help facilitate the identification and prosecution of individuals involved in illegal activities for profit. In 1984, the Detroit Computing Center (DCC) was chosen to collect, perfect and input to the CBRS Data Base, millions of documents required to be furnished under the laws. These documents consist of the following: **Currency Transaction Reports (CTR's - Form 4789)** required to be filed by Financial Institutions on cash transactions over \$10,000; **Currency Transaction Reports by Casinos (CTRC - Form 8362)** required to be filed by casinos on cash transactions over \$10,000; **Report of Cash Payments Received in a Trade or Business (Form 8300)** to be filed by anyone in a trade or business receiving payments in cash totalling \$10,000 or more in a single or related transaction; **Report of Foreign Bank and Financial Accounts (FBAR - TDF 90-22.1)** required to be filed annually by any U.S. citizen having financial interest in or signature authority over any foreign bank account exceeding \$10,000 in total value at any time during the calendar year, or multiple accounts that in the aggregate exceed \$10,000; **Report of International Transportation of Currency or Monetary Instrument Reports (CMIR - Form 4790)** are loaded from tapes received from U.S. Customs Service, these documents are filed when amounts greater than \$10,000 in cash or monetary instruments are taken across any U.S. Borders; **Suspicious Activity Report (SAR)** are filed by Financial Institutions on any unusual or suspicious cash transactions of any amount; and **Form CF-7501 Entry Summary** is received from Customs electronically for any commodity subject to Excise Tax. In early 1994, the **Information Return for Federal Contract Document (Form 8596)** was added to the CBRS. This Collection document allows for tracking of contracts being issued by different Federal Agencies. As of the end of January 1996, the CBRS Data Base contained over 90,000,000 information documents.

The CBRS Data Base can be accessed by special agents, revenue agents and revenue officers through portable computers through a telephone system or CDN lines. There are approximately 15,000 user-id/passwords assigned to users of the CBRS, including staff of the Board

of Governors of the Federal Reserve System. Additionally, tapes of all documents, except 8300s, are furnished to U.S. Customs and subsequently added to the Treasury Enforcement Communications Service's (TECS) data base for use by law enforcement agencies. Tape files are also sent to the states of California, Arizona, New York, Florida, Illinois and Texas for CTR documents filed in their respective states. Project GATEWAY has been established to allow selected officials from all states to have hands-on access to the query data base.

The system can be used to identify bank accounts, secret cash, leads to assets and foreign bank accounts, and a myriad of other useful information for compliance and other law enforcement personnel. For example, Federal Reserve staff utilize the data base to verify timely filings by financial institutions.

The CBRS Data Base is maintained at the DCC, where the processing of the data is controlled. Three branches comprise the working group for the project: Systems, Edit/Error Resolution, and the Compliance Branch. The Compliance Branch has the overall responsibility of providing authoritative information and assistance in person, by telephone, or by correspondence to financial institutions and their representatives as they apply to the provisions of the Bank Secrecy Act.

Banks, as defined in the regulations, have the authority to exempt from reporting transactions of certain types of entities specifically enumerated in the regulations. These entities are maintained on bank exempt lists. The Compliance Branch corresponds with banks to obtain these exempt lists and conducts a limited review on such lists once received.

If a bank believes that certain circumstances warrants the exemption of an entity not specifically enumerated in the regulation, it must request a "Special Exemption" from IRS. These requests for "Special Exemptions" are granted or denied by the Compliance Branch.

Research of various data bases and files is done so that certified transcripts/documents can be prepared by use in grand jury investigations and criminal/civil court cases. Periodically, the employees may be called upon to serve as witnesses (court testifiers) to introduce these documents as evidence during a trial.

Also, as a part of the document processing function, many documents are perfected by telephone contact and/or correspondence. Telephone contact is made with financial institutions when an unsatisfactory response is received as a result of computer generated correspondence on an incomplete Currency Transaction Report. The objective is to make the Form 4789 processable. If the telephone contact is unsuccessful, the Form 4789 is deemed unsatisfactory and thus forwarded to Treasury for further review.

BSA COMPLIANCE BRANCH, DETROIT COMPUTING CENTER

The BSA Compliance Branch of the Currency Reporting & Compliance Division has been delegated responsibility for providing authoritative information on certain provisions of the Bank Secrecy Act ("BSA"). This guidance is provided in person, by telephone or through correspondence to financial institutions and their representatives.

The BSA Compliance Branch will verify receipt of CTRs at the request of a financial institution. There is a research fee charged for this service of \$20.00 for up to ten documents and \$2.00 for each additional document. To receive copies, add 15 cents per document requested.

A synopsis of the duties of the BSA Compliance Branch as follows:

Outreach Program:

- Speakers for Banking/Professional Seminars

Financial Institution Services

- Customer service lines for answering technical and form completion questions
- Grant/deny request for special exemptions
- Process requests for backfiling determinations
- Review bank Exemption Lists
- Provide verification of receipt and copies of CTRs
- Staff a toll-free suspicious transaction reporting hot line

CID Agents, IRS and Other Law Enforcement Services

- Copies of BSA/Title 26 documents including true copy certifications for court
- Research and certification of "negative" or "no document filed" results
- Testify at trials as Custodian of the Record

BSA Compliance Branch—Contact Points

BSA Compliance Branch Office

David Gooding, *Chief*
Tamika Brown, *Secretary*
P.O. Box 32063
Detroit, Michigan 48232-0063
Voice (313) 234-1576
Fax (313) 234-1614

BSA Compliance Review Group

Candace Walls, <i>Chief</i>	(313) 234-1597
Vergary Fortune, <i>Secretary</i>	
Outside Customers (financial institutions)	(313) 234-1613
IRS Employees/law enforcement	(313) 234-1597

Lead BSA Representative

Marion Formigan	(313) 234-1602
-----------------	----------------

BSA Representatives (BSAR)

Freda Allen	(313) 234-1610
Phyllis Brown	(313) 234-1599
Yvonne Covington	(313) 234-1600
Lyndon Ford	(313) 234-1601
Wanda Hampton	(313) 234-1612
Elva Jackson	(313) 234-1603
Elizabeth Johnson	(313) 234-1604
Ronald Kaczynski	(313) 234-1605
Marian Kirkland	(313) 234-1607
Linda Krych	(313) 234-1608
Annie McCarty	(313) 234-1609
Marie Morris	(313) 234-1610
Linda Townsend	(313) 234-1611

BSA Support Group I

Chief, Yvonne Davis	(313) 234-1594
---------------------	----------------

Tax Examining Assistants (TEA)

Minnie Blair	(313) 234-1580
Cynthia Drew	(313) 234-1590
Sharon McMorris	(313) 234-1585

Mary Rogers (313) 234-1586
Linda Taylor (313) 234-1588

LOGON CODES

Each organization is required to use specified Client and Office codes in the Accounting Data field when logging into the CBRS. Federal Reserve System staff must first obtain an authorization code in order to access the CBRS system. Each Reserve Bank has established a Bank Secrecy Act contact to access the CBRS system. Additional requests for logon i.d.'s should be mailed to:

Other Numbers/Addresses of Interest

Jim Bahnke
Chief, Tax Systems Division (313) 234-1066

Pat Donaldson
Chief, CTR Branch (313) 234-1401
(voice)
(313) 234-1402
(fax)

Henry James
*Chief, Currency Rep.
& Compl. Div.* (313) 234-1062

Derrick Moore
Chief, Edit/Error Res. Br. (313) 234-1636

CTR Corrective
Correspondence (313) 234-1657

Ben McMakin
CID Coordinator (313) 234-1077

Cathy Swickle
Public Affairs Officer (313) 234-1052

Magnetic Media Hotline (313) 234-1445

Suspicious Transaction
Hotline (800) 800-2877

Bank Secrecy Act (BSA)
Bulletin Board (313) 234-1453

IRS Forms
(including Form 4789) (800) 829-3676

IRS Taxpayer Service
Toll-Free (800) 829-1040

Mr. Richard Small
Special Counsel
Board of Governors of the Federal Reserve
System
Mail Stop 173
Washington, D.C. 20551

**SPECIAL REQUEST PROCEDURE
(REPORTS AND/OR TAPE)**

In situations where on-line or download data is insufficient for your needs, a special report or data tape may be requested from the DCC. Non-IRS personnel should mail requests to the Special Assistant for Financial Enforcement at the DCC. For Federal Reserve System staff, the request should be routed through the Special Counsel at the Federal Reserve Board.

INTRODUCTION

Pursuant to Federal Reserve regulations, all institutions supervised by the Federal Reserve are required to report suspicious transactions using the Suspicious Activity Report (“SAR”). The SARs are maintained in a computerized database that is managed by the Internal Revenue Service. All Reserve Banks have on-line access to the SAR database.

REVIEW OF SUSPICIOUS ACTIVITY REPORTS

Prior to the start of an examination, the SAR database should be reviewed as to all SARs related to the financial institution to be examined. This review should be an integral part of the examination preparation, as it can provide valuable information to assist in developing the appropriate scope of the review.

SEARCHING THE SAR DATABASE

Instructions for accessing the SAR database can be found in the “Internal Revenue Service User’s Guide.” Additional guidance on the use of the SAR database can be obtained from the Bank Secrecy Act coordinator at each Reserve Bank.

IDENTIFICATION OF SIGNIFICANT SUSPICIOUS ACTIVITY

When suspicious activity involving senior current or former officials or highly unusual activity is identified, the Board’s Special Investigations and Examinations Section should be notified at 202-452-3168.

FAST TRACK CRIMINAL REFERRAL ENFORCEMENT PROGRAM

Effective April 14, 1995, as detailed in the Board’s supervisory directive SR 95-23, the

Federal Reserve implemented a Fast Track Criminal Referral¹ Enforcement Program (the “Fast Track Program”) that uses expedited, streamlined enforcement procedures to obtain consent orders of prohibition from banking officials and employees whose cases have been declined by law enforcement agencies and have already admitted to criminal acts involving amounts up to \$100,000. When needed, it will also be used to seek restitution from the individuals through consent cease and desist orders. The Fast Track Program also involves the expeditious issuance of appropriate notices in those instances where individuals do not consent to the orders presented to them. Detailed below are the procedures that Federal Reserve staff should follow in utilizing the Fast Track Program.

Procedures

1. Each Federal Reserve Bank should review all SARs on an on-going basis and, in connection therewith, should implement the Fast Track Program to identify those SARs where law enforcement agencies have declined to prosecute institution-affiliated parties who have admitted guilt involving criminal activities with associated losses of less than \$100,000.
2. For those SARs involving losses of under \$100,000, in which an institution-affiliated party has admitted guilt through a signed confession, an oral admission to a banking organization official that is recorded, or otherwise, designated Federal Reserve Bank personnel should contact federal law enforcement agencies and, where necessary, state or local law enforcement agencies, or reconfirm prior contacts, to determine the status of any criminal investigation or prosecution involving the individual. The Federal Reserve Bank should ascertain whether the individual has already been prosecuted and sentenced through a U.S. Attorney’s or state equivalent

1. Effective April 1, 1996, the Criminal Referral Form was replaced with the Suspicious Activity Report form.

- “Fast Track” system or otherwise,² whether the matter is under active investigation, or whether the matter has been declined for prosecution.
3. If law enforcement has declined to prosecute the individual subject to the SAR, the Federal Reserve Bank should:
 - a. Gather from the law enforcement agency, or the banking organization filing the SAR, or both, all appropriate documents related to the SAR, including a copy of the signed confession, records relating to any admission made to banking officials, and any other pertinent supporting materials, such as affidavits and investigatory reports;
 - b. contact the appropriate banking organization representative to ascertain whether any civil action has been taken by the organization against the individual, and whether the financial institution has obtained any restitution, either through the voluntary cooperation of the individual or by means of a court judgment;
 - c. determine the current home address of the individual, if possible; and
 - d. determine whether the individual is currently employed by a banking organization, if possible.
 4. When requested information is received and the Federal Reserve Bank determines with certainty that the appropriate federal, state, or local law enforcement agency will not prosecute the institution-affiliated party, designated Federal Reserve Bank personnel should make a determination regarding whether a prohibition order, or cease and desist order seeking restitution, or a combination of both should be pursued under the Fast Track Program.
 5. In the event a Federal Reserve Bank recommends an institution-affiliated party for inclusion in the Fast Track Program, it should forward to the Board’s Division of Banking Supervision and Regulation’s Deputy Associate Director responsible for enforcement matters the following:
 - a. The completed portion of the Fast Track Program checklist³ identified as “Federal Reserve Bank Responsibilities,” along with a copy of the SAR; and
 - b. documentation supporting the recommendation, such as the signed confession, or a bank’s record of an individual’s admission.
 6. Upon the submission of a Federal Reserve Bank’s recommendation and completed checklist, designated staff of the Division of Banking Supervision and Regulation, in coordination with the Board’s Legal Division, will:
 - a. Obtain the necessary approvals of senior Board staff required for the initiation of an enforcement action using the Fast Track Program checklist in the place of a standard “final approval” memorandum;
 - b. notify the other federal financial institutions supervisory agencies regarding the proposed enforcement action under current interagency notification procedures;
 - c. in consultation with Federal Reserve Bank staff, finalize a proposed order, using pre-approved formats, and send it to the individual for his or her consideration of entering into the order on a consent basis by means of a cover letter signed by the Deputy Associate Director, which designates an Enforcement Section attorney as the contact person for discussions regarding the consent order;
 - d. upon receipt of a signed consent order, obtain the necessary senior Board staff approvals, have the order executed by the Board’s Secretary, prepare and send all necessary interagency notification letters, and, in consultation with the Board’s public information office, prepare an appropriate press release; and
 - e. in the event the individual does not agree to the consensual issuance of an order of prohibition, or cease and desist order, or a combined order, where necessary, coordinate with designated Federal Reserve Bank staff in order to prepare the appropriate notice under existing Federal Reserve enforcement procedures.

2. In those cases where an individual has already been prosecuted and sentenced, Federal Reserve Banks should follow current procedures and ensure that the individual receives a letter from the Federal Reserve Bank explaining the restrictions and limitations contained in section 19 of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1829).

3. Not included in this Manual. Refer to SR Letter 95-23 for a copy of the checklist.

These are internal procedures for the Federal Reserve's Fast Track Program. They do not create or confer any substantive or procedural rights on third parties, which would be enforceable, in any manner, in a proceeding of any nature.

QUESTIONS

For questions regarding the use of the SAR database you may telephone the Board's Special Investigations and Examinations Section at 202-452-3168.

The Federal Reserve supervises the following entities and has the statutory authority to take formal enforcement actions against them:

- State member banks
- Bank holding companies
- Nonbank subsidiaries of bank holding companies
- Edge and agreement corporations
- Branches and agencies of foreign banking organizations operating in the U.S. and their parent banks
- Officers, directors, employees, and certain other categories of individuals associated with the above banks, companies and organizations (referred to as “institution affiliated parties”)

Generally, the Federal Reserve takes formal enforcement actions against the above entities

for violations of laws, rules, or regulations, unsafe or unsound practices, breaches of fiduciary duty, and violations of final orders. Formal actions include cease and desist orders, written agreements, removal and prohibition orders, and orders assessing civil money penalties. Such actions can include those for entities who fail to develop and implement compliance programs designed to detect, deter and report suspicious activities possibly associated with money laundering or to meet other technical reporting and recordkeeping requirements under the Bank Secrecy Act.

For information regarding enforcement actions taken by the Federal Reserve, the reader may refer to the Federal Reserve’s home page at the following address:

<http://www.bog.frb.fed.us/boarddocs/enforcement>

From time to time as deemed necessary, the Financial Crimes Enforcement Network (“FinCEN”) will provide advisories to the banks, regulators and the general public concerning money laundering matters, trends and patterns, or amendments/clarifications to the Bank Secrecy Act. Access to the Fincen home page to obtain the advisories and other information can be found at the following address:

<http://www.ustreas.gov/treasury/bureaus/fincen/advis.html>

Other communications can be directed to FinCEN:

Phone (703) 905-3773

Facsimile (703) 905-3885

Address: 2070 Chain Bridge Road, Vienna,
Virginia 22182

Federal Reserve Examination Staff is advised that any questions regarding a FinCEN matter should be directed first to the Board’s Special Investigations and Examinations Section at (202) 452-3168.

The following is a list of transactions that could be considered unusual or suspicious and possibly linked to money laundering or other financial crime activities. The list is not intended to be all inclusive.

- Currency transaction reports, when filed, are often incorrect or lack important information.
- List of exempted customers appears unusually long.
- High volume of sequentially numbered traveler's checks or postal money orders addressed to same payee.

MONEY LAUNDERING

- Increase in cash shipments that is not accompanied by a corresponding increase in the number of accounts.
- Cash on hand frequently exceeds limits established in security program and/or blanket bond coverage.
- Large volume of wire transfers to and from offshore banks.
- Large volume of cashier's checks, money orders or travelers checks sold for cash.
- Accounts have a large number of small deposits and a small number of large checks with the balance of the account remaining relatively low and constant. Account has many of the same characteristics as an account used for check kiting.
- A large volume of deposits to several different accounts with frequent transfers of major portion of the balance to a single account at the same bank or at another bank.
- Loans to offshore companies.
- A large volume of cashier's checks or money orders deposited to an account where the nature of the account holder's business would not appear to justify such activity.
- Large volume of cash deposits from a business that is not normally cash intensive.
- Cash deposits to a correspondent bank account by any means other than through an armored carrier.
- Large turnover in large bills or excess of small bills from bank and demand for large bills by bank which would appear uncharacteristic for the bank.
- Cash shipments which appear large in comparison to the dollar volume of currency transaction reports filed.
- Dollar limits on the list of the bank customers exempt from currency transaction reporting requirements which appear unreasonably high considering the type and location of the business. No information is in the bank's files to support the limits set.

OFFSHORE TRANSACTIONS

- Loans made on the strength of a borrower's financial statement reflects major investments in and income from businesses incorporated in bank secrecy haven countries.
- Loans to offshore companies.
- Loans secured by obligations of offshore banks.
- Transactions involving an offshore "shell" bank whose name may be very similar to the name of a major legitimate institution.
- Frequent wire transfers of funds to and from bank secrecy haven countries.
- Offers of multimillion dollar deposits at below market rates from a confidential source to be sent from an offshore bank or somehow guaranteed by an offshore bank through a letter, telex, or other "official" communication.
- Presence of telex or facsimile equipment in a bank where the usual and customary business activity would not appear to justify the need for such equipment.

WIRE TRANSFERS

- Indications of frequent overrides of established approval authority and other internal controls.
- Intentional circumvention of approval authority by splitting transactions.
- Wire transfers to and from bank secrecy haven countries.
- Frequent or large wire transfers for persons who have no account relationship with bank.
- In a linked financing situation, a borrower's request for immediate wire transfer of loan proceeds to one or more of the banks where the funds for the brokered deposits originated.
- Large or frequent wire transfers against uncollected funds.

- Wire transfers involving cash where the amount exceeds \$10,000.
- Inadequate control of password access.
- Customer complaints and/or frequent error conditions.
- Financial statements reflect concentrations of closely held companies or businesses that lack audited financial statements to support their value.

LINKED FINANCING/BROKERED TRANSACTIONS

- Out-of-territory lending.
- Loan production used as a basis for officer bonuses.
- Evidence of unsolicited attempts to buy or recapitalize the bank where there is evidence of a request for large loans at or about the same time by persons previously unknown to the bank. Promise of large dollar deposits may also be involved.
- Promise of large dollar deposits in consideration for favorable treatment on loan requests. (Deposits are not pledged as collateral for the loans.)
- Brokered deposit transactions where the broker's fees are paid for from the proceeds of related loans.
- Anytime a bank seriously considers a loan request where the bank would have to obtain brokered deposits to be able to fund the loan should be viewed with suspicion.
- Solicitation by persons who purportedly have access to multi-millions of dollars, from a confidential source, readily available for loans and/or deposits in U.S. financial institutions. Rates and terms quoted are usually more favorable than funds available through normal sources. A substantial fee may be requested in advance or the solicitor may suggest that the fee be paid at closing but demand compensation for expenses, often exceeding \$50,000.
- Prepayment of interest on deposit accounts where such deposit accounts are used as collateral for loans.

THIRD PARTY OBLIGATIONS

- Incomplete documentation on guaranties.
- Loans secured by obligations of offshore banks.
- Lack of credit information on third party obligor.

CREDIT CARDS AND ELECTRONIC FUNDS TRANSFERS

- Lack of separation of duties between the card issuing function and issuance of personal identification number (PIN).
- Poor control of unissued cards and PINs.
- Poor control of returned mail.
- Customer complaints.
- Poor control of credit limit increases.
- Poor control of name and address changes.
- Frequent malfunction of payment authorization system.
- Unusual delays in receipt of card and PINs by the customers.
- Bank does not limit amount of cash that a customer can extract from an ATM in a given day.
- Evidence that customer credit card purchases have been intentionally structured by a merchant to keep individual amount below the "floor limit" to avoid the need for transaction approval.

MISCELLANEOUS

- Indications of frequent overrides of internal controls or intentional circumvention of bank policy.
- Unresolved exceptions or frequently recurring exceptions on exceptions report.
- Out-of-balance conditions.
- Purpose of loan is not recorded.
- Proceeds of loan are used for a purpose other than the purpose recorded.
- A review of checks paid against uncollected funds indicates that the customer is offsetting checks with deposits of the same or similar amount and maintains a relatively constant account balance, usually small in relation to the amount of activity and size of the transactions.

FEDERAL RESERVE press release



For immediate release

February 5, 1996

The Federal Reserve Board today announced a final rule to simplify the process for reporting suspected crimes and suspicious activities by banking organizations supervised by the Federal Reserve.

The final rule is effective April 1, 1996.

The rule was developed by the Federal Reserve, the other federal banking agencies, and the Financial Crimes Enforcement Network of the U.S. Department of the Treasury (FinCEN).

The rule significantly reduces reporting burdens, while at the same time enhancing the ability of law enforcement authorities to investigate and prosecute criminal offenses involving our Nation's financial institutions.

The new suspicious activity reporting rule:

- combines the current criminal referral rules of the Federal Reserve and the other federal banking agencies with FinCEN's suspicious activity reporting requirements relating to money laundering offenses;
- creates a uniform reporting form and instructions--the new "Suspicious Activity Report" or "SAR"--for use by banking organizations to report all violations;
- requires the filing of only one form with FinCEN;
- enables a filer, through computer software that will be provided by the Federal Reserve to all of the domestic and foreign banking organizations it supervises, to prepare a SAR on a computer and file it by magnetic media, such as a computer disc or tape;

(more)

2

- raises the thresholds for mandatory reporting in two categories and creates a threshold for the reporting of suspicious transactions related to money laundering and violations of the Bank Secrecy Act in order to reduce the reporting burdens of banking organizations; and
- emphasizes recent changes in the law that provide a safe harbor from civil liability to banking organizations and their employees for reporting of known or suspected criminal offenses or suspicious activities.

Substantially identical suspicious activity reporting rules are being issued by FinCEN, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration.

The Board's notice is attached.

-0-

Attachment

FEDERAL RESERVE SYSTEM

12 CFR Parts 208, 211 and 225

[Regulations H, K and Y; Docket No. R-0885]

Membership of State Banking Institutions in the Federal Reserve System; International Banking Operations; Bank Holding Companies and Change in Control; Reports of Suspicious Activity under the Bank Secrecy Act

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final Rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is amending its regulations on the reporting of known or suspected criminal and suspicious activities by the domestic and foreign banking organizations supervised by the Board. This final rule streamlines reporting requirements by providing that such an organization file a new Suspicious Activity Report (SAR) with the Board and the appropriate federal law enforcement agencies by sending a SAR to the Financial Crimes Enforcement Network of the Department of the Treasury (FinCEN) to report a known or suspected criminal offense or a transaction that it suspects involves money laundering or violates the Bank Secrecy Act (BSA).

EFFECTIVE DATE: April 1, 1996.

FOR FURTHER INFORMATION CONTACT: Herbert A. Biern, Deputy Associate Director, Division of Banking Supervision and Regulation, (202) 452-2620, Richard A. Small, Special Counsel, Division of Banking Supervision and Regulation, (202) 452-5235, or Mary Frances Monroe, Senior Attorney, Division of Banking

2

Supervision and Regulation, (202) 452-5231. For the users of Telecommunications Devices for the Deaf (TDD) only, contact Dorothea Thompson, (202) 452-3544, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION:

Background

The Board, the office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively, the Agencies) have issued for public comment substantially similar proposals to revise their regulations on the reporting of known or suspected criminal conduct and suspicious activities. The Department of the Treasury, through FinCEN, has issued for public comment a substantially similar proposal to require the reporting of suspicious transactions relating to money laundering activities.

The Board's proposed regulation (60 FR 34481, July 3, 1995) noted that the interagency Bank Fraud Working Group, consisting of representatives from the Agencies, the National Credit Union Administration, law enforcement agencies, and FinCEN, has been working on the development of a single form, the SAR, for the reporting of known or suspected federal criminal law violations and suspicious activities. The Board's proposed regulation, as well as those proposed by the OCC, FDIC, OTS and FinCEN, attempted to simplify and clarify reporting requirements

3

and reduce banking organizations, reporting burdens by raising mandatory reporting thresholds for criminal offenses and by requiring the filing of only one report with FinCEN.

The Board's final rule adopts its proposal with a few additional changes that have been made in response to the comments received. The changes will result in burden reductions even greater than those that were proposed. The Board's, the other Agencies', and FinCEN's final rules relating to the reporting of suspicious activities are now substantially identical, and they:

- (1) Combine the current criminal referral rules of the federal financial institutions regulatory agencies with the Department of the Treasury's suspicious activity reporting requirements;
- (2) create a uniform reporting form, the new Suspicious Activity Report or SAR, for use by banking organizations in reporting known or suspected criminal offenses, or suspicious activities related to money laundering and violations of the BSA;
- (3) provide a system whereby a banking organization need only refer to the SAR and its instructions in order to complete and file the form in conformance with the Agencies' and FinCEN's reporting regulations;
- (4) require the filing of only one form with FinCEN;
- (5) eliminate the need to file supporting documentation with a SAR;

4

- (6) enable a filer, through computer software that will be provided by the Board to all of the domestic and foreign banking organizations it supervises, to prepare a SAR on a computer and file it by magnetic media, such as a computer disc or tape;
- (7) establish a database that will be accessible to federal and state financial institutions regulators and law enforcement agencies;
- (8) raise the thresholds for mandatory reporting in two categories and create a threshold for the reporting of suspicious transactions related to money laundering and violations of the BSA in order to reduce the reporting burdens on banking organizations; and
- (9) emphasize recent changes in the law that provide a safe harbor from civil liability to banking organizations and their employees for reporting of known or suspected criminal offenses or suspicious activities, by filing a SAR or by reporting by other means, and provide criminal sanctions for the unauthorized disclosure of such report to any party involved in the reported transaction.

Section-by-Section Analysis

Under the Board's final rule, state member banks, bank holding companies and their nonbank subsidiaries, most U.S. branches and agencies and other offices of foreign banks, and Edge and Agreement corporations need only follow SAR instructions

5

for completing and filing the SAR to be in compliance with the Board's and FinCEN's reporting requirements. The following section-by-section analysis correlates the specific SAR instruction number with the applicable section of the Board's final rule:

Section 208.20(a) (Instruction No. 1 on the SAR) provides that a state member bank must file a SAR when it detects a known or suspected violation of federal law or a suspicious activity pertinent to a money laundering offense.

Section 208.20(b) provides pertinent definitions.

Sections 208.20(c)(1), (2), and (3) (Instructions 1 a., b., and c. on the SAR) instruct a state member bank to file a SAR with FinCEN in order to comply with the requirement to notify federal law enforcement agencies if the bank detects any known or suspected federal criminal violation, or pattern of violations, committed or attempted against the bank, or involving one or more transactions conducted through the bank, and the bank believes it was an actual or potential victim of a crime, or was used to facilitate a crime. If the bank has a substantial basis for identifying one of its insiders or other institution-affiliated parties in connection with the known or suspected crime, reporting is required regardless of the dollar amount involved. If the bank can identify a non-insider suspect, the applicable transaction threshold is \$5,000. In cases in which no suspect can be identified, the applicable transaction threshold is

6

\$25,000. These sections were not changed from the proposed regulations published for public comment in July 1995.

Section 208.20(c)(4) (Instruction 1 d. on the SAR) instructs a state member bank to file a SAR with FinCEN in order to comply with the requirement to notify federal law enforcement agencies and the Department of the Treasury of transactions involving \$5,000 or more in funds or other assets when the bank knows, suspects or has reason to suspect that the transaction: (i) involves money laundering, (ii) is designed to evade any regulations promulgated under the Bank Secrecy Act, or (iii) has no business or apparent lawful purpose or is not the sort in which the particular customer normally engages and, after examining the available facts, the bank knows of no reasonable explanation for the transaction. Section 208.20(c)(4) has been modified in the final rule to reflect comments received on the proposal. Most notably, the circumstances under which a transaction should be reported under this section were clarified, and a reporting threshold of \$5,000 was added.

Section 208.20(c)(4) recognizes the emerging international consensus that the efforts to deter, substantially reduce, and eventually eradicate money laundering are greatly assisted by the reporting of suspicious transactions by banking organizations. The requirements of this section comply with the recommendations adopted by multi-country organizations in which the United States is an active participant, including the Financial Action Task Force of G-7 nations and the Organization

of American States, and are consistent with the European Community's directive on preventing money laundering through financial institutions.

Section 208.20(d) (Instruction 2 on the SAR) provides that SARs must be filed within 30 calendar days of the initial detection of the criminal or suspicious activity. An additional 30 days is permitted in order to enable a bank to identify a suspect, but in no event may a SAR be filed later than 60 days after the initial detection of the reportable conduct. The Board and law enforcement must be notified in the case of a violation requiring immediate action, such as an on-going violation. These reporting requirements were not changed from the July 1995 proposal, with the exception of the addition of the requirement that the Board be notified about on-going offenses requiring immediate notification to law enforcement authorities.

Section 208.20(e) encourages a state member bank to file a SAR with state and local law enforcement agencies. This section is unchanged from the July 1995 proposal.

Section 208.20(f) (Instruction 3 on the SAR) provides that a state member bank need not file a SAR for an attempted or committed burglary or robbery reported to the appropriate law enforcement agencies. In addition, a SAR need not be filed for missing or counterfeit securities that are the subject of a report pursuant to Rule 17f-1 under the Securities Exchange Act of 1934. This section of the final rule was not modified from the version published for public comment in July 1995.

Section 208.20(g) requires that a state member bank retain a copy of the SAR and the original or business record equivalent of supporting documentation for a period of five years. The section also requires that a state member bank identify and maintain supporting documentation in its files and that the bank make available such documentation to law enforcement agencies upon their request. The Board made three changes to this section from the version published for public comment in July 1995. First, the record retention period was shortened from 10 years to five years. Second, provision was made for the retention of business record equivalents of original documents, such as microfiche and computer imaged record systems, in recognition of modern record retention technology. The third change involves the clarification of a state member bank's obligation to provide supporting documentation upon request to law enforcement officials. Supporting documentation is deemed filed with a SAR in accordance with this section of the Board's final rule; as such, law enforcement authorities need not make their access requests through subpoena or other legal processes.

Section 208.20(h) requires the management of a state member bank to report the filing of all SARs to the board of directors of the bank, or a designated committee thereof. No change was made from the July 1995 proposal.

Section 208.20(i) reminds a state member bank and its institution-affiliated parties that failure to file a SAR may

expose them to supervisory action. No change from the July 1995 proposal was made.

Section 208.20(j) provides that SARs are confidential. Requests for SARs or the information contained therein should be declined. The final rule also adds a requirement that a request for a SAR or the information contained therein should be reported to the Board. With the exception of the added requirement that requests for SARs be reported to the Board, no changes were made to this section from the July 1995 proposal.

Section 208.20(k) sets forth the safe harbor provisions of 31 U.S.C. 5318(g). This new section, which was added to the final rule as the result of many comments concerning this important statutory protection for banking organizations, states that the safe harbor provisions of the law are triggered by a report of known or suspected criminal violations or suspicious activities to law enforcement authorities, regardless whether the report is made by the filing of a SAR in accordance with the Board's rules or for other reasons by different means.

Sections 211.8, 211.24(f), and 225.4(f) of the Board's rules relating to the activities of foreign banking organizations and bank holding companies have not been changed in a substantive manner. Only the references in the sections to "criminal referral forms" have been changed to reflect the new name for the reporting form, the SAR. The SAR filing requirements, as well as the safe harbor and notification prohibition provisions of

31 U.S.C. 5318(g), continue to be applicable to all foreign banking organizations and bank holding companies and their nonbank subsidiaries supervised by the Federal Reserve through these provisions.

Comments Received

The Board received letters from 44 public commenters. Comments were received from 15 community banks, 13 multinational or large regional banks, eight trade and industry research groups, seven Federal Reserve Banks and one law firm.

The large majority of commenters expressed general support for the Board's proposal. None of the commenters opposed the proposed new suspicious activity reporting rules. A number of suggestions and requests for clarification were received. They are as follows.

Criminal Versus Suspicious Activities. Many commenters expressed confusion over the difference between the known or suspected criminal conduct that would be subject to the dollar reporting thresholds (provided such conduct does not involve an institution-affiliated party of the reporting entity) and the suspicious activities that would be reported regardless of dollar amount. Section 208.20(c)(4) has been revised to add a \$5,000 reporting threshold and to clarify that the suspicious activity must relate to money laundering and Bank Secrecy Act violations. A threshold for the reporting of suspicious activities was added to reduce further the reporting burdens on banking organizations.

Reporting of Crimes Under State Law. A number of commenters requested clarification of whether activities constituting crimes under state law, but not under federal law, should be reported on the SAR. The Board continues to encourage banking organizations to refer criminal and suspicious activities under both federal and state law by filing a SAR. Under the new reporting system designed by the Board, the other Agencies, and FinCEN, state chartered banking organizations should be able to fulfill their state reporting obligations by filing a SAR with FinCEN.

Safe Harbor Protections; Potential Liability Under Federal and State Laws. Some commenters expressed the concern that banking organizations and their institution-affiliated parties could be liable under federal and state laws, such as the Right to Financial Privacy Act, for filing SARs with respect to conduct that is later found not to have been criminal. Another concern was that the filing of SARs with state and local law enforcement agencies would subject filers to claims under state law. Both of these concerns are addressed by the scope of the safe harbor protections provided in 31 U.S.C. 5318(g).

The Board is of the opinion that the safe harbor statute is broadly defined to include the reporting of known or suspected criminal offenses or suspicious activities, by filing a SAR or by reporting by other means, with state and local law enforcement authorities, as well as with the Agencies and FinCEN.

A few commenters requested that the Board make explicit the safe harbor protections of 31 U.S.C. 5318(g)(2) and (3) on the SAR. They are included in new Section 208.20(k) of this rule and on the form.

Record Retention. Several commenters expressed the view that the 10-year period for the retention of records in Section 208.20(g) was excessive, especially in light of a five-year record retention requirement for records that is contained in the Bank Secrecy Act. The 10-year period in the Board's proposed regulation would have continued the Board's existing record retention requirement for criminal referral forms. However, in recognition of the potential burden of document retention on financial institutions, the Board has limited the record retention period to five years.

Dollar Thresholds. A few commenters encouraged the Board to raise the dollar thresholds for known or suspected criminal conduct by non-insiders, or to establish a dollar threshold for insiders. The Board has considered these comments, but at this time it believes that the thresholds meet and properly balance the dual concerns of prosecuting criminal activity involving banking organizations and minimizing the burden on banking organizations. With respect to the suggestion that the Board adopt a dollar threshold for insider violations, it is noted that insider abuse has long been a key concern and focus of enforcement efforts at the Board. With the development of a new sophisticated automated database, the Board and law

enforcement agencies will have the benefit of a comprehensive and easily accessible catalogue of known or suspected insider wrongdoing. The Board does not wish to limit the information it receives regarding insider wrongdoing. Some petty crimes, for example, repetitive thefts of small amounts of cash by an employee who frequently moves between banking organizations, may warrant enforcement action or criminal prosecution.

One commenter suggested an indexed threshold, based on the regional differences in the various dollar thresholds below which the federal, state, and local prosecutors generally decline prosecution. While the Board recognizes that there may be regional variations in the dollar amount of financial crimes generally prosecuted, the Board's concern is to place the relevant information in the hands of the investigating and prosecuting authorities. The prosecuting authorities then may consider whether to pursue a particular matter. In the Board's view, the dollar thresholds proposed and adopted in this final rule best balance the interests of law enforcement and banking organizations. The Board also believes that indexed thresholds could create more confusion than benefit to banking organizations.

Commenters also suggested the creation of a dollar threshold for the reporting of suspicious activities relating to money laundering offenses. A \$5,000 threshold has been established for reporting of such suspicious activities.

Questions were raised regarding the permissibility of filing SARs in situations in which the dollar thresholds for known or suspected criminal conduct or suspicious activity are not met and the applicability of the safe harbor provisions of 31 U.S.C. 5318(g) to such non-mandatory filings. It is the opinion of the Board that the safe harbor provisions of 31 U.S.C. 5318(g) cover all reports of suspected or known criminal violations and suspicious activities to law enforcement authorities, regardless of whether such reports are filed pursuant to the mandatory requirements of the Board's regulations or are voluntary.

Notification of On-Going Violations and of State and Local Law Enforcement Authorities. Proposed Section 208.20(d) required a banking organization to notify immediately the law enforcement authorities in the event of an on-going violation. Section 208.20(e) encourages the filing of a copy of the SAR with state and local law enforcement agencies in appropriate cases. This requirement and guidance were found by some commenters to be unclear as to when immediate notification or the filing of the SAR with state and local authorities would be required. The Board wishes to clarify that immediate notification is limited to situations involving on-going violations, for example, when a check kite or money laundering has been detected and may be continuing. It is impossible for the Board to contemplate all of the possible circumstances in which it might be appropriate for a banking organization to advise state and local law enforcement authorities. Banking organizations should use their best

judgment regarding when to alert them regarding on-going criminal offenses or suspicious activities.

Supporting Documentation. The proposed requirements that an institution maintain "related" documentation and make "supporting" documentation available to the law enforcement agencies upon request were criticized as inconsistent and vague. One commenter questioned whether the Board intended a substantive difference in meaning between "related" and "supporting." As a substantive difference is not intended, the Board has referred to "supporting" documentation in the final rule in reference both to the maintenance and production requirements. The Board believes that the use of the word "supporting" is more precise and limits the scope of the information which must be retained to that which would be useful in proving that the crime has been committed and by whom it has been committed. As to the criticism that the meaning of "related" or "supporting" documentation is vague, it is anticipated that banking organizations will use their judgment in determining the information to be retained. It is impossible for the Board to catalogue the precise types of information covered by this requirement, as it necessarily depends upon the facts of a particular case.

Scope of Confidentiality Requirement. One commenter correctly noted that the proposed regulation is unclear as to whether the confidentiality requirement applies only to the information contained on the SAR itself, or whether the requirement extends to the "supporting" documentation. The Board

takes the position that only the SAR and the fact that supporting documentation to a SAR exists are subject to the confidentiality requirements of 31 U.S.C. 5318(g). The supporting documentation itself is not subject to the confidentiality provisions of 31 U.S.C. 5318(g). The safe harbor provisions of 31 U.S.C. 5318(g), however, apply to the SAR and supporting documentation, as set forth in Section 208.20(k).

Provisions of Supporting Documentation to Law Enforcement Authorities Upon Request. Many commenters noted that the guidance provided in the Board's proposed regulation regarding giving supporting documentation to law enforcement agencies upon their request after the filing of a SAR was unclear or contrary to law. Some questioned whether law enforcement agencies would still need to subpoena relevant documents from a banking organization. The Board's regulation requires banking organizations filing SARs to identify, maintain and treat the documentation supporting the report as if it were actually filed with the SAR. This means that subsequent requests from law enforcement authorities for the supporting documentation relating to a particular SAR does not require the service of a subpoena or other legal processes normally associated with providing information to law enforcement agencies.

Civil Litigation. The Board was encouraged to adopt regulations that would make SARs undiscoverable in civil litigation in order to avoid situations in which a banking organization could be ordered by a court to produce a SAR in

civil litigation and could be confronted with the prospect of having to choose between being found in contempt or violating the Board's rules. In the opinion of the Board, 31 U.S.C. 5318(g) precludes the disclosure of SARs. The final rule requires a banking organization that receives a subpoena or other request for a SAR to notify the Board so that the Board may, if appropriate, intervene in litigation or seek the assistance of the U.S. Department of Justice.

Maintenance of Originals. Proposed Section 208.20(g) required the maintenance of supporting documentation in its original form. A number of commenters noted that electronic storage of documents is becoming the rule rather than the exception, and that requiring the storage of paper originals would impose undue burdens on financial institutions. Moreover, some records are retained only in a computer database. The proposed regulation reflected the concerns of the law enforcement agencies that the best evidence be preserved. However, upon further consideration, the Board wishes to clarify that the electronic storage of original documentation related to the filing of a SAR is permissible. In addition, the Board recognizes that a banking organization will not always have custody of the originals of documents and that some documents will not exist at the organization in paper form. In those cases, preservation of the best available evidentiary documents, for example, computer disks or photocopies, should be acceptable. This has been reflected in the final rule by changing the

reference to original documents to "original documents or business record equivalents."

Investigation and Proof Burdens. One commenter expressed the concern that a banking organization would need to establish probable cause before reporting crimes for which an essential element of the proof of the crime was the intent of the actor. The Board does not intend that banking organizations assume the burden of proving illegal conduct; rather, banking organizations are required to report known or suspected crimes or suspicious activities in accordance with this final rule.

Supplementary or Corrective Information; Reporting of Multiple Crimes or Suspects. Material information that supplements or corrects a SAR should be filed with FinCEN by means of a subsequent SAR. The first page of the SAR provides boxes for the reporter to indicate whether the report is an initial, a corrected or a supplemental report.

One commenter requested guidance on the reporting of multiple crimes or related crimes committed by more than one individual. The instructions to the SAR contemplate that additional suspects may be reported by means of a supplemental page. Likewise, multiple crimes committed by a suspect may be reported by means of multiple check-offs on the SAR, or if needed, by a written addendum to the SAR. In the event that related crimes have been committed by more than one person, a description of the related crimes may be made by addendum to the SAR. The Board encourages filers to make a complete report of

all known or suspected criminal or suspicious activity. The SAR may be supplemented in order to facilitate a complete disclosure.

Calculation of Time Frame for Reporting. A number of commenters requested that the Board clarify the application of the deadline for filing SARs. The Board's proposed regulation used the broadest possible language to set the time frames for the reporting of known or suspected criminal offenses and suspicious activities in order to best guide reporting institutions. Absolute deadlines for the filing of SARs are important to the investigatory and prosecutorial efforts of law enforcement authorities. It is expected that banking organizations will meet the filing deadlines once conduct triggering the reporting requirements is identified. Further clarification of the time frames is not needed in the Board's view.

Board Notification Requirements. Several commenters expressed general support for the modification of the reporting requirement that permits reporting of SARs to a committee of the board. As a matter of clarification, notification of a committee of the board relieves the banking organization of the obligation to disclose the SARs filed to the entire board. It would be expected, however, that the appointed committee, such as the audit committee, would report to the full board at regular intervals with respect to routine matters in the same manner and to the same extent as other committees report at board meetings. With respect to serious crimes or insider malfeasance, the

appointed committee likely should consider it appropriate to make more immediate disclosure to the full board.

Some larger banking organizations expressed the view that prompt disclosure of SARs to the board or a committee would impose a serious burden because larger organizations typically file a larger number of criminal referral forms (now, SARs). While the Board acknowledges that larger institutions may have more SARs to report to the board or a committee, this does not alter the directors' fiduciary obligation to monitor, for example, the condition of the institution and to take action to prevent losses. The final regulation does not dictate the content of the board or committee notification, and, in some cases, such as when relatively minor non-insider crimes are to be reported, it may be completely appropriate to provide only a summary listing of SARs filed. The Board expects the management of banking organizations to provide a more detailed notification to the boards or committees of SARs involving insiders or a potential material loss to the institutions.

Information Sharing. Commenters suggested that the final regulations should somehow facilitate the sharing of information among banking organizations in order to better detect new fraudulent schemes. It is anticipated that the Treasury Department, through FinCEN, and the Agencies, will keep reporting entities apprised of recent developments and trends in banking-related crimes through periodic pronouncements, meetings, and seminars.

Single Filing Requirement; Acknowledgement of Filings.

Some commenters requested clarification of the single form filing requirement. The Board reiterates that the filing of a SAR with FinCEN is the only filing that is required. Federal and state law enforcement and bank supervisory agencies will have access to the database created and maintained by FinCEN on behalf of the Agencies and the Department of Treasury; thus, a single filing with FinCEN is all that is required under the new reporting system.

Commenters also requested that the final rule permit the filing of SARs via telecopier. Such filings are not compatible with the system developed by the Agencies and FinCEN. Banking organizations can file the SAR via magnetic media using the computer software to be provided to all banking organizations by the Board and each of the other Agencies with respect the institutions they supervise. Larger banking organizations that currently file currency transaction reports via magnetic tape with FinCEN may also file SARs by magnetic tape.

Regulatory Flexibility Act

The Board certifies that this final regulation will not have a significant financial impact on a substantial number of small banks or other small entities.

Paperwork Reduction Act

In accordance with Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320 Appendix

A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget.

The collection of information requirements in this regulation are found in 12 CFR 208.20, 211.8, 211.24, and 225.4. This information is mandatory and is necessary to inform appropriate law enforcement agencies of known or suspected criminal or suspicious activities that take place at or were perpetrated against financial institutions. Information collected on this form is confidential (5 U.S.C. 552(b)(7) and 552a(k)(2), and 31 U.S.C. 5318(g)). The federal financial institution regulatory agencies and the U.S. Department of Justice may use and share the information. The respondents/recordkeepers are for-profit financial institutions, including small businesses.

The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100-0212.

No comments specifically addressing the hour burden estimate were received.

It is estimated that there will be 12,000 responses from state member banks, bank holding companies, Edge and agreement corporations, and U.S. branches and agencies of foreign banks.

Both the new regulation and revisions made to the proposed regulation and reflected in this final rule simplify the

23

submission of the reporting form and shorten the records retention requirement. However, the same amount of information will be collected under the new rule. The burden per respondent varies depending on the nature of the criminal or suspicious activity being reported. The Federal Reserve estimates that the average annual burden for reporting and recordkeeping per response will remain .6 hours. Thus the Federal Reserve estimates the total annual hour burden to be 7,200 hours. Based on an hourly cost of \$20, the annual cost to the public is estimated to be \$144,000.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551 and to the Office of Management and Budget, Paperwork Reduction Project (7100-0212), Washington, D.C. 20503.

List of Subjects12 CFR Part 208

Accounting, Agriculture, Banks, Banking, Confidential Business information, Crime, Currency, Federal Reserve System, Flood insurance, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 211

24

Exports, Federal Reserve System, Foreign Banking,
Holding companies, Investments, Reporting and recordkeeping
requirements.

12 CFR Part 225

Administrative practice and procedures, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, Parts 208, 211 and 225 of chapter II of title 12 of the Code of Federal Regulations are amended as set forth below:

PART 208 -- MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The Authority citation for 12 CFR Part 208 continues to read as follows:

Authority: 12 U.S.C. 36, 248(a), 248(c), 321-338a, 371d, 461, 481-486, 601, 611, 1814, 1823(j), 1828(o), 1831o, 1831p-1, 3105, 3310, 3331-3351, and 3906-3909; 15 U.S.C. 78b, 781(b), 781(g), 781(i), 78o-4(c)(5), 78q, 78q-1 and 78w; 31 U.S.C. 5318; 42 U.S.C. 4102a, 4104a, 4104b, 4106, and 4128.

2. Section 208.20 and its heading are revised to read as follows:

§ 208.20 Suspicious Activity Reports.

(a) Purpose. This section ensures that a state member bank files a Suspicious Activity Report when it detects a known or suspected violation of Federal law, or a suspicious transaction related to a money laundering activity or a violation of the Bank Secrecy Act. This section applies to all state member banks.

(b) Definitions. For the purposes of this section:

(1) FinCEN means the Financial Crimes Enforcement Network of the Department of the Treasury.

(2) Institution-affiliated party means any institution-affiliated party as that term is defined in 12 U.S.C. 1786(r), or 1813(u) and 1818(b)(3),(4) or (5).

(3) SAR means a Suspicious Activity Report on the form prescribed by the Board.

(c) SARs required. A state member bank shall file a SAR with the appropriate Federal law enforcement agencies and the Department of the Treasury in accordance with the form's instructions by sending a completed SAR to FinCEN in the following circumstances:

(1) Insider abuse involving any amount. Whenever the state member bank detects any known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the bank or involving a transaction or transactions conducted through the bank, where the bank believes that it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the bank was used to facilitate a criminal transaction, and the bank has a substantial basis for identifying one of its directors, officers, employees, agents or other institution-affiliated parties as having committed or aided in the commission of a criminal act regardless of the amount involved in the violation.

(2) Violations aggregating \$5,000 or more where a suspect can be identified. Whenever the state member bank

detects any known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the bank or involving a transaction or transactions conducted through the bank and involving or aggregating \$5,000 or more in funds or other assets, where the bank believes that it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the bank was used to facilitate a criminal transaction, and the bank has a substantial basis for identifying a possible suspect or group of suspects. If it is determined prior to filing this report that the identified suspect or group of suspects has used an "alias," then information regarding the true identity of the suspect or group of suspects, as well as alias identifiers, such as drivers' license or social security numbers, addresses and telephone numbers, must be reported.

(3) Violations aggregating \$25,000 or more regardless of a potential suspect. Whenever the state member bank detects any known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the bank or involving a transaction or transactions conducted through the bank and involving or aggregating \$25,000 or more in funds or other assets, where the bank believes that it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the bank was used to facilitate a criminal transaction, even though there is no substantial basis for identifying a possible suspect or group of suspects.

28

(4) Transactions aggregating \$5,000 or more that involve potential money laundering or violations of the Bank Secrecy Act. Any transaction (which for purposes of this paragraph (c)(4) means a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument or investment security, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected) conducted or attempted by, at or through the state member bank and involving or aggregating \$5,000 or more in funds or other assets, if the bank knows, suspects, or has reason to suspect that:

- (i) The transaction involves funds derived from illegal activities or is intended or conducted in order to hide or disguise funds or assets derived from illegal activities (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any law or regulation or to avoid any transaction reporting requirement under federal law;
- (ii) The transaction is designed to evade any regulations promulgated under the Bank Secrecy Act; or
- (iii) The transaction has no business or apparent lawful purpose or is not the sort in which the

29

particular customer would normally be expected to engage, and the bank knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

(d) Time for reporting. A state member bank is required to file a SAR no later than 30 calendar days after the date of initial detection of facts that may constitute a basis for filing a SAR. If no suspect was identified on the date of detection of the incident requiring the filing, a state member bank may delay filing a SAR for an additional 30 calendar days to identify a suspect. In no case shall reporting be delayed more than 60 calendar days after the date of initial detection of a reportable transaction. In situations involving violations requiring immediate attention, such as when a reportable violation is on-going, the financial institution shall immediately notify, by telephone, an appropriate law enforcement authority and the Board in addition to filing a timely SAR.

(e) Reports to state and local authorities. State member banks are encouraged to file a copy of the SAR with state and local law enforcement agencies where appropriate.

(f) Exceptions. (1) A state member bank need not file a SAR for a robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities.

30

(2) A state member bank need not file a SAR for lost, missing, counterfeit, or stolen securities if it files a report pursuant to the reporting requirements of 17 CFR 240.17f-1.

(g) Retention of records. A state member bank shall maintain a copy of any SAR filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of the filing of the SAR. Supporting documentation shall be identified and maintained by the bank as such, and shall be deemed to have been filed with the SAR. A state member bank must make all supporting documentation available to appropriate law enforcement agencies upon request.

(h) Notification to board of directors. The management of a state member bank shall promptly notify its board of directors, or a committee thereof, of any report filed pursuant to this section.

(i) Compliance. Failure to file a SAR in accordance with this section and the instructions may subject the state member bank, its directors, officers, employees, agents, or other institution-affiliated parties to supervisory action.

(j) Confidentiality of SARs. SARs are confidential. Any state member bank subpoenaed or otherwise requested to disclose a SAR or the information contained in a SAR shall decline to produce the SAR or to provide any information that would disclose that a SAR has been prepared or filed citing this section, applicable law (e.g., 31 U.S.C. 5318(g)), or both, and notify the Board.

31

(k) Safe Harbor. The safe harbor provisions of 31 U.S.C. 5318(g), which exempts any state member bank that makes a disclosure of any possible violation of law or regulation from liability under any law or regulation of the United States, or any constitution, law or regulation of any state or political subdivision, covers all reports of suspected or known criminal violations and suspicious activities to law enforcement and financial institution supervisory authorities, including supporting documentation, regardless of whether such reports are filed pursuant to this section or are filed on a voluntary basis.

PART 211 -- INTERNATIONAL BANKING OPERATIONS (REGULATION K)

1. The Authority citation for 12 CFR Part 211 continues to read as follows:

Authority: 12 U.S.C. 221 et seq., 1818, 1841 et seq., 3101 et seq., 3901 et seq..

§§ 211.8 and 211.24 [Amended]

2. In §§ 211.8 and 211.24(f), remove the words "criminal referral form" and add, in their place, the words "suspicious activity report".

PART 225 -- BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The Authority citation for 12 CFR Part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1831p-1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331-3351, 3907, and 3909.

32

§ 225.4 [Amended]

2. In § 225.4, the heading of paragraph (f) is revised to read "Suspicious Activity Report".

3. In § 225.4(f), remove the words "criminal referral form" and add, in their place, the words "suspicious activity report".

By order of the Board of Governors of the Federal Reserve System, January 30, 1996.

(signed) William W. Wiles

William W. Wiles,
Secretary of the Board.

WHAT IS A PAYABLE THROUGH ACCOUNT?

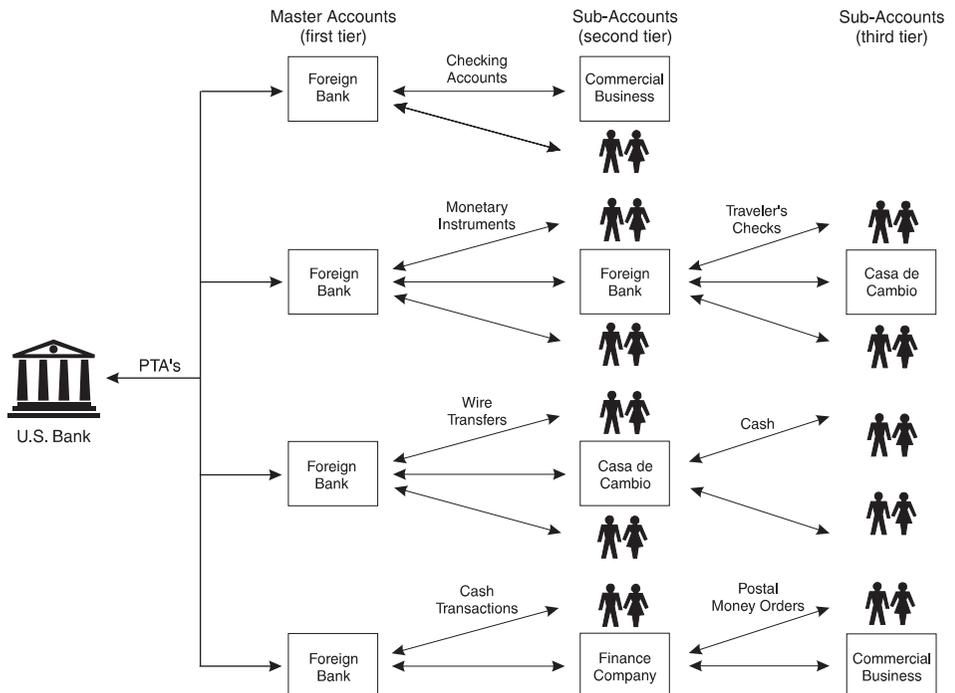
A Payable Through Account (PTA) is a demand deposit account through which banking entities located in the United States extend check-writing privileges to the customers of a foreign bank. Under this PTA arrangement, a U.S. bank, Edge corporation or the U.S. branch or agency of a foreign bank (“U.S. banking entities”), opens a master checking account in the name of a foreign bank operating outside the United States.

The master account subsequently is divided by the foreign bank into “sub-accounts,” each in the name of one of the foreign bank’s customers. The foreign bank extends signature authority on its master account to its own customers. The number of sub-accounts permitted under this arrangement is virtually unlimited. See Diagram 1.

Deposits into the master account may flow through the foreign bank, which pools them for daily transfer to the U.S. banking entity, or the funds may flow directly to the U.S. banking entity for credit to the master account, with further credit to the sub-account. Checks encoded with the foreign bank’s account number, along with a numeric code to identify the sub-account, provide sub-account holders with access to the U.S. payments system. Thus, the PTA mechanism permits the foreign bank operating outside the U.S. to offer its customers, the sub-account holders, U.S. dollar denominated checks and ancillary services, which may include the ability to receive wire transfers and deposits into the sub-accounts, and to cash checks.

U.S. banking entities may require foreign banks to execute a contract stipulating that all matters pertaining to sub-accounts are the sole responsibility of the foreign bank. Sub-account records are typically maintained by the foreign

Diagram 1



bank in the foreign jurisdiction in which it is chartered and, for the most part, statements and account activity notices are also issued by the foreign bank outside of the United States.

Certain aspects of the PTA arrangement may provide opportunities for illicit activities. First, weak licensing laws, promulgated by a proliferating offshore financial services sector and compounded by weak or absent bank supervision in some offshore financial centers, have created an environment in which access to banking licenses is unencumbered and unregulated.

Second, in the PTA arrangement, the U.S. banking entity may regard the foreign bank as its sole customer. This means that even if the U.S. banking entity has adequate “know your customer” guidelines in place with respect to its own customers, such guidelines may not be extended to the customers of the foreign bank.

In addition, some U.S. banking entities routinely permit sub-account holders to have cash deposit and cash withdrawal privileges from the foreign bank’s master account. These activities, especially if they are frequent and involve large amounts, indicate a potential for abuse, in light of uncertainty as to the true identity of the sub-account holders. Finally, PTAs used in conjunction with a U.S. office of the foreign bank, such as a representative office or a subsidiary, may enable the foreign bank to, in effect, offer the same services as a branch without being subject to Federal Reserve supervision.

PTAs have been used for many years by credit unions, insurance companies and investment companies. More recently, PTAs have been marketed to foreign banks that do not have a U.S. presence as a way to clear U.S. dollar denominated checks through the U.S. payments system. This product has also been offered under different names by a variety of banking entities. Although the most common alternative names used by banking entities are “pass-through account” or “pass-by account,” the banking entity may have another name for this product which does not identify it as a PTA. In this event, a further check into the foreign bank correspondent relationships existing at the examined institution may be necessary.

BENEFITS AND RISKS ASSOCIATED WITH PAYABLE THROUGH ACCOUNTS

The objectives of U.S. banking entities marketing PTAs, and foreign banks which subscribe to the PTA service, may vary from situation to situation. However, there are essentially three benefits that currently drive provider and user interest: a) permits U.S. banking entities to attract dollar deposits from the home market of foreign banks without jeopardizing the foreign bank’s relationship with its clients; b) provides fee income potential for both the U.S. PTA provider and the foreign bank; and, c) the foreign bank can offer its customers efficient and low cost access to the U.S. payment system.

The safety and soundness risks most likely to be encountered by U.S. banking entities providing PTA services to foreign banks, in addition to the possible use of the banking entities in money laundering schemes, are “reputational,” with the potential related loss of business, and the payment of legal expenses. Violations of the Bank Secrecy Act and related statutes, the International Emergency Economic Powers Act, and the Trading with the Enemy Act can also result from the PTA arrangement.

CONTRACTUAL AGREEMENTS

There may be a comprehensive written contract agreement between the U.S. banking entity offering the PTA and the foreign bank that governs their relationship and, among other things, the requirements of the account and services offered, eligible sub-account holders, the accounting and recordkeeping to be done by both parties, fees, and required minimum balance, the provision of overdraft lines of credit, indemnification for bad checks and losses, and the legal jurisdiction under which disputes will be resolved. It is important to note that the contract is between the U.S. banking entity and the foreign bank. The written agreement should be reviewed as it may provide evidence and documentation for the policies and procedures that the U.S. banking entity has developed.

	Y	N	Comments
1. Review the U.S.-based bank's deposit ledger and determine if the bank offers payable through accounts to foreign banks. If so, identify which banks and country(s) of origin. If no, do not complete this section.			

Advisory #1

The Federal Reserve has established guidelines for the maintenance of payable through accounts. (See SR 95-10 (SUP), March 3, 1995, Section 1402.0 of the BSA Examination Manual). The guidelines state that it is inconsistent with the principles of safe and sound banking for U.S.-based banking entities to offer payable through account services without developing and maintaining policies and procedures designed to guard against the possible improper or illegal

use of their payable through account facilities by foreign banks and their customers.

For each payable through account maintained for a foreign financial institution, the U.S. banking entity should either: (1) obtain adequate information about the ultimate users of the payable through accounts; (2) be able to rely on the home country supervisor to require the foreign bank to identify and monitor the transactions of its own customers; or (3) ensure that its payable through account is not being used for money laundering or other illicit purposes.

	Y	N	Comments
2. Review the contract with the foreign bank. Does the contract: <ul style="list-style-type: none"> a. address procedures for opening sub-accounts? b. require the master account holder to provide the U.S.-based bank with the true identity of sub-account holders? c. allow cash transactions by sub-account holders within the U.S. borders? d. require the foreign bank to investigate suspicious transactions and report findings to the U.S.-based bank? e. clearly state the liability of both the U.S.-based bank and the foreign bank to which the payable through service is being offered? 			

	<i>Y</i>	<i>N</i>	<i>Comments</i>
f. have approval of personnel with appropriate authority?			
g. have approval of the legal department?			
3. Does the U.S.-based bank have an effective system of internal controls for opening and monitoring payable through accounts that include written policies and procedures providing for:			
a. procedures for opening accounts?			
b. operational procedures?			
c. staff responsibilities?			
d. training?			
e. audit?			
f. identifying and reporting of unusual or suspicious transactions (e.g., money laundering)?			
4. Does the U.S.-based bank apply its “know your customer” policy to:			
a. payable through accounts			
b. sub-account holders?			
c. Review documentation to determine effectiveness.			
5. Does the U.S.-based bank prohibit foreign banks from opening <i>sub-accounts</i> (second tier) for other foreign banks, casas de cambios, finance companies or other financial intermediaries? If not, what procedures are in place for the U.S. bank to understand the identity of these second-tier sub-accounts holders and the nature of the business transactions (see Diagram #1 in Section 1101.0)?			
6. Does the U.S.-based bank review the listing of account and sub-account holders to ensure that no accounts have been opened to individuals or businesses located in countries that are prohibited with doing business with the U.S. and Specially Designated Nationals or Specially Designated Narcotics Traffickers as determined by the Treasury’s Office of Foreign Assets Control?			

	<i>Y</i>	<i>N</i>	<i>Comments</i>
7. Does the U.S.-based bank have written internal controls policies to monitor account activity for suspicious transactions? Determine how monitoring occurs.			
8. Do the foreign banks that maintain the payable through relationship properly review and explain suspicious transactions to the U.S.-based bank? Review and determine if written procedures provide for the explanation of suspicious accounts.			
9. Does the U.S.-based bank allow cash transactions by sub-account holders? If so, does the U.S. bank properly report CTRs for large cash transactions?			
10. Does the U.S.-based bank conduct audits of payable through accounts to ensure compliance with the contract and appropriate laws and regulations? If so, note the scope and frequency of the audit.			
11. Does the U.S.-based bank conduct audits of the foreign bank, or review in some other way: <ul style="list-style-type: none"> a. the procedures of the foreign bank for opening accounts, to determine if they are consistent with U.S. requirements? b. the foreign bank's monitoring of sub-account holder activities to detect and report suspicious or unusual transactions? 			
12. Does the U.S.-based bank maintain adequate documentary information (i.e. financial statements, licensing confirmation, etc.) regarding the foreign bank?			
13. Has the examiner determined, if possible, whether the home country supervisor of the foreign bank requires banks in that jurisdiction to identify and monitor the transactions of its own customers consistent with U.S. requirements?			
14. Has the U.S.-based bank determined whether the home country supervisor of the foreign bank requires banks in that jurisdiction to identify and monitor the transactions of its own customers consistent with U.S. requirements?			

	<i>Y</i>	<i>N</i>	<i>Comments</i>
<p>15. After reviewing the responses to procedures 1 through 14, above, answer the questions listed below:</p> <p>a. Does the U.S.-based bank obtain adequate information about the ultimate users of the payable through accounts?</p> <p>b. Is the U.S.-based bank able to rely on the home country supervisor to require the foreign bank to identify and monitor the transactions of its own customers?</p> <p>c. Can the U.S.-based bank ensure that its payable through account is not being used for money laundering or other illicit purposes?</p>			

Advisory #2

If procedure 15, a, b and c is answered in the affirmative, you may stop. In the event that the answer to procedure 15 a, b, or c is in the

negative, Federal Reserve guidelines recommend that the U.S.-based banking entity terminate the payable through arrangement with the foreign bank as expeditiously as possible.

	<i>Y</i>	<i>N</i>	<i>Comments</i>
16. Has the U.S.-based bank taken steps to terminate the account relationship as expeditiously as possible?			

Advisory #3

In those cases where the U.S.-based institution fails to take appropriate steps to terminate the account relationship, the examiner should so

note this in the “Examiners Comments and Conclusions” page of the examination report, and bring the inappropriate practice to the attention of bank management.

**REPORT OF FOREIGN BANK AND
FINANCIAL ACCOUNTS, TD F
90-22.1, BY "BANKS" LOCATED
IN THE UNITED STATES
(INCLUDING AGENCIES AND
BRANCHES OF FOREIGN BANKS)**

The regulation that calls for the reporting of foreign financial accounts implements the Currency and Foreign Transactions Reporting Act of 1970, commonly referred to as the Bank Secrecy Act (BSA). In the late 1960's, law enforcement and tax collection officials noted an increased use of foreign bank accounts by U.S. citizens and residents to evade taxes. Such citizens established and maintained financial accounts in "tax haven" countries with strict bank secrecy laws in order to hinder U.S. investigations into their unlawful activities. For example, funds obtained from illicit narcotics sales in the U.S. would be deposited into foreign bank accounts and then repatriated back to the U.S. owner in the form of innocent-appearing sham loans or investments.

The Form 90-22.1 requirements serve two useful purposes in combating the use of foreign financial accounts to circumvent U.S. law. First, the information provides leads to investigators in identifying or tracing illicit funds or unreported income maintained or generated abroad. Also, and often more importantly, the Form 90-22.1 filing requirements provide an additional prosecutorial tool in combating money laundering, tax evasion, drug trafficking, and numerous white collar crimes. Often it is difficult or impossible to obtain detailed evidence of financial activity and assets from outside of the jurisdiction of the U.S. Frequently, this evidence is critical in convicting violators of U.S. law who use foreign financial accounts to "cover the tracks" of their illegal activities. Generally, such persons do not comply with the Form 90-22.1 filing requirement as they do not want to notify the government of their interest in foreign financial accounts. Accordingly, persons may be prosecuted for criminal violation of the reporting requirements instead of for commission of the underlying crimes.

Treasury Form 90-22.1 is used to report foreign account relationships and is required by section 103.24 of the BSA regulations, 31 C.F.R.

Part 103. The BSA is not an income tax statute, and Form 90-22.1, though filed with the Internal Revenue Service, is not a tax form. Accordingly, a person may have a Form 90-22.1 reporting obligation even though that person's assets held through foreign accounts produce no taxable income.

In general, each United States person having a financial interest in, or signatory authority over, foreign financial accounts with an aggregate value exceeding \$10,000, must report the account relationships to the Internal Revenue Service. See form 90-22.1, Instruction A, and Sections 103.24 and 103.27 of the Bank Secrecy Act regulations, 31 C.F.R. Part 103. A report must be filed for each calendar year in which the aggregate value of the foreign accounts exceeded U.S. \$10,000. No report is required for calendar years where the aggregate value of the foreign financial accounts at no time exceeded U.S. \$10,000.

The term "United States person" means (1) a U.S. citizen, (2) a resident of the United States e.g., any individual who was in the United States for any 60 consecutive day period during the reporting year, (3) a domestic partnership, (4) a domestic corporation, or (5) a domestic estate or trust. A branch, agency, or representative office of a foreign corporation, including a foreign bank, which is not recognizable as a separate legal personality is not a United States person for the purposes of this form.

An officer or employee of a federally-insured depository institution branch, or agency office within the United States of a foreign bank that is subject to the supervision of a federal bank regulatory agency need not report that he or she has signature or other authority over a foreign bank, securities or other financial account maintained by such entities unless he or she has a personal financial interest in the account. See form 90-22.1, Instruction A.

Form 90-22.1 shall be filed on or before June 30 of each calendar year with the Internal revenue Service, Post Office Box 32621, Detroit, Michigan 48232. The year for which the report is made must be identified on the form. Please note that if an extension of time to file is needed, request such extension by writing to the Financial Crimes Enforcement Network, Department of the Treasury, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220.

Accounts subject to reporting are all maintained with a bank (except a military banking facility as defined in Instruction E) or broker or dealer in securities that is located in a foreign country, even if it is part of a United States bank or other institution. Accounts maintained with a branch, agency, or other office of a foreign bank or other institution that is located in the United States, Guam, Puerto Rico, the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands, and the Virgin Islands are not foreign accounts and are not subject to reporting. Foreign assets (such as securities issued by foreign corporations) that are held directly by a U.S. person, or through an account maintained with a U.S. office of a bank or other institution are not subject to the BSA foreign account reporting requirements. Form 90-22.1 is for the reporting of foreign accounts, and not all "foreign" assets owned or controlled

by U.S. persons. Also, international, interbank transfer accounts ("nostro accounts") held by domestic banks are not subject to reporting on Form 90-22.1 52FR 11436, 11438 (April 8, 1987).

Reportable bank accounts include both deposit accounts and loan/credit line accounts. The term "bank deposit account" means a savings, demand, checking, or any other funds deposit account maintained with a financial institution or other person engaged in the business of banking. It includes certificates of deposit. The term "loan/credit line account" means disbursed loan, funds drawn under credit lines, and secured, undrawn credit lines and other secured, undisbursed extensions of credit by a financial institution to a U.S. person. A federally insured depository institution, however, should not report any loans and credit extensions from foreign banks.

Anti-Money Laundering Program Review for U.S. Overseas Offices

Examination Procedures

Section 1202.0

Advisory #1

The Federal Reserve has developed examination procedures for reviewing compliance by U.S.-based institutions, whether domestic or foreign operated, with the Bank Secrecy Act (“BSA”) and other related anti-money laundering statutes. These procedures, entitled the “Workprogram for Financial Recordkeeping and Reporting of Currency and Foreign Transactions Examination,” is designed for conducting BSA reviews of the U.S.-based operations only and can be located at Section 100 of the *BSA Examination Manual*.

In contrast, the following examination procedures should be utilized by the examiner when conducting BSA on-site reviews of the overseas operations of U.S.-based institutions. It is imperative that the examiner understand that each foreign country may have its own anti-money laundering statutes, if any at all, and that the statutes may differ significantly from those utilized in the U.S. The availability of records may also differ significantly from the U.S.

Advisory #2

The following examination procedures have been designed to be completed in two parts. The first is to be completed at the head office in the U.S. prior to conducting the on-site examination of the overseas branch or subsidiary of the U.S.-based institution. The second relates to the on-site foreign country review.

PART 1: HEAD OFFICE REVIEW

Operational Considerations On-Site in the U.S.

Contact the appropriate U.S. representative with overseas branch/subsidiary responsibility to advise that information regarding BSA and related anti-money laundering laws is needed to conduct the initial portion of the examination. Follow-up the conversation in writing to request the needed information.

The following information, at a minimum, should be obtained from the head office:

	<i>Y</i>	<i>N</i>	<i>Comments</i>
<p>1. Policies and Procedures</p> <p>Does the head office maintain and periodically review policies and procedures for overseas operations?</p> <p>The following should be reviewed:</p> <ul style="list-style-type: none"> a. Policies and procedures applicable to the foreign offices such as the corporate policy statement or program designed to monitor compliance with U.S. and local anti-money laundering statutes. b. Applicable laws and regulations affecting the foreign operations. Does the foreign country in which the institution operates maintain similar reporting requirements as that of the U.S.? 			

	<i>Y</i>	<i>N</i>	<i>Comments</i>
<p>c. The mission statement and a detailed description of the foreign branch/subsidiary's primary business and a listing of the services offered (i.e. retail, wholesale, private banking, trust, money exchange, letters of credit secured with cash or time deposits).</p> <p>d. Organization Chart, including a listing of management and other key personnel at the foreign offices.</p> <p>e. Listing of financial reports available from the foreign branch/subsidiary and copies of the most recent reports forwarded by the foreign operation to the head office to determine:</p> <ul style="list-style-type: none"> • addresses/recipients • method of reporting to the U.S. • content of required reports • frequency of reports • required responses to provided reports (review responses) • record retention requirements at the foreign operation • type of accounting systems in place (manual or automated) 			

Advisory #3

available in a foreign language only and if so, what arrangements can be made to translate the information.

The examiner should determine whether or not the records on-site at the foreign operation are

	<i>Y</i>	<i>N</i>	<i>Comments</i>
<p>2. Audit</p> <p>Are internal or external audit reports available?</p> <p>Contact should be made with the auditor responsible for the on-site overseas audit to determine the:</p> <ul style="list-style-type: none"> a. scope of internal/external audits b. frequency of audits c. location of audit workpapers d. audit procedures implemented e. reporting lines 			

	<i>Y</i>	<i>N</i>	<i>Comments</i>
<p>2. Audit (Continued)</p> <p>Is a copy of the latest internal and/or external audit of the overseas operation available at the head office? If so, review the audit for pertinent information that may assist the conducting of the on-site review.</p> <p>Has senior management reviewed the internal and/or external audits and implemented corrective actions regarding criticisms noted within the audits?</p>			

Advisory #4

Section 1502 of the *BSA Examination Manual* contains information regarding the Financial Action Task Force (FATF) and its recommendations to member countries in adopting anti-money laundering statutes. For each foreign country in which the U.S. institution operates, management should be able to provide information regarding the foreign country's adoption of the FATF recommendations. Keep in mind that a foreign country's formal adoption of the FATF recommendations does not necessarily mean that the anti-money laundering statutes and regulations are now in place, or that the statutes and regulations are being adequately followed by the financial community or monitored by the country's federal government. The foreign country on-site examination should be able to assist you in making the determination as to the adequacy of the country's adoption of the FATF recommendations.

Advisory #5

The U.S. Department of Treasury's Office of Foreign Assets Control ("OFAC") administers laws that impose economic sanctions against foreign countries to further U.S. foreign policy and national security objectives. OFAC is also responsible for making regulations that restrict transactions by U.S. persons or entities (including banks), located in the U.S. or abroad, with certain foreign countries, their nationals or "specially designated nationals."¹ OFAC regularly provides to banks, or banks may subscribe to certain databases or other informational providers (including the *Federal Register*), current listings of foreign countries and designated nationals that are prohibited from conducting business with any U.S. entity or individual. Some of the OFAC examination procedures listed below can be conducted at the head office while others may have to be checked during the on-site foreign country review. Refer to Section 1505 for additional information.

1. Includes "specially designated narcotics traffickers," "specially designated terrorists," "blocked persons," and "blocked vessels."

	Y	N	Comments
<p>3. Office of Foreign Assets Control (OFAC)</p> <p>Does the institution have policies and procedures in place for complying with OFAC laws and regulations?</p> <p>Does the U.S. bank maintain a current listing of OFAC information?</p> <p>Is the OFAC information disseminated to foreign country offices?</p> <p>Are new accounts compared to the OFAC listing prior to opening?</p> <p>Are established accounts regularly compared to current OFAC listings?</p>			

Advisory #6

Deliver a first day letter to the U.S. office for each foreign branch or subsidiary to be examined. The head office should be able to provide the name(s) of responsible personnel to be contacted and to ensure their presence during

the on-site portion of the examination. Tailor the first day letter to reflect information obtained from the U.S. head office examination. The following is a list of some of the information that should be available prior to the on-site country review:

	<i>Y</i>	<i>N</i>	<i>Comments</i>
<p>4. First Day Letter</p> <p>List of the different currencies used in cash operations.</p> <p>Average amount of cash held on premises in a normal working day.</p> <p>Information concerning customers, including type of business and location, who frequently conduct large cash transactions.</p> <p>List of banks that ship/receive currency with the foreign country offices.</p> <p>Copy of procedures and sample reports used to monitor large currency deposits.</p> <p>Description of teller systems (automated or manual).</p> <p>Description of and sample reports utilized in conducting electronic funds transfers.</p> <p>Average volume of daily funds transfers.</p> <p>List of private banking/trust accounts, including name and country of origin.</p> <p>List of banks that clear dollar denominated instruments (e.g., checks, money orders, and traveller's checks).</p>			

Advisory #7

Upon completion of the examination of the head office records, you may be able to make an adequate assessment of the entire operations efforts, both domestically and internationally, in complying with the BSA and other related statutes. Nonetheless, you should complete as many of the overseas on-site procedures located in Part 2 as possible.

Advisory #8

Prior to the commencement of the on-site foreign country review, you should check with your Reserve Bank BSA representative to determine the nature and scope of any examination conducted on the institution or foreign country anti-money laundering initiatives by either the home country supervisor or team of FATF auditors.

PART 2: ON-SITE FOREIGN COUNTRY EXAMINATION

	<i>Y</i>	<i>N</i>	<i>Comments</i>
<p>5. Internal Compliance Program and Procedures</p> <p>Does the institution follow a written program?</p> <p>Does the written program provide for the following:</p> <p>a. a system of internal controls to ensure compliance with applicable rules, regulations and internal policies?</p> <p>b. independent testing for compliance? If conducted by an outside party, list the name of the party.</p> <p>c. a designated position(s) responsible for daily compliance with BSA and related statutes? List name(s) of individuals.</p> <p>d. training for personnel?</p> <p>e. adequate control of currency flows and cash transactions?</p>			
<p>6. Know Your Customer Policy</p> <p>Does the institution have policies and procedures that require reasonable efforts to be made to ascertain the identity of individuals and/or stated business purpose of each commercial enterprise with whom the institution conducts business? (Refer to Section 600 of the <i>BSA Examination Manual</i>—"Know Your Customer")</p> <p>Does the institution allow accounts to be opened under fictitious names? If so, does the institution maintain records containing the actual names and other identifying information regarding the individuals and their stated "activities?"</p> <p>Do the bank employees receive adequate training regarding the identifying and reporting of unusual or suspicious transactions?</p> <p>Does the bank have an adequate monitoring system to identify unusual or suspicious transactions (structuring of cash transactions, concentration of accounts, unusual wire transfer activity, cash collateralized loans, or other transactions inconsistent with the nature of a customer's stated business activity)?</p>			

	<i>Y</i>	<i>N</i>	<i>Comments</i>
<p>7. Private Banking and Trust Departments</p> <p>Does the institution provide for private banking or trust services in the host country? If so, determine what requirements are necessary for opening an account:</p> <ul style="list-style-type: none"> a. identification b. recommendation from third party c. business or profession <p>Are numbered accounts or accounts with coded names permitted? If so, review documentation of:</p> <ul style="list-style-type: none"> a. actual names and country of origination b. concentration of accounts by country <p>Determine the source and destination of funds (checks, wires).</p>			
<p>8. Wire Transfers</p> <p>What systems are in place for recording the initiation and reception of wire transfers (automated, manual)?</p> <p>Is documentation available to identify the remitter, destination and description of the transaction?</p> <p>Does the institution maintain daily transaction logs for both incoming and outgoing transfers?</p> <p>Does the institution accept cash from non-customers to initiate funds transfers?</p> <p>Do wire room personnel receive regular training in anti-money laundering procedures and the identification of unusual or suspicious activities?</p>			

Advisory #9

Credit extensions can serve as one of the channels to conceal money laundering activities, whether extended to individuals or business

entities. In view of the numerous methods and complex nature of such transactions, you should complete the following procedures. The list is not meant to be exhaustive, rather, it should provide a conceptual framework for analysis.

	<i>Y</i>	<i>N</i>	<i>Comments</i>
<p>9. Credit Extensions</p> <p>Does the bank have a clear understanding of its customers business and credit needs?</p> <p>Does the bank clearly understand the ownership structure of corporate borrowers?</p> <p>Is the purpose of the credit extension well defined and commensurate with the business activity?</p> <p>Are the sources of payment well defined? What is the repayment history (are extensions paid down ahead of schedule)?</p> <p>Are credits secured with cash? If so, what is the reasoning and is this structure in line with the client’s business objectives and needs?</p> <p>Are cross-border credit extensions being booked on the basis of cash deposits at an affiliate or correspondent bank?</p> <p>Is the pricing of credit services in line with general practices, including the payment of “up-front” fees?</p>			

Advisory #10

Section 1100 of the BSA Examination Manual provides information on “Payable Through Accounts.” You should determine whether the foreign country operation deals in such accounts and what policies and procedures are in place for the proper opening and monitoring of such relationships. A review of the correspondent bank relationships should also be conducted.

Findings, particularly criticisms, should be noted in the consolidated examination report and brought to management’s attention.

Advisory #11

If there are adequate policies, procedures and internal controls regarding currency flows, stop here. If not, proceed to #10.

	<i>Y</i>	<i>N</i>	<i>Comments</i>
<p>10. Bank Secrecy Act (Anti-Money Laundering Statutes)</p> <p>Does the foreign branch/subsidiary accept cash for deposits, loan payments or other financial transactions? If so, review the following:</p> <ul style="list-style-type: none"> a. teller operations, including daily cash proof sheets, tapes, computer-generated reports and any other documents to support the cash activity. b. sources of cash (clients, non-clients) c. uses of cash (deposits, wire transfers, purchase of monetary instruments) <p>Are deposits accepted for U.S. accounts? If so, ascertain how credit is accomplished (pouch delivery, nostro account debit/credit). Determine the make-up of the deposits.</p> <p>Is the U.S. foreign office in compliance with local anti-money laundering statutes regarding reporting and record retention.</p>			

Sound Practices Paper—Private Banking

Prepared by the Federal Reserve Bank
of New York, July 1997

Section 1301.0

This paper presents the observations of examiners of the Federal Reserve Bank of New York regarding sound risk management and internal control practices with respect to private banking activities. Findings are based on a year-long cycle of on-site examinations of the risk management practices of approximately forty institutions in the Second Federal Reserve District that are engaged in the provision of financial services to high net worth individuals, which is commonly referred to as private banking. These examinations represented a cross section of commercial banks, Edge Act corporations, trust companies, and U.S. branches of foreign banks. Our examiners found varying degrees of sophistication and depth in private banking activities. And, we recognize that what constitutes sound practice may vary according to the particulars of each organization's business.

The guidance presented in this paper is not a regulation and should not be interpreted as such. The sound practices reflect the type of information banks need to have to satisfy existing legal requirements as well as transactions testing performed by examiners, and the types of controls essential to minimize reputational and legal risk and deter money laundering. The goal of the paper is to ensure that banks are aware of the major issues currently under review by regulatory and legal authorities and to further the dialogue with institutions engaged in private banking.

Heightened supervisory interest in private banking activities primarily reflects market developments. Recently, domestic and foreign banking organizations have been increasing their private banking activities and their reliance on income from this business line. Several large institutions reported plans to increase sharply the net contribution of private banking to their organizations' earnings. Additionally, the target market for private banking—high net worth individuals—is growing and becoming more sophisticated and diverse with regard to product and service preferences and risk appetites. As the target market for private banking is growing, so is the level of competition among institutions that provide private banking services. Banking organizations are experiencing competition for private banking clients from non-bank financial

institutions, including securities dealers, and asset management and brokerage firms. Accordingly, there are increased pressures on the relationship managers and marketing officers of banking organizations to obtain new clients, increase their assets under management, and contribute a greater percentage to the net income of their organizations.

The reviews underlying this paper focused primarily on assessing each banking institution's ability to recognize and manage the potential reputational and legal risks that may be associated with inadequate knowledge and understanding of the clients' personal and business background, source of wealth and use of their private banking accounts. Also considered were the essential characteristics of an appropriate control infrastructure that is suited to support the effective management of these risks.

To varying degrees, the sound practices identified here either are currently in place or are in the process of being implemented in most institutions, although it is recognized that practices observed in the United States may differ from global practices. The discussion is structured as follows: (I) management oversight, (II) policies and procedures, (III) risk management practices and monitoring systems, and (IV) segregation of duties, compliance and audit.

I. MANAGEMENT OVERSIGHT OF PRIVATE BANKING

Senior management's active oversight of private banking activities and the creation of an appropriate corporate culture are crucial elements of a sound risk management and control environment. Senior management is responsible for identifying clearly the purpose and objectives of the organization's private banking activities. A statement that describes the target client base, the range of services offered to clients, and the financial objectives and risk tolerances should be approved by senior management and establish accountability for risk management and control functions. Well-developed goals and objectives not only describe the target client base in terms of factors such as minimum net worth, investable assets and the types of prod-

ucts and services sought, but specifically indicate the types of clients the institution will and will not accept, and establish multiple and segregated levels of authorization for new client acceptance. Institutions that follow such sound practices will be better positioned to design and deliver products and services that match their clients' needs, while reducing the likelihood that unsuitable clients will be accepted.

Senior management should be actively involved in strategic planning for the private banking operation. Sound strategic planning should involve not only setting targets such as revenue, assets under management, and the number of new accounts, but also include the establishment of control and risk management goals, such as satisfactory audit and compliance reviews. The most control-conscious institutions have passed these and other specific qualitative goals through to relationship managers. In some cases, they have included these factors in employee compensation schemes, thus promoting accountability and responsibility for risk management and control processes.

The culture that exists within the private banking operation invariably reflects senior management's level of commitment to controls and risk management. A focused, integrated, "top-down" approach to embracing risk management and control concepts will most effectively foster an environment in which managers and staff are knowledgeable and aware of the risks in their portfolio. This approach to private banking activities will help ensure that staff members apply consistent practices, communicate effectively, and assume responsibility and accountability for controls.

Each organization should ensure that its policies and procedures for conducting private banking activities are evaluated and updated regularly, and that there is a clear delineation of roles, responsibilities and accountability for implementing such policies and procedures.

II. POLICIES AND PROCEDURES

As a private banking operation frequently functions as a "bank within a bank," there are different policies and procedures needed to govern its activities and operations. This paper focuses primarily on the significance of sound Know Your Customer ("KYC") policies and procedures in managing the reputational and legal risks inherent in private banking activities.

Know Your Customer Policies and Procedures

Nearly all of the institutions examined had written KYC policies and procedures—most of which captured the spirit of sound KYC guidelines. These institutions have taken a reasonable approach to including essential components of a sound KYC policy in their written policies, such as: obtaining identification and basic background information on the clients, describing the clients' source of wealth and line of business, requesting references, handling referrals and identifying red-flags or suspicious transactions. Policies also should require that the clients' source of wealth and funds be corroborated and include specific guidelines on how to corroborate information provided by the client. Sound policies also define acceptable KYC information for different types of account holders, such as individuals, operating companies, personal investment companies ("PICs"), trusts, clients of financial advisers or other intermediaries, and financial advisers. These policies also should recognize that contact/visitation reports written by private bankers, which document their meetings with clients in their home countries and places of business, are an important component to the KYC process.

Additionally, sound policies require that the type and volume of transactions expected to be passing through the clients' accounts be documented, with actual flows monitored to assist in detecting suspicious or unusual transactions. Accountability for following up on suspicious activities and making such reports as may be required should also be clearly assigned.

Compliance with policies should be expected by senior management as a matter of course; waivers should be the exception, not the rule, and reasons for any exception should be documented. Moreover, all waivers should be handled by authorized personnel—thus reinforcing senior management's oversight of the risk management process. Clearly, the best written policies and procedures will not work unless they are implemented effectively and modified appropriately to reflect changing industry practices.

Credit Policies and Procedures

Lending to high net worth individuals and their business concerns often takes on unique banking

characteristics. The majority of private banking lending is fully secured—often by cash, securities and other assets held by the private banking function. Thus, the extensions of credit to high net worth individuals on a secured basis should not result in compromising sound underwriting standards. If credit is extended based on collateral, even if the collateral is cash, repayment is not assured. For example, collateral derived from illicit activities may be subject to government forfeiture. Accordingly, when extending secured private banking loans, institutions should be satisfied as to the source and legitimacy of the client's collateral, the borrower's intended use of the proceeds and the source of repayment. Some institutions have appropriately recognized that, when lending to high net worth individuals, whether on a secured or unsecured basis, the creditworthiness determination is bolstered by a thorough and well-structured KYC process.

III. RISK MANAGEMENT PRACTICES AND MONITORING SYSTEMS

Effective risk management practices and systems that carry out the KYC policies are the foundation of a sound risk management process. These practices should be well-integrated within the organization and reassessed on an ongoing basis. Additionally, relevant personnel should recognize their roles in the process, as well as their accountability.

Documentation and Due Diligence

Virtually all institutions perform more due diligence on relationships established currently than on accounts that were opened in the past. They are supplementing basic account-opening information, such as identification through passports and national identity cards and other basic personal and business data, including the client's mailing address, profession, and estimated net worth, with more detailed and substantive information. Sound practice requires institutions to obtain references on their clients from reliable, independent sources, such as other financial institutions, the client's business associates, attorneys or accountants. Independent references that describe the capacity in which the referring party knew the client and the nature of

their relationship are important components of the KYC process, and institutions routinely should seek to obtain these references. Furthermore, if internal references from personnel that serve the client from an affiliated office are used, such references should be accompanied by detailed, well-supported documentation.

Institutions employ a wide array of sound practices to corroborate a client's source of wealth and business activities, in addition to obtaining references. For example, some institutions have obtained private credit agency reports on their clients' businesses, including those in foreign countries. Private bankers have also sought out public information on high profile clients in the press, periodicals and through standard database searches. Sound practice also suggests that private bankers obtain financial statements, marketing brochures, and annual reports of clients' businesses as additional corroboration sources.¹ Examinations have confirmed that there are relatively easy and unobtrusive ways to corroborate a private banking client's source of wealth, whether that client is from the United States or abroad.

A concerted effort should be made to embrace these due diligence practices with prospective and existing private banking clients to assure that a client's source of funds is legitimate. While most institutions emphasized the significance of documentation and due diligence during the client acceptance process, it is equally important to ensure that client profiles are appropriately updated throughout the relationship with the client.

Most banking institutions maintain and manage accounts for PICs in their U.S. offices; in fact, frequently PICs are established for the client—the beneficial owner of the PIC—by one of the institution's affiliated trust companies in an offshore secrecy jurisdiction. The majority of these institutions employ the sound practice of applying the same general KYC standards to PICs as they do to personal private banking accounts—they identify and profile the beneficial owners. Most institutions had KYC documentation on the beneficial owners of the PICs in their U.S. files.

1. Note that dealings with certain types of entities—pension funds or public entities such as municipalities—require additional procedures. When dealing with a pension fund certain disclosure requirements of ERISA may apply, and a knowledge of relevant statutes or regulations may be required when dealing with public entities.

The beneficial owners of PICs have a legitimate right to protect their financial privacy, and some high net worth private clients may have a special and legitimate need for confidentiality—because of their public prominence, for example. The needed confidentiality in these cases may be afforded by promulgating special protections as to access to the records revealing the identity of a beneficial owner of a PIC. However, the ability to make proper identification of the beneficial owner remains an important control within the banking organization. First, without this control, the banking organization cannot satisfy its compliance obligations with respect to legal process served on the banking organization, which might reach property owned or controlled by a particular beneficial owner, including the PIC itself. If the banking organization has structured its records in a way that makes it impossible to comply with such process, this could cause the organization serious compliance problems. Second, the lack of transparency may be an impediment to the banking organization's understanding of its overall relationship with a particular beneficial owner; and the existence of accounts for one or more PICs could confuse the organization about the nature and depth of the overall relationship if the identity of the beneficial owner is masked within management information systems. Finally, there is no legal impediment to maintaining appropriate records. The law in the foreign jurisdiction where the PIC is organized ordinarily should present no obstacle to recording the beneficial owner in a record that the banking organization maintains with respect to a PIC account in the United States.

KYC standards for the beneficial owners of PICs (and similarly for those of offshore trusts and foundations) should be no different from those of other personal private banking accounts. Further, institutions maintaining such accounts in the United States should be able to make available, within a reasonable period of time, the identities and full KYC profiles of the beneficial owners when requested by supervisors performing test-checks of their KYC programs.²

2. Similarly, KYC standards should be no different than those applicable to private banking accounts when the institution deals with a financial adviser or other type of intermediary acting on behalf of a client. In order to perform its KYC responsibilities, the institution should identify the beneficial owner of the account (usually the intermediary's client, but, in rare cases, the intermediary itself) and perform its KYC analysis with respect to the beneficial owner. The imposition

Use of “Omnibus” and “Concentration” Accounts

Sound practice calls for each private banking client to have its own account(s) at the bank, through which all of the client's transactions are directed. Private banking operations should have the policies and controls in place to confirm that a client's funds flow into and out of the client's account(s), and not through any other account, such as the organization's suspense, omnibus or concentration accounts. Generally, it is inadvisable from a risk management and control perspective for institutions to allow their clients to direct transactions through the organization's suspense account(s). Such practices effectively prevent association of the clients' names and account numbers with specific account activity, could easily mask unusual transactions and flows, the monitoring of which is essential to sound risk management in private banking, and could easily be abused.

Management Information Systems

The management information systems (“MIS”) associated with private banking activities were reviewed with a focus on the utility, thoroughness, timeliness and accuracy of data reported to management and responsible individuals. While the size and complexity of the private banking operation at each organization will affect the resources devoted to MIS, private banking operations should make effective use of current technology to support their risk management framework. The level of MIS support given to private banking frequently was weaker than the support given to other areas of the same banking organization. In such cases, institutions should develop specific plans to change or upgrade their MIS.

MIS should be migrating towards providing management with timely information necessary to analyze and manage effectively the private banking business. The types of reports that may meet this objective are those that reflect each client's holdings, including those held through PICs and any affiliated accounts; any missing account opening documentation; transactions made through a client's accounts that are

of an intermediary between the institution and the counter party should not lessen the private bank's KYC responsibilities.

unusual; and the private banking function's profitability. Institutions that manage private banking activities on a decentralized, functional basis may face challenges in uneven implementation of policies and procedures and in aggregating a client's total relationship with the institution, as the client's account balances might be recorded on disparate systems. Institutions with integrated management of private banking activities have more success in capturing and reporting a client's complete relationship. Management's ability to measure and analyze each client's complete relationship with the organization is a key element for sound risk management, and MIS should support that objective.

MIS should be capable of monitoring accounts for unusual and potentially suspicious activities. Many institutions are developing or enhancing systems which will identify transactions that warrant explanation and evaluation because of their size, volume, pattern, source or destination. Systems that identify individual transactions on an exception basis, for example those that are above established thresholds in dollar amount and volume, are more appropriate in the detection of aberrations in transactional behavior than systems that only recognize net balance changes. There is a wide array of thresholds used to initiate exception reports—some institutions use a dollar minimum for each transaction, regardless of the type of client or activity, while others segregate their client base and establish different dollar/volume thresholds for transactions pertaining to each client grouping or to each individual client account. Each institution should implement exception reporting that makes sense and provides appropriate information within the context of its particular business. It should recognize that the systems and reports are valuable only if there are individuals who are responsible for receiving, analyzing and acting on the information generated.

Reporting Suspicious Activity

Procedures established to investigate and, if necessary, report suspicious private banking activity also were reviewed. If legal, reputational, and other risks are to be controlled, there must be a heightened focus on preventing and detecting money laundering and other unlawful activity. Financial institutions clearly have a key responsibility in that process. The Federal Reserve's Suspicious Activity Reporting regu-

lations, which became effective April 1, 1996, and are similar to regulations issued by the OCC, FDIC, OTS, NCUA and the Treasury, impose a duty to file a Suspicious Activity Report ("SAR") for any transaction that:

"has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the institution knows of no reasonable explanation for the transaction after examining the available facts including the background and possible purpose of the transaction."

Some institutions with global private banking activities have recognized the advantages in applying their suspicious activity monitoring procedures globally, as they will be better equipped to detect and analyze patterns and trends of suspicious transactions within their organizations. Private banking senior management should ensure that sound practices are being followed throughout their organization. Management should ensure there is a proactive approach and well-established procedures covering the SAR process and that accountability exists within their organization for the analysis and follow-up of internally identified suspicious activity, for the decision-making process as to whether or not to file a SAR, and for maintaining or closing an account. Because there is a legal requirement to report suspicious transactions, it is essential for banking organizations to maintain internal programs that ensure compliance.

IV. SEGREGATION OF DUTIES, COMPLIANCE AND AUDIT

Ensuring effective implementation of established policies and procedures is a significant challenge to many private banking operations. Institutions that evidence ongoing progress towards conformity with stated policies and procedures are those that recognize the importance of segregation of duties and provide adequate attention, direction and support to the individuals responsible for compliance and internal audit.

Segregation of Duties

Adequate segregation of duties in the KYC

process is of critical importance. Institutions should not rely exclusively on any individual relationship manager or immediate supervisor to, for example, waive documentation required to open an account, approve the client profile, authorize a new client relationship, fully identify (or “know”) the client, and monitor client accounts for unusual transactions. The more control-conscious institutions ensure that an independent unit—such as compliance, risk management or senior management—also has responsibility for these functions. Some institutions have segregated KYC duties in a KYC committee comprised of relationship managers, compliance, and senior management to determine, prior to the acceptance of any new client, if the potential client’s profile meets the institution’s KYC standards. Many institutions have also introduced the concept of “back-up relationship managers” or “client teams” to minimize the risk of a single relationship manager having exclusive knowledge and control over individual relationships.

Segregation of duties clearly facilitates the private banking operation’s compliance with policies and procedures and, consequently, minimizes reputational and legal risk. Institutions that have not already established independent control over the above-mentioned activities are urged to introduce such measures as soon as possible.

Compliance

Compliance functions are most effective if they are proactive in ensuring the integrity of the control infrastructure of the private banking operation, as opposed to being reactive to specific, isolated events. They should ensure that policies and procedures are being followed by conducting frequent *ad hoc* reviews and tests that measure how different groups within the private banking function are complying with the policies and procedures. Some institutions assign to compliance the responsibility for reviewing all prospective client profiles to determine if the relationship managers have satisfied the institutions’ profiling requirements, obtained necessary documentation and taken appropriate action where problems arise. Compliance functions should also be in a position to recognize promptly any client activity that may be unusual, to question relationship managers about the

nature of potentially suspicious activities, and to follow through on their inquiries and suspicions. Compliance functions work effectively only when they have senior management commitment and sufficient resources to accomplish their mission.

In creating a culture that follows best practices of risk management and internal control, institutions should conduct frequent training of personnel that is reinforced at regular intervals, particularly in providing the “how to” of client profiling, conducting due diligence, preparing customer call reports and detecting and responding to unusual activities. In some cases, KYC training has been incorporated into the overall marketing and sales training programs. This serves to integrate the concepts of knowing the client’s personal and business background, and source and legitimacy of wealth with those relating to the selling of appropriate products and services that meet the client’s needs and interests. The majority of institutions provide training on money laundering and documentation requirements for their compliance staff. Institutions also should incorporate this training into programs conducted for their relationship managers.

Internal Audit

Comprehensive private banking audit programs are based on risk ratings that apply an appropriate weighting to the major risks of the business, such as reputational and legal risk, and audits that are conducted with sufficient frequency and involve adequate transaction testing to determine the effectiveness of the internal control environment. KYC testing, for example should be a critical element.

As internal audit plays a crucial role in independently evaluating the risk management and controls, management should ensure that audit functions are staffed adequately with individuals who are well-versed in private banking. In addition, auditors should be proactive in following-up on their findings and criticisms.

Conclusion

The purpose of this paper is to provide sound practice guidance to institutions that are engaged in private banking, while at the same time

contribute to the ongoing national and international discussion of the difficult challenges of implementing effective Know Your Customer policies and procedures. Banks face a major responsibility with their affirmative legal obligation to prevent money laundering. This is particularly true in light of the general expectation that private banking will grow significantly

in size, complexity and diversity over the next several years, with the result that business practices, policies and procedures will need to be reviewed and revised to ensure effective risk management. We look forward to continuing our dialogue with banks engaged in private banking.

BOARD OF GOVERNORS
of the
FEDERAL RESERVE SYSTEM
Washington, D.C. 20551

AD 93-56 (FIS)

September 22, 1993

TO THE OFFICER IN CHARGE OF SUPERVISION
AT EACH FEDERAL RESERVE BANK

SUBJECT: Bank Secrecy Act—Department of the Treasury Rulings and Directives

The Department of the Treasury, Office of Financial Enforcement, recently issued two Administrative Rulings, a policy statement and a directive with regard to Bank Secrecy Act (BSA) compliance. Summaries of these are set forth below. Additionally, copies of the Administrative Rulings and the policy statement are attached.¹ Reserve Banks are requested to disseminate this information to the examination staff and, in accordance with a request from the Department of the Treasury, to all domestic and foreign banking organizations supervised by the Federal Reserve.

and record the identity of individuals conducting reportable currency transactions. However, certain elderly or disabled patrons do not possess identification documents that would normally be accepted within the banking community (e.g. driver's license, passport, state-issued identification card). Administrative Ruling 92-1 (AD 92-1) allows for other methods of verification of identification to be utilized. Financial institutions must establish formal written procedures consistent with AD 92-1 and, once implemented, there can be no exceptions to the procedures.

ADMINISTRATIVE RULINGS

The following Administrative Rulings issued by the Department of the Treasury are with regard to: 1) the identification of elderly or disabled patrons that conduct large cash transactions or purchase monetary instruments with currency in amounts between \$3,000 and \$10,000; and 2) proper completion of the Currency Transaction Report (IRS Form 4789) for multiple transactions:

Administrative Ruling 92-1— Identification Of Elderly Or Disabled Patrons Conducting Large Currency Transactions

The BSA requires financial institutions to verify

¹ Administrative rulings located in prior sections of BSA manual.

Administrative Ruling 92-2—Proper Completion Of The Currency Transaction Report (CTR), IRS Form 4789, When Reporting Multiple Transactions

The BSA requires financial institutions to report currency transactions that exceed either \$10,000 or an exempted account's established limit. Multiple currency transactions are treated as a single transaction when the institution has knowledge that the transactions by or on behalf of any person, conducted during any business day, exceed either \$10,000 or the exemption limit. When reporting multiple transactions, item 3d of the CTR must be checked and the information in item 48 of the CTR must be provided. Administrative Ruling 92-2 explains the procedures to be followed in completing a CTR for these cases.

Exemption Policy For Retail Accounts In Which Retail and Money Order Sale Proceeds Are Commingled

The Department of the Treasury has issued a policy statement with regard to exemption procedures for retail accounts in which retail and money order sale proceeds are commingled. The policy statement amends the current policy that such accounts cannot be exempted from the filing of CTRs.

CURRENCY TRANSACTION REPORTS FILING DEADLINES DIRECTIVE

In 1988, the Department of the Treasury exempted all banks from the 15-day filing requirements of the BSA (31 C.F.R. 103.26 (a)(1)(1987)) with respect to the filing of CTR's on magnetic tape. For CTR's that are filed

magnetically, banks must file the CTR's with the IRS Detroit Computing Center within 25 days following the date on which a reportable transaction occurs.

It is important to emphasize that this exemption applies only to CTR's filed magnetically pursuant to an agreement between a bank and the IRS. If for any reason a bank should withdraw from the magnetic tape program or for any other reason file paper CTR's, these CTR's must be filed within the 15-day period following the reportable transaction (31 C.F.R. 103.27(a)(1) (1989)).

If you have any questions regarding these procedures, you may call Richard Small, Special Counsel, at (202) 452-5235, or Dan Soto, Senior Special Examiner, at (202) 728-5829.

Stephen C. Schemering
Deputy Director

Attachment

DEPARTMENT OF THE TREASURY
WASHINGTON

OFFICE OF FINANCIAL ENFORCEMENT EXEMPTION POLICY
FOR RETAIL ACCOUNTS IN WHICH RETAIL AND MONEY ORDER SALE
PROCEEDS ARE COMMINGLED

(August 27, 1993).

Section 103.22(b)(2)(i) of the Bank Secrecy Act (BSA) regulations authorizes a bank to unilaterally exempt from the Currency Transaction Report (CTR) reporting requirement deposits to or withdrawals of currency from an existing account by an established depositor who is a United States resident and operates a retail type of business in the United States. However, the BSA regulations do “. . . not permit a bank to exempt its transactions with nonbank financial institutions (except for check cashing services licensed by state or local government and the United States Postal Service). . . .” 31 C.F.R. 103.22(c). Any business which sells more than \$150,000 worth of money orders or traveler’s checks within any given 30-day period is defined to be a “financial institution.” 31 CFR 103.11 (i)(4).

In view of this, and the fact that illegally obtained funds are frequently laundered through purchases of money orders and other monetary instruments, Treasury’s policy has been that banks could not exempt accounts of retail businesses into which retail receipts and money order sale proceeds are commingled. However, Treasury recognizes that many operators of retail businesses, especially grocery, discount and convenience stores sell money orders as an incidental service to their customers and that the majority of these sales are for legitimate purposes.

Provided that the Bank monitors the accounts to detect unusual activity and reports suspicious transactions law enforcement’s concerns are satisfied. Provided also that money order sales do not exceed \$150,000 in any 30-day period defined as any calendar month (e.g. January 1–31; February 1–28/29; June 1–30). and that retail proceeds account for more than 50% of a business’ gross revenues, such a business is not a financial institution as defined in the BSA regulations. To withhold exemption authority and to require routine CTR reporting in such a situation is burdensome to banks and could well

produce information of little value to law enforcement.

Therefore, Treasury will consider on a case-by-base basis, requests from banks for special exemption authorization to exempt accounts of retail stores in which money order receipts are commingled with retail proceeds under the following conditions. First, the Bank must verify that the business is not a nonbank financial institution by taking the following steps. The Bank should review any records it has available to confirm that: (1) money order sale proceeds do not exceed \$150,000 in any 30-day period (calendar month); (2) money order sale proceeds have never exceeded \$150,000 in any 30-day period (calendar month); and retail proceeds account for more than 50% of the business’ gross revenues. In the event that multiple locations deposit to a single account, the exemption criteria should be applied to each location. In addition, the Bank must require the business to attest to both facts in its Exemption Statement.

The following examples illustrate application of the above verification provision:

Retail business with one location which commingles the location’s retail and money order proceeds in one account:

The account may be considered for exemption only if a bank confirms that both the money order sale proceeds do not exceed and have never exceeded \$150,000 in any 30-day period (calendar month) and the retail proceeds account for more than 50% of the business’ gross revenues. If either of the thresholds is not met, the account may not be exempted.

Retail business with multiple locations which commingles the locations’ retail and money order proceeds in one account:

The account may be considered for exemption only if a bank confirms that the money order sale proceeds do not exceed and have never exceeded \$150,000 in any 30-day period (calendar month) and the retail proceeds account for more than 50% of the business’ gross rev-

enues for each location. If either of the thresholds is exceeded by any location, the account may not be exempted.

Retail business which deposits retail and money order proceeds in separate accounts.

The separate money order account is never exemptible, irrespective of whether or not the business' money order sale proceeds are less than or exceed \$150,000 in any 30 day period (calendar month). The retail proceeds account may be considered for exemption only if retail proceeds account for more than 50% of the business' gross revenues.

After an account has been exempted, the Bank must monitor the account and request that the business notify it immediately should any of the above conditions change. If any of the thresholds are exceeded, the exemption must be suspended immediately. As set forth in the *Exemption Handbook*, Treasury recommends that the Bank review this exemption at least once a year, preferably every six months. At the time of the review, the Bank shall again ensure that money order sale proceeds have not and have never exceeded \$150,000 in any 30-day period (calendar month) and retail proceeds still account for more than 50% of the gross revenues. The Bank must require that a depositor renew its attestations by signing a new Exemption Statement. Beyond the foregoing special requirements, the Bank must comply with all

other exemption requirements as described in Treasury's *Exemption Handbook*.

This authority is limited to the customers and account numbers[s] identified in a bank's request and continues in effect only until otherwise directed by Treasury through any subsequent applicable regulation or Administrative Ruling which address this issue. Please be advised that should a bank become aware of any accounts of retail businesses that also sell money orders and are currently exempted, the Bank must make separate application to Treasury for exemption within 60 days. However, the exemption need not be revoked. If the account is not exempted, until such time as special exemption authority is granted, the Bank must report all currency transactions in excess of \$10,000. Applications for special exemptions of such accounts must be made to the Director, Office of Financial Enforcement (Room 5000, Annex), Department of the Treasury, 1500 Pennsylvania Avenue N.W., Washington, D.C. 20220.

With respect to retail businesses which sell lottery tickets and traveler's checks and/or money orders, a bank may request additional authority to exempt the account. Authority to exempt such a business' account will be granted under the same conditions described above provided that the retail proceeds account for more than 50% of the business' gross revenues.

SR 95-10 (FIS)

TO THE OFFICER IN CHARGE OF SUPERVISION
AT EACH FEDERAL RESERVE BANK

SUBJECT: Payable Through Accounts

BACKGROUND

Over the past year, Board staff has become aware of the increasing use of an account service known as a “payable through account” that is being marketed by U.S. banks, Edge corporations and the U.S. branches and agencies of foreign banks (“U.S. banking entity(ies)”) to foreign banks that otherwise would not have the ability to offer their customers direct access to the U.S. banking system. This account service has also been referred to by other names, such as “pass through accounts” and “pass by accounts.” We have worked with representatives from the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision to monitor payable through account activities and to ensure that all banking organizations supervised by the Federal Reserve and the other agencies are advised about the matters described below.

The payable through account mechanism has long been used in the United States by credit unions (*e.g.*, for checking account services) and investment companies (*e.g.*, for checking account services associated with money market management accounts) to offer their respective customers the full range of banking services that only a commercial bank has the ability to provide. The problems described below do not relate to these traditional uses of payable through account relationships.

EXPLANATION OF “PAYABLE THROUGH ACCOUNTS”

The recent use of payable through accounts as an account service being offered by U.S. banking entities to foreign banks involves the U.S. banking entity opening a checking account for the foreign bank. The foreign bank then solicits

customers that reside outside of the United States who, for a fee, are provided with the means to conduct banking transactions in the United States through the foreign bank’s account at the U.S. banking entity. Typically, the foreign bank will provide its customers, commonly referred to as “sub-account holders,” with checks that enable the sub-account holder to draw on the foreign bank’s account at the U.S. banking entity. The group of sub-account holders, which may number several hundred for one payable through account, all become signatories on the foreign bank’s account at the U.S. banking entity.¹ This results in individuals and businesses, who may not have been subject to the same requirements imposed on U.S. citizens or residents for opening an account at a U.S. banking entity, possessing the ability to write checks and make deposits at a U.S. banking entity, as if such individuals and businesses were the actual account holders at the U.S. banking entity.²

1. In a recent adaptation of the payable through account service, foreign banks have opened accounts at U.S. banking entities and then solicited other foreign banks, rather than individuals, to use their accounts at the U.S. banking entities. These second tier foreign banks then solicit individuals as customers. This has resulted in thousands, rather than hundreds, of individuals having signatory authority over a single account at a U.S. banking entity.

2. Payable through account activities should not be confused with traditional correspondent banking relationships. Under typical correspondent banking arrangements, a smaller bank will enter into an agreement with a larger bank to process and complete transactions on behalf of the smaller bank’s customers or the smaller bank itself. In such an arrangement, the smaller bank’s customers are not aware of the correspondent banking relationships their bank has with other financial institutions. The smaller bank’s customers certainly do not have access to their bank’s account at the larger correspondent bank. This differs significantly from the payable through account situations where the sub-account holders have direct control of the payable through account at the U.S. banking entity by virtue of their signatory authority over the foreign bank’s account at the U.S. banking entity.

It appears that some U.S. banking entities are not exercising the same degree of care with respect to payable through accounts that they exercise for domestic customers that want to open checking or other types of account relationships directly with the banking organizations. Our experience has shown that some U.S. banking entities simply collect signature cards that have been completed abroad and have been submitted to them in bulk by the foreign banks, and then proceed to process thousands of checks issued by the sub-account holders, as well as other banking transactions, through the foreign banks' accounts at the U.S. banking entities. These U.S. banking entities undertake little or no effort independently to obtain or verify information about the individuals and businesses who use their accounts.

POSSIBLE ILLEGAL OR IMPROPER CONDUCT ASSOCIATED WITH PAYABLE THROUGH ACCOUNTS

The traditional use of payable through accounts by financial organizations in the United States (*i.e.*, credit unions and investment companies) has not been a cause for concern by bank regulators. These organizations are regulated by federal or state agencies, or are otherwise subject to established industry standards; and they appear to have adopted adequate policies and procedures to establish the identity of, and monitor the activity of, sub-account holders—in essence the credit union's depositors or the investment company's mutual fund account holders. The same types of safeguards do not appear to be present in some U.S. banking entities that provide payable through account services to foreign banks.

Board staff is concerned that the use of payable through accounts by foreign banks at U.S. banking entities may facilitate unsafe and unsound banking practices and other misconduct, including money laundering and related criminal activities. Unless a U.S. banking entity is able to identify adequately, and understand the transactions of, the ultimate users—all or most of whom are off-shore—of the foreign bank's account maintained at the U.S. banking entity, there is a potential for serious illegal conduct. Recent reports from law enforcement agencies, as well as our own investigatory

efforts, confirm that some money laundering and related illicit schemes have involved the use of foreign banks' payable through account arrangements at U.S. banking entities. Should accounts at U.S. banking entities be used for illegal purposes, the entities could be exposed not only to reputational risks, but also to serious risks of financial losses as a result of asset seizures and forfeitures brought by law enforcement authorities.

GUIDELINES ON PAYABLE THROUGH ACCOUNT ACTIVITIES

Because of the possibility of illicit activities being conducted through payable through accounts at U.S. banking entities, we believe that it is inconsistent with the principles of safe and sound banking for U.S. banking entities to offer payable through account services without developing and maintaining policies and procedures designed to guard against the possible improper or illegal use of their payable through account facilities by foreign banks and their customers.

These policies and procedures must be fashioned to enable each U.S. banking entity offering payable through account services to foreign banks to identify sufficiently the ultimate users of its foreign bank customers' payable through accounts, including obtaining (or having the ability to obtain) in the United States substantially the same type of information on the ultimate users as the U.S. banking entity obtains for its domestic customers. This may require a review of the foreign bank's own procedures for identifying and monitoring sub-account holders, as well as the relevant statutory and regulatory requirements placed on the foreign bank to identify and monitor the transactions of its own customers by its home country supervisory authorities. In addition, U.S. banking entities should have procedures whereby they monitor account activities conducted in their payable through accounts with foreign banks and report suspicious or unusual activity in accordance with applicable Federal Reserve criminal referral regulations.

In those situations where (1) adequate information about the ultimate users of the payable through accounts cannot be obtained; (2) the U.S. banking entity cannot adequately rely on

the home country supervisor to require the foreign bank to identify and monitor the transactions of its own customers; or (3) the U.S. banking entity is unable to ensure that its payable through accounts are not being used for money laundering or other illicit purposes, it is recommended that the U.S. banking entity terminate the payable through arrangement with the foreign bank as expeditiously as possible.

NOTICE TO U.S. BANKING ENTITIES AND NEW EXAMINATION PROCEDURES

Because of the existing and potential problems associated with payable through accounts, we are asking that U.S. banking entities immediately begin to establish and maintain policies and procedures designed to guard against the possible improper or illegal use of their payable through account facilities, and that your Reserve Bank start to review such activities during the course of future examinations. To assist the banking organizations in your District with their understanding of our concerns in this area, we have attached a suggested letter to disseminate our payable through account guidelines to the state member banks, Edge corporations, and U.S. branches and agencies of foreign banks in your District. We have also developed new examination procedures that should be used by your examination staff to review payable through account activities. The new examination procedures will be sent to you under separate cover shortly.

After your Reserve Bank disseminates the attached suggested letter and begins to use the new payable through account examination procedures, we ask that, for the next six months, your examiners concentrate on reviewing U.S. banking entities' existing policies and procedures related to monitoring payable through account activities, to the extent that the banking organizations conduct such activities, and that they make suggestions for improvements or enhancements, where appropriate, consistent with our new guidelines in this area. Because the Federal Reserve, as well as other federal bank regulators, have not previously issued any guidance regarding the operation of payable through accounts at U.S. banking entities, we request that, until September 30, 1995, you focus on

improvements and enhancements at U.S. banking entities where some deficiencies in this area are discovered and not include criticisms of U.S. banking entities' payable through account activities in your reports of examination. In addition, we request that your Reserve Bank not recommend any follow-up supervisory actions related to a U.S. banking entity's policies and procedures regarding its payable through account activities until the fourth quarter of 1995, unless your examiners find apparent violations of the Bank Secrecy Act or indicia of other serious criminal misconduct associated with such activities.

COLLECTION OF DATA RELATED TO PAYABLE THROUGH ACCOUNTS

Board staff is in the process of collecting data on payable through accounts in order to determine as soon as possible the extent of such activities in the United States. In this regard, please provide the following information to Ronald J. Ranochak, Senior Financial Analyst, International Supervision Section, Mail Stop 182, as soon as such information becomes available through your upcoming examinations, contacts with U.S. banking entities following the dissemination of the attached suggested letter, or through other sources:

1. The name and location of each U.S. banking entity offering payable through accounts to foreign banks.
2. For each such banking entity, as identified above:
 - a. the name, location and licensing authority of each foreign bank that maintains a payable through account, to the extent that such information is available at the U.S. banking entity;
 - b. the ownership structure data on each foreign bank, to the extent that such information is available at the U.S. banking entity; and
 - c. the number of sub-account holders in each payable through account, including the name and number of foreign banks that are sub-account holders.

In the event that you have any questions concerning any of the matters described herein,

please contact Richard A. Small, Special Counsel, at (202) 452-5235, or Daniel D. Soto, Senior Special Examiner, at (202) 728-5829. For questions related to the collection of data on payable through accounts, Mr. Ranochak can be reached at (202) 452-5275.

Richard Spillenkothen
Director

Attachment

SUGGESTED LETTER

TO THE CHIEF EXECUTIVE OFFICER OF EACH STATE MEMBER BANK,
EDGE CORPORATION, AND U.S. BRANCH AND AGENCY OF A FOREIGN BANK

SUBJECT: PAYABLE THROUGH ACCOUNTS

DEAR _____ :

Over the past year, the Federal Reserve has become aware of the increasing use of an account service known as a "payable through account" that is being marketed by U.S. banks, Edge corporations and the U.S. branches and agencies of foreign banks ("U.S. banking entity(ies)") to foreign banks that otherwise would not have the ability to offer their customers access to the U.S. banking system. This account service has also been referred to by other names, such as "pass through accounts" and "pass by accounts." We have worked with representatives from the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision to monitor payable through account activities and to ensure that all banking organizations supervised by the Federal Reserve and the other agencies are advised about the matters described below.

The payable through account mechanism has long been used in the United States by credit unions (*e.g.*, for checking account services) and investment companies (*e.g.*, for checking account services associated with money market management accounts) to offer their respective customers the full range of banking services that only a commercial bank has the ability to provide. The problems described below do not relate to these traditional uses of payable through account relationships.

EXPLANATION OF "PAYABLE THROUGH ACCOUNTS"

The recent use of payable through accounts as an account service being offered by U.S. banking entities to foreign banks involves the U.S. banking entity opening a checking account for the foreign bank. The foreign bank then solicits customers that reside outside of the United States who, for a fee, are provided with the means to conduct banking transactions in the United States through the foreign bank's account

at the U.S. banking entity. Typically, the foreign bank will provide its customers, commonly referred to as "sub-account holders," with checks that enable the sub-account holder to draw on the foreign bank's account at the U.S. banking entity. The group of sub-account holders, which may number several hundred for one payable through account, all become signatories on the foreign bank's account at the U.S. banking entity.¹ This results in individuals and businesses, who may not have been subject to the same requirements imposed on U.S. citizens or residents for opening an account at a U.S. banking entity, possessing the ability to write checks and make deposits at a U.S. banking entity, as if such individuals and businesses were the actual account holders at the U.S. banking entity.²

It appears that some U.S. banking entities are not exercising the same degree of care with respect to payable through accounts that they exercise for domestic customers that want to open checking or other types of account relationships directly with the banking organizations. Our experience has shown that some U.S. banking entities simply collect signature cards that have been completed abroad and have been submitted to them in bulk by the foreign banks,

1. In a recent adaptation of the payable through account service, foreign banks have opened accounts at U.S. banking entities and then solicited other foreign banks, rather than individuals, to use their accounts at the U.S. banking entities. These second tier foreign banks then solicit individuals as customers. This has resulted in thousands, rather than hundreds, of individuals having signatory authority over a single account at a U.S. banking entity.

2. Payable through account activities should not be confused with traditional correspondent banking relationships. Under typical correspondent banking arrangements, a smaller bank will enter into an agreement with a larger bank to process and complete transactions on behalf of the smaller bank's customers or the smaller bank itself. In such an arrangement, the smaller bank's customers are not aware of the correspondent banking relationships their bank has with other financial institutions. The smaller bank's customers certainly do not have access to their bank's account at the larger correspondent bank. This differs significantly from the payable through account situations where the sub-account holders have direct control of the payable through account at the U.S. banking entity by virtue of their signatory authority over the foreign bank's account at the U.S. banking entity.

and then proceed to process thousands of checks issued by the sub-account holders, as well as other banking transactions, through the foreign banks' accounts at the U.S. banking entities. These U.S. banking entities undertake little or no effort independently to obtain or verify information about the individuals and businesses who use their accounts.

POSSIBLE ILLEGAL OR IMPROPER CONDUCT ASSOCIATED WITH PAYABLE THROUGH ACCOUNTS

The traditional use of payable through accounts by financial organizations in the United States (*i.e.*, credit unions and investment companies) has not been a cause for concern by bank regulators. These organizations are regulated by federal or state agencies, or are otherwise subject to established industry standards; and they appear to have adopted adequate policies and procedures to establish the identity of, and monitor the activity of, sub-account holders—in essence the credit union's depositors or the investment company's mutual fund account holders. The same types of safeguards do not appear to be present in some U.S. banking entities that provide payable through account services to foreign banks.

Federal Reserve staff is concerned that the use of payable through accounts by foreign banks at U.S. banking entities may facilitate unsafe and unsound banking practices and other misconduct, including money laundering and related criminal activities. Unless a U.S. banking entity is able to identify adequately, and understand the transactions of, the ultimate users—all or most of whom are off-shore—of the foreign bank's account maintained at the U.S. banking entity, there is a potential for serious illegal conduct. Recent reports from law enforcement agencies, as well as the Federal Reserve's own investigatory efforts, confirm that some money laundering and related illicit schemes have involved the use of foreign banks' payable through account arrangements at U.S. banking entities. Should accounts at U.S. banking entities be used for illegal purposes, the entities could be exposed not only to reputational risks, but also to serious risks of financial losses as a result of asset seizures and forfeitures brought by law enforcement authorities.

GUIDELINES ON PAYABLE THROUGH ACCOUNT ACTIVITIES

Because of the possibility of illicit activities being conducted through payable through accounts at U.S. banking entities, we believe that it is inconsistent with the principles of safe and sound banking for U.S. banking entities to offer payable through account services without developing and maintaining policies and procedures designed to guard against the possible improper or illegal use of their payable through account facilities by foreign banks and their customers.

These policies and procedures must be fashioned to enable each U.S. banking entity offering payable through account services to foreign banks to identify sufficiently the ultimate users of its foreign bank customers' payable through accounts, including obtaining (or having the ability to obtain) in the United States substantially the same type of information on the ultimate users as the U. S. banking entity obtains for its domestic customers. This may require a review of the foreign bank's own procedures for identifying and monitoring sub-account holders, as well as the relevant statutory and regulatory requirements placed on the foreign bank to identify and monitor the transactions of its own customers by its home country supervisory authorities. In addition, U.S. banking entities should have procedures whereby they monitor account activities conducted in their payable through accounts with foreign banks and report suspicious or unusual activity in accordance with applicable Federal Reserve criminal referral regulations.

In those situations where (1) adequate information about the ultimate users of the payable through accounts cannot be obtained; (2) the U.S. banking entity cannot adequately rely on the home country supervisor to require the foreign bank to identify and monitor the transactions of its own customers; or (3) the U.S. banking entity is unable to ensure that its payable through accounts are not being used for money laundering or other illicit purposes, it is recommended that the U.S. banking entity terminate the payable through arrangement with the foreign bank as expeditiously as possible.

Even though we are asking that you begin immediately to establish and maintain policies

and procedures designed to guard against the possible improper or illegal use of payable through account facilities, we understand that such new policies and procedures will take some time to implement fully. As a first step, you should contact each foreign bank that maintains any type of payable through account relationship with your banking organization in order to bring the records related to its accounts into conformity with the aforementioned guidelines.

Over the next several months, during our regular examinations, Reserve Bank examiners will be reviewing your existing policies and procedures related to payable through account activities, to the extent that you conduct such activities, any improvements or enhancements that you may make in light of the aforementioned guidelines, and your efforts, if needed, to contact foreign banks that maintain payable through accounts at your institution.

In order to provide your banking organization with sufficient time to implement our guidelines in this area, our examiners will not include criticisms of any U.S. banking entity's payable through account activities in reports of examinations until the fourth quarter of 1995. Also, we will not recommend any follow-up supervisory actions addressing deficiencies in this area until the fourth quarter of 1995, except in those situations where examiners find apparent violations of the Bank Secrecy Act or indicia of other serious criminal misconduct associated with such activities.

Should you have any questions with regard to this matter, please contact _____ at the Reserve Bank.

Sincerely,

SR 97-19 (SUP)

June 30, 1997

TO THE OFFICER IN CHARGE OF SUPERVISION
AT EACH FEDERAL RESERVE BANK

SUBJECT: Private Banking Activities

Private banking activities, which involve, among other things, personalized services such as money management, financial advice, and investment services for high net worth clients, have become an increasingly important aspect of the operations of some large, internationally active banking organizations. The Federal Reserve has traditionally reviewed private banking activities in connection with regular on-site examinations. In 1996 and 1997, the Federal Reserve Bank of New York undertook a comprehensive review of private banking activities at approximately 40 domestic and foreign banking organizations in the Second District in order to enhance the Federal Reserve's understanding about private banking operations. Examiners focused principally on assessing each institution's ability to recognize and manage the potential reputational and legal risks that may be associated with inadequate knowledge and understanding of its clients' personal and business backgrounds, sources of wealth, and uses of private banking accounts. In carrying out the reviews, examiners considered the parameters of an appropriate control infrastructure that is suited to support the effective management of these risks.

The reviews indicated that there are certain essential elements associated with sound private banking activities, and these elements are described in a paper, prepared by the Federal Reserve Bank of New York, entitled "Guidance on Sound Risk Management Practices Governing Private Banking Activities." A copy of the sound practices paper is attached for the use of your examiners, and we are requesting that you provide copies to each domestic and foreign banking organization in your District that conducts private banking activities.¹ A suggested transmittal letter is also attached.

The sound practices paper provides banking organizations with guidance regarding the basic controls necessary to minimize reputational and legal risk and to deter illicit activities, such as money laundering. The essential elements associated with sound private banking activities are, in brief outline, as follows:

- *Management Oversight.* Senior management's active oversight of private banking activities and the creation of an appropriate corporate culture are crucial elements of a sound risk management and control environment. Goals and objectives must be set at high levels, and senior management must be proactive in overseeing compliance with corporate policies and procedures.
- *Policies and Procedures.* All well run private banking operations have written "Know Your Customer" policies and procedures, consistent with guidance provided by the Federal Reserve over the past several years, that require banking organizations to obtain identification and basic background information on their clients, describe the clients' source of wealth and lines of business, request references, handle referrals, and identify red flags and suspicious transactions. They also have adequate written credit policies and procedures that address, among other things, money laundering-related issues, such as lending secured by cash collateral.
- *Risk Management Practices and Monitoring Systems.* Sound private banking operations stress the importance of the acquisition and retention of documentation relating to their clients, as well as due diligence regarding obtaining follow-up information where needed to verify or corroborate information provided

1. See section 1301 of the BSA manual.

by a customer or his or her representative. Inherent in sound private banking operations is the retention of beneficial owner information in the United States for accounts opened by financial advisors or through the use of off-shore facilities. Adequate management information systems capable of, among other things, monitoring all aspects of an organization's private banking activities are also stressed. These include systems that provide management with timely information necessary to analyze and effectively manage the private banking business and systems that enable management to monitor accounts for suspicious transactions and to report any such instances to law enforcement authorities and banking regulators as required by the regulators' suspicious activity reporting regulations.

- *Segregation of Duties, Compliance, and Audit.* Because private banking activities are generally conducted through relationship managers, banking organizations need to have an effective system of oversight by senior officials and by board committees, as well as guidelines pertaining to the segregation of duties to prevent the unauthorized waiver of documentation requirements, poorly documented referrals, and overlooked suspicious activities. Likewise, strong compliance and internal audit programs are essential to ensure the integrity of the risk management and internal control environment established by senior management and the board of directors.

to start field testing these new procedures within the next three months.

In the next few weeks, the Federal Reserve will also distribute an updated Bank Secrecy Act examination manual. The updated version will include examination procedures relating to recent additions and changes to the Bank Secrecy Act, as well as updated sections related to anti-money laundering initiatives.

Staff is in the process of developing a draft regulation that would require banking organizations to establish "Know Your Customer" policies and procedures. The results of the private banking reviews will be incorporated into the proposed regulation. In moving forward with this initiative, the Federal Reserve will coordinate its efforts with the other federal banking agencies regarding the breadth and scope of the rules in order to ensure that all banking organizations in the United States operate under the same standards.

In the event you have any questions regarding the attached sound practices paper, please contact Ms. Nancy Bercovici, Senior Vice President, Federal Reserve Bank of New York, at (212) 720-8227, or Mr. Richard A. Small, Special Counsel, Division of Banking Supervision and Regulation, at (202) 452-5235. Other questions can be directed to Mr. Small.

Richard Spillenkothen
Director

ATTACHMENTS TRANSMITTED
ELECTRONICALLY BELOW

OTHER RELATED PROJECTS AND PRODUCTS

The lessons learned from the private banking reviews will be incorporated into a new examination manual for private banking activities. The manual will be in two parts: one which describes the examination procedures for a comprehensive, top to bottom review of a private banking operation; and the other, a set of "risk focused" guidelines aimed at assisting examiners in determining which procedures should be followed depending, for example, on the level of private banking activity, any noted deficiencies, management's responsiveness in implementing corrective action, and the sufficiency of the organization's internal audit program. We expect

SUGGESTED LETTER

TO THE CHIEF EXECUTIVE OFFICER OR GENERAL MANAGER
OF EACH STATE MEMBER BANK, BANK HOLDING COMPANY, AND
U.S. BRANCH AND AGENCY OF A FOREIGN BANK
THAT CONDUCTS PRIVATE BANKING ACTIVITIES

SUBJECT: "SOUND PRACTICES" FOR PRIVATE BANKING ACTIVITIES

DEAR _____ :

Private banking activities, which involve, among other things, personalized services such as money management, financial advice, and investment services for high net worth clients, have become an increasingly important aspect of the operations of some large, internationally active banking organizations. The Federal Reserve has traditionally reviewed private banking activities in connection with regular on-site examinations. In 1996 and 1997, the Federal Reserve Bank of New York undertook a comprehensive review of private banking activities at approximately 40 domestic and foreign banking organizations in the Second District in order to enhance the Federal Reserve's understanding about private banking operations. Examiners focused principally on assessing each institution's ability to recognize and manage the potential reputational and legal risks that may be associated with inadequate knowledge and understanding of its clients' personal and business backgrounds, sources of wealth, and uses of private banking accounts. In carrying out the reviews, examiners considered the parameters of an appropriate control infrastructure that is suited to support the effective management of these risks.

The reviews indicated that there are certain essential elements associated with sound private banking activities, and these elements are described in a paper, prepared by the Federal Reserve Bank of New York, entitled "Guidance on Sound Risk Management Practices Governing Private Banking Activities." A copy of the sound practices paper is attached for your information.

The sound practices paper provides you with guidance regarding the basic controls necessary to minimize reputational and legal risk and to deter illicit activities, such as money laundering. The essential elements associated with sound private banking activities are, in brief outline, as follows:

- *Management Oversight.* Senior management's active oversight of private banking activities and the creation of an appropriate corporate culture are crucial elements of a sound risk management and control environment. Goals and objectives must be set at high levels, and senior management must be proactive in overseeing compliance with corporate policies and procedures.
- *Policies and Procedures.* All well run private banking operations have written "Know Your Customer" policies and procedures, consistent with guidance provided by the Federal Reserve over the past several years, that require banking organizations to obtain identification and basic background information on their clients, describe the clients' source of wealth and lines of business, request references, handle referrals, and identify red flags and suspicious transactions. They also have adequate written credit policies and procedures that address, among other things, money laundering-related issues, such as lending secured by cash collateral.
- *Risk Management Practices and Monitoring Systems.* Sound private banking operations stress the importance of the acquisition and retention of documentation relating to their clients, as well as due diligence regarding obtaining follow-up information where needed to verify or corroborate information provided by a customer or his or her representative. Inherent in sound private banking operations is the retention of beneficial owner information in the United States for accounts opened by financial advisors or through the use of off-shore facilities. Adequate management information systems capable of, among other things, monitoring all aspects of an organization's private banking activities are also stressed. These include systems that provide management with timely information necessary to analyze and effectively manage the private banking business and systems that

enable management to monitor accounts for suspicious transactions and to report any such instances to law enforcement authorities and banking regulators as required by the regulators' suspicious activity reporting regulations.

- *Segregation of Duties, Compliance, and Audit.* Because private banking activities are generally conducted through relationship managers, banking organizations need to have an effective system of oversight by senior officials and by board committees, as well as guidelines pertaining to the segregation of duties to prevent the unauthorized waiver of documentation requirements, poorly documented referrals, and overlooked suspicious activities. Likewise, strong compliance and

internal audit programs are essential to ensure the integrity of the risk management and internal control environment established by senior management and the board of directors.

In the event you have any questions regarding the attached sound practices paper, please contact Ms. Nancy Bercovici, Senior Vice President, Federal Reserve Bank of New York, at (212) 720-8227, or Mr. Richard A. Small, Special Counsel, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, at (202) 452-5235.

Sincerely,

Enclosure

PREAMBLE

1. Banks and other financial institutions may be unwittingly used as intermediaries for the transfer or deposit of funds derived from criminal activity. Criminals and their associates use the financial system to make payments and transfers of funds from one account to another; to hide the source and beneficial ownership of money; and to provide storage for bank-notes through a safe-deposit facility. These activities are commonly referred to as money-laundering.
2. Efforts undertaken hitherto with the objective of preventing the banking system from being used in this way have largely been undertaken by judicial and regulatory agencies at a national level. However, the increasing international dimension of organized criminal activity, notably in relation to the narcotics trade, has prompted collaborative initiatives at the international level. One of the earliest such initiatives was undertaken by the Committee of Ministers of the Council of Europe in June 1980. In its report¹ the Committee of Ministers concluded that “. . . the banking system can play a highly effective preventative role while the cooperation of the banks also assists in the repression of such criminal acts by the judicial authorities and the police”. In recent years the issue of how to prevent criminals laundering the proceeds of crime through the financial system has attracted increasing attention from legislative authorities, law enforcement agencies and banking supervisors in a number of countries.
3. The various national banking supervisory authorities represented on the Basle Committee on Banking Regulations and Supervisory Practices² do not have the same roles and responsibilities in relation to the suppression

of money-laundering. In some countries supervisors have a specific responsibility in this field; in others they may have no direct responsibility. This reflects the role of banking supervision, the primary function of which is to maintain the overall financial stability and soundness of banks rather than to ensure that individual transactions conducted by bank customers are legitimate. Nevertheless, despite the limits in some countries on their specific responsibility, all members of the Committee firmly believe that supervisors cannot be indifferent to the use made of banks by criminals.

4. Public confidence in banks, and hence their stability, can be undermined by adverse publicity as a result of inadvertent association by banks with criminals. In addition, banks may lay themselves open to direct losses from fraud, either through negligence in screening undesirable customers or where the integrity of their own officers has been undermined through association with criminals. For these reasons the members of the Basle Committee consider that banking supervisors have a general role to encourage ethical standards of professional conduct among banks and other financial institutions.
5. The Committee believes that one way to promote this objective, consistent with differences in national supervisory practice, is to obtain international agreement to a Statement of Principles to which financial institutions should be expected to adhere.
6. The attached Statement is a general statement of ethical principles which encourage banks' management to put in place effective procedures to ensure that all persons conducting business with their institutions are properly identified; that transactions that do not appear legitimate are discouraged; and that cooperation with law enforcement agencies is achieved. The Statement is not a legal document and its implementation will depend on national practice and law. In particular, it should be noted that in some countries banks may be subject to additional more stringent legal regulations in this field and the Statement is not intended to replace or diminish those requirements. Whatever the legal position in different countries, the Committee

1. Measures against the transfer and safeguarding of funds of criminal origin. Recommendation No. R(80)10 adopted by the Committee of Ministers of the Council of Europe on 27th June 1980.

2. The Committee comprises representatives of the central banks and supervisory authorities of the following countries: Belgium, Canada, France, Germany, Italy, Japan, Netherlands, Sweden, Switzerland, United Kingdom, United States, and Luxembourg.

considers that the first and most important safeguard against money-laundering is the integrity of banks' own managements and their vigilant determination to prevent their institutions becoming associated with criminals or being used as a channel for money-laundering. The Statement is intended to reinforce those standards of conduct.

7. The supervisory authorities represented on the Committee support the principles set out in the Statement. To the extent that these matters fall within the competence of supervisory authorities in different member countries, the authorities will recommend and encourage all banks to adopt policies and practices consistent with the Statement. With a view to its acceptance worldwide, the Committee would also recommend the Statement to Supervisory authorities in other countries.

Basle, December 1988

STATEMENT OF PRINCIPLES

I. Purpose

Banks and other financial institutions may unwittingly be used as intermediaries for the transfer or deposit of money derived from criminal activity. The intention behind such transactions is often to hide the beneficial ownership of funds. The use of the financial system in this way is of direct concern to police and other law enforcement agencies; it is also a matter of concern to banking supervisors and banks' managements, since public confidence in banks may be undermined through their association with criminals.

This Statement of Principles is intended to outline some basic policies and procedures that banks' managements should ensure are in place within their institutions with a view to assisting in the suppression of money-laundering through the banking system, national and international. The Statement thus sets out to reinforce existing best practices among banks and, specifically, to encourage vigilance against criminal use of the payments system, implementation by banks of effective preventive safeguard, and cooperation with law enforcement agencies.

II. Customer Identification

With a view to ensuring that the financial system is not used as a channel for criminal funds, banks should make reasonable efforts to determine the true identity for all customers requesting the institution's services. Particular care should be taken to identify the ownership of all accounts and those using safe-custody facilities. All banks should institute effective procedures for obtaining identification from new customers. It should be an explicit policy that significant business transactions will not be conducted with customers who fail to provide evidence of their identity.

III. Compliance with Laws

Banks' management should ensure that business is conducted in conformity with high ethical standards and that laws and regulations pertaining to financial transactions are adhered to. As regards transactions executed on behalf of customers, it is accepted that banks may also have no means of knowing whether the transaction stems from or forms part of criminal activity. Similarly, in an international context it may be difficult to ensure that cross-border transactions on behalf of customers are in compliance with the regulations of another country. Nevertheless, banks should not set out to offer services or provide active assistance in transactions which they have good reason to suppose are associated with money-laundering activities.

IV. Cooperation with Law Enforcement Authorities

Banks should cooperate fully with national law enforcement authorities to the extent permitted by specific local regulations relating to customer confidentiality. Care should be taken to avoid providing support or assistance to customers seeking to deceive law enforcement agencies through the provision of altered, incomplete or misleading information. Where banks become aware of facts which lead to the reasonable presumption that money held on deposit derives from criminal activity or that transactions entered into are themselves criminal in purpose, appropriate measures, consistent with the law, should be taken, for example, to deny assistance,

sever relations with the customer and close or freeze accounts.

V. Adherence to the Statement

All banks should formally adopt policies consistent with the principles set out in this Statement and should ensure that all members of their staff concerned, wherever located, are informed

of the bank's policy in this regard. Attention should be given to staff training in matters covered by the Statement. To promote adherence to these principles, banks should implement specific procedures for customer identification and for retaining internal records of transactions. Arrangements for internal audit may need to be extended in order to establish an effective means of testing for general compliance with the Statement.

Financial Action Task Force and its 40 Recommendations

Section 1502.0

INTRODUCTION

1. The Financial Action Task Force on Money Laundering (FATF) is an inter-governmental body whose purpose is the development and promotion of policies to combat money laundering—the processing of criminal proceeds in order to disguise their illegal origin. These policies aim to prevent such proceeds from being utilized in future criminal activities and from affecting legitimate economic activities.
2. The FATF currently consists of 26 countries¹ and two international organizations.² Its membership includes the major financial center countries of Europe, North America and Asia. It is a multi-disciplinary body—as is essential in dealing with money laundering—bringing together the policy-making power of legal, financial and law enforcement experts.
3. This need to cover all relevant aspects of the fight against money laundering is reflected in the scope of the forty FATF Recommendations—the measures which the Task Force have agreed to implement and which all countries are encouraged to adopt. The Recommendations were originally drawn up in 1990. In 1996 the forty Recommendations were revised to take into account the experience gained over the last six years and to reflect the changes which have occurred in the money laundering problem.³
4. These forty Recommendations set out the basic framework for anti-money laundering efforts and they are designed to be of universal application. They cover the criminal justice system and law enforcement; the finan-

- cial system and its regulation, and international cooperation.
5. It was recognized from the outset of the FATF that countries have diverse legal and financial systems and so all cannot take identical measures. The Recommendations are therefore the principles for action in this field, for countries to implement according to their particular circumstances and constitutional frameworks allowing countries a measure of flexibility rather than prescribing every detail. The measures are not particularly complex or difficult, provided there is the political will to act. Nor do they compromise the freedom to engage in legitimate transactions or threaten economic development.
6. FATF countries are clearly committed to accept the discipline of being subjected to multilateral surveillance and peer review. All member countries have their implementation of the forty Recommendations monitored through a two-pronged approach: an annual self-assessment exercise and the more detailed mutual evaluation process under which each member country is subject to an on-site examination. In addition, the FATF carries out cross-country reviews of measures taken to implement particular Recommendations.
7. These measures are essential for the creation of an effective anti-money laundering framework.

THE FORTY RECOMMENDATIONS OF THE FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING

A. General Framework of the Recommendations

1. Each country should take immediate steps to ratify and to implement fully, the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention).
2. Financial institution secrecy laws should be conceived so as not to inhibit implementation of these recommendations.

1. Reference in this document to “countries” should be taken to apply equally to “territories” or “jurisdictions.” The twenty six FATF member countries and governments are: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, Ireland, Italy, Japan, Luxembourg, the Kingdom of the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, Turkey, United Kingdom, and the United States.

2. The two international organizations are: the European Commission and the Gulf Cooperation Council.

3. During the period 1990 to 1995, the FATF also elaborated various Interpretive Notes which are designed to clarify the application of specific Recommendations. Some of these Interpretive Notes have been updated in the Stocktaking Review to reflect changes in the Recommendations (not included in this manual).

3. An effective money laundering enforcement program should include increased multilateral co-operation and mutual legal assistance in money laundering investigations and prosecutions and extradition in money laundering cases, where possible.

B. Role of National Legal Systems in Combating Money Laundering

Scope of the Criminal Offense of Money Laundering

4. Each country should take such measures as may be necessary, including legislative ones, to enable it to criminalize money laundering as set forth in the Vienna Convention. Each country should extend the offense of drug money laundering to one based on serious offenses. Each country would determine which serious crimes would be designated as money laundering predicate offenses.
5. As provided in the Vienna Convention, the offense of money laundering should apply at least to knowing money laundering activity, including the concept that knowledge may be inferred from objective factual circumstances.
6. Where possible, corporations themselves—not only their employees—should be subject to criminal liability.

Provisional Measures and Confiscation

7. Countries should adopt measures similar to those set forth in the Vienna Convention, as may be necessary, including legislative ones, to enable their competent authorities to confiscate property laundered, proceeds from, instrumentalities used in or intended for use in the commission of any money laundering offense, or property of corresponding value, without prejudicing the rights of bona fide third parties.

Such measures should include the authority to: 1) identify, trace and evaluate property which is subject to confiscation; 2) carry out provisional measures, such as freezing and seizing, to prevent any dealing, transfer or disposal of such property; and 3) take any appropriate investigative measures.

In addition to confiscation and criminal sanctions, countries also should consider monetary and civil penalties, and/or proceedings including civil proceedings, to void contracts entered into by parties, where parties knew or should have known that as a result of the contract, the State would be prejudiced in its ability to recover financial claims, e.g. through confiscation or collection of fines and penalties.

C. Role of the Financial System in Combating Money Laundering

8. Recommendations 10 to 29 should apply not only to banks, but also to non-bank financial institutions. Even for those non-bank financial institutions which are not subject to a formal prudential supervisory regime in all countries, for example bureaux de change, governments should ensure that these institutions are subject to the same anti-money laundering laws or regulations as all other financial institutions and that these laws or regulations are implemented effectively.
9. The appropriate national authorities should consider applying Recommendations 10 to 21 and 23 to the conduct of financial activities as a commercial undertaking by businesses or professions which are not financial institutions, where such conduct is allowed or not prohibited. Financial activities include, but are not limited to, those listed in the annex at the end of this document. It is left to each country to decide whether special situations should be defined where the application of anti-money laundering measures is not necessary, for example, when a financial activity is carried out on an occasional or limited basis.

Customer Identification and Recordkeeping Rules

10. Financial institutions should not keep anonymous accounts or accounts in obviously fictitious names: they should be required (by law, by regulations, by agreements between supervisory authorities and financial institutions or by self-regulatory agreements among financial institutions) to iden-

tify, on the basis of an official or other reliable identifying document, and record the identity of their clients, either occasional or usual, when establishing business relations or conducting transactions (in particular opening of accounts or passbooks, entering into fiduciary transactions, renting of safe deposit boxes, performing large cash transactions).

In order to fulfill identification requirements concerning legal entities, financial institutions should, when necessary, take measures:

- (i) to verify the legal existence and structure of the customer by obtaining either from a public register or from the customer or both, proof of incorporation, including information concerning the customer's name, legal form, address, directors and provisions regulating the power to bind the entity.
 - (ii) to verify that any person purporting to act on behalf of the customer is so authorized and identify that person.
11. Financial institutions should take reasonable measures to obtain information about the true identity of the persons on whose behalf an account is opened or a transaction conducted if there are any doubts as to whether these clients or customers are acting on their own behalf, for example, in the case of domiciliary companies (i.e. institutions, corporations, foundations, trusts, etc. that do not conduct any commercial or manufacturing business or any other form of commercial operation in the country where their registered office is located).
 12. Financial institutions should maintain, for at least five years, all necessary records on transactions, both domestic or international, to enable them to comply swiftly with information requests from the competent authorities. Such records must be sufficient to permit reconstruction of individual transactions (including the amounts and types of currency involved if any) so as to provide, if necessary, evidence for prosecution of criminal behavior.

Financial institutions should keep records on customer identification (e.g. copies or records of official identification documents like passports, identity cards, driving licenses or similar documents), account files and business correspondence for at least five years after the account is closed.

These documents should be available to domestic competent authorities in the context of relevant criminal prosecutions and investigations.

13. Countries should pay special attention to money laundering threats inherent in new or developing technologies that might favor anonymity, and take measures, if needed, to prevent their use in money laundering schemes.

Increased Diligence of Financial Institutions

14. Financial institutions should pay special attention to all complex, unusual large transactions, and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose. The background and purpose of such transactions should, as far as possible, be examined, the findings established in writing, and be available to help supervisors, auditors and law enforcement agencies.
15. If financial institutions suspect that funds stem from a criminal activity, they should be required to report promptly their suspicions to the competent authorities.
16. Financial institutions, their directors, officers and employees should be protected by legal provisions from criminal or civil liability for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, if they report their suspicions in good faith to the competent authorities, even if they did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred.
17. Financial institutions, their directors, officers and employees, should not, or, where appropriate, should not be allowed to, warn their customers when information relating to them is being reported to the competent authorities.
18. Financial institutions reporting their suspicions should comply with instructions from the competent authorities.
19. Financial institutions should develop programs against money laundering. These programs should include, as a minimum:
 - (i) the development of internal policies, procedures and controls, including the

designation of compliance officers at management level, and adequate screening procedures to ensure high standards when hiring employees;

- (ii) an ongoing employee training program;
- (iii) an audit function to test the system.

Measures to Cope with the Problem of Countries with No or Insufficient Anti-Money Laundering Measures

20. Financial institutions should ensure that the principles mentioned above are also applied to branches and majority owned subsidiaries located abroad, especially in countries which do not or insufficiently apply these Recommendations, to the extent that local applicable laws and regulations permit. When local applicable laws and regulations prohibit this implementation, competent authorities in the country of the mother institution should be informed by the financial institutions that they cannot apply these Recommendations.
21. Financial institutions should give special attention to business relations and transactions with persons, including companies and financial institutions, from countries which do not or insufficiently apply these Recommendations. Whenever these transactions have no apparent economic or visible lawful purpose, their background and purpose should, as far as possible, be examined, the findings established in writing, and be available to help supervisors, auditors and law enforcement agencies.

Other Measures to Avoid Money Laundering

22. Countries should consider implementing feasible measures to detect or monitor the physical cross-border transportation of cash and bearer negotiable instruments, subject to strict safeguards to ensure proper use of information and without impeding in any way the freedom of capital movements.
23. Countries should consider the feasibility and utility of a system where banks and other financial institutions and intermediaries would report all domestic and international currency transactions above a fixed

amount, to a national central agency with a computerized data base, available to competent authorities for use in money laundering cases, subject to strict safeguards to ensure proper use of the information.

24. Countries should further encourage in general the development of modern and secure techniques of money management, including increased use of checks, payment cards, direct deposit of salary checks, and book entry recording of securities, as a means to encourage the replacement of cash transfers.
25. Countries should take notice of the potential for abuse of shell corporations by money launderers and should consider whether additional measures are required to prevent unlawful use of such entities.

Implementation, and Role of Regulatory and other Administrative Authorities

26. The competent authorities supervising banks or other financial institutions or intermediaries, or other competent authorities, should ensure that the supervised institutions have adequate programs to guard against money laundering. These authorities should cooperate and lend expertise spontaneously or on request with other domestic judicial or law enforcement authorities in money laundering investigations and prosecutions.
27. Competent authorities should be designated to ensure an effective implementation of all these Recommendations, through administrative supervision and regulation, in other professions dealing with cash as defined by each country.
28. The competent authorities should establish guidelines which will assist financial institutions in detecting suspicious patterns of behavior by their customers. It is understood that such guidelines must develop over time, and will never be exhaustive. It is further understood that such guidelines will primarily serve as an educational tool for financial institutions' personnel.
29. The competent authorities regulating or supervising financial institutions should take the necessary legal or regulatory measures to guard against control or acquisition of a significant participation in financial institutions by criminals or their confederates.

D. Strengthening of International Cooperation

Administrative Cooperation

Exchange of general information

30. National administrations should consider recording, at least in the aggregate, international flows of cash in whatever currency, so that estimates can be made of cash flows and reflows from various sources abroad, when this is combined with central bank information. Such information should be made available to the International Monetary Fund and the Bank for International Settlements to facilitate international studies.
31. International competent authorities, perhaps Interpol and the World Customs Organization, should be given responsibility for gathering and disseminating information to competent authorities about the latest developments in money laundering and money laundering techniques. Central banks and bank regulators could do the same on their network. National authorities in various spheres, in consultation with trade associations, could then disseminate this to financial institutions in individual countries.

Exchange of information relating to suspicious transactions

32. Each country should make efforts to improve a spontaneous or "upon request" international information exchange relating to suspicious transactions, persons and corporations involved in those transactions between competent authorities. Strict safeguards should be established to ensure that this exchange of information is consistent with national and international provisions on privacy and data protection.

Other Forms of Cooperation

Basis and means for co-operation in confiscation, mutual assistance and extradition

33. Countries should try to ensure, on a bilateral or multilateral basis, that different knowledge standards in national definitions—i.e.

different standards concerning the intentional element of the infraction—do not affect the ability or willingness of countries to provide each other with mutual legal assistance.

34. International cooperation should be supported by a network of bilateral and multilateral agreements and arrangements based on generally shared legal concepts with the aim of providing practical measures to affect the widest possible range of mutual assistance.
35. Countries should be encouraged to ratify and implement relevant international conventions on money laundering such as the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

Focus of improved mutual assistance on money laundering issues

36. Cooperative investigations among countries' appropriate competent authorities should be encouraged. One valid and effective investigative technique in this respect is controlled delivery related to assets known or suspected to be the proceeds of crime. Countries are encouraged to support this technique, where possible.
37. There should be procedures for mutual assistance in criminal matters regarding the use of compulsory measures including the production of records by financial institutions and other persons, the search of persons and premises, seizure and obtaining of evidence for use in money laundering investigations and prosecutions and in related actions in foreign jurisdictions.
38. There should be authority to take expeditious action in response to requests by foreign countries to identify, freeze, seize and confiscate proceeds or other property of corresponding value to such proceeds, based on money laundering or the crimes underlying the laundering activity. There should also be arrangements for coordinating seizure and confiscation proceedings which may include the sharing of confiscated assets.
39. To avoid conflicts of jurisdiction, consideration should be given to devising and applying mechanisms for determining the best venue for prosecution of defendants in

the interests of justice in cases that are subject to prosecution in more than one country. Similarly, there should be arrangements for coordinating seizure and confiscation proceedings which may include the sharing of confiscated assets.

40. Countries should have procedures in place to extradite, where possible, individuals charged with a money laundering offense or related offenses. With respect to its national legal system, each country should recognize money laundering as an extraditable offense. Subject to their legal frameworks, countries may consider simplifying extradition by allowing direct transmission of extradition requests between appropriate ministries, extraditing persons based only on warrants of arrests or judgements, extraditing their nationals, and/or introducing a simplified extradition of consenting persons who waive formal extradition proceedings.

Annex to Recommendation 9: List of Financial Activities Undertaken by Business or Professions Which Are Not Financial Institutions

1. Acceptance of deposits and other repayable funds from the public.
2. Lending.⁴

3. Financial leasing.
4. Money transmission services.
5. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques and bankers' drafts . . .).
6. Financial guarantees and commitments.
7. Trading for account of customers (spot, forward, swaps, futures, options . . .) in:
 - (a) money market instruments (cheques, bills, CDs, etc.);
 - (b) foreign exchange;
 - (c) exchange, interest rate and index instruments;
 - (d) transferable securities;
 - (e) commodity futures trading.
8. Participation in securities issues and the provision of financial services related to such issues.
9. Individual and collective portfolio management.
10. Safekeeping and administration of cash or liquid securities on behalf of clients.
11. Life insurance and other investment related insurance.
12. Money changing.

-
4. Including inter alia
- consumer credit
 - mortgage credit
 - factoring, with or without recourse
 - finance of commercial transactions (including forfeiting)

Financial Crimes Enforcement Network

Guidance on the New Currency Transaction Report (CTR)

(September 1995)

Section 1503.0

INTRODUCTION

The Treasury Department's Financial Crimes Enforcement Network (FinCEN) offers the following guidance to filers of the new Currency Transaction Report (CTR) Form 4789 (Rev. October 1995). This guidance is intended to answer general, basic questions about completing and filing the new CTR. It is not meant to be comprehensive and does not replace the CTR Form instructions and/or the regulations. Its development is based on questions received from the financial community by FinCEN and advice received from the Treasury Department's Bank Secrecy Act Advisory Group (BSAAG). The BSAAG, comprised of approximately 30 private (bank and non-bank) and government representatives, was established by the Treasury Department in March 1994 pursuant to the Annunzio-Wylie Anti-Money Laundering Act of 1992.

Copies of this FinCEN "Guidance on the New CTR" (published in September 1995) may be ordered: (1) by calling FinCEN's recording at 1-800-949-2732, or (2) via computer with a modem from the Treasury Bank Secrecy Act (BSA) Bulletin Board at 313-234-1453.

WHY CTR REVISED

The purpose of revising the CTR was to further the goal of reducing regulatory burdens on financial institutions. This CTR revision reduces the amount of information required by approximately 30 percent, which makes it the first time (in the 25-year history of the Bank Secrecy Act's requirement that CTRs be filed by financial institutions) that the form has been revised to reduce the amount of regulatory information required. The revised CTR is designed to be beneficial to both the law enforcement and financial communities because it focuses on the quality of information rather than the quantity.

Generally, the new CTR was revised to require only basic information, such as who conducted the transaction, on whose behalf it was conducted, the amount, a description of the transaction, and where it occurred. The revised CTR

also lists broad categories of transactions, which were intended to make it easier to complete and analyze. It eliminates duplication of information and information that was difficult to obtain or of limited value to law enforcement.

HOW CTR USED

Information from CTRs is routinely used in a wide variety of criminal, tax, and regulatory investigations and proceedings, and prosecutions, as investigative leads, intelligence for the tracking of currency flows, corroborating information, and probative evidence. The analysis of CTR data, which is a major function of the Treasury Department's FinCEN, is a vital tool in combating money laundering. CTRs filed by financial institutions facilitate the detection of money laundering because they provide a "paper trail" for large cash transactions that may point to the financial side of criminal activity.

FinCEN uses its computer access to CTRs independently and in conjunction with other law enforcement agency data bases to respond to requests by law enforcement agencies for tactical reports on subjects under investigation. Also, FinCEN uses CTR data to examine and forecast the currency flow in a particular area, and it produces strategic intelligence reports containing this information for use by law enforcement in detecting money laundering and other financial crimes.

Additionally, FinCEN has developed an Artificial Intelligence system. The system reviews BSA filings in order to identify potentially suspicious activity. Each filing is matched to other filings by the same subjects and accessing the same accounts, and all transactions, accounts, and subjects of BSA filings are evaluated against standard sets of criteria developed by FinCEN's computer scientists in close consultation with FinCEN agents and analysts. The FinCEN Artificial Intelligence system links and evaluates reports of large cash transactions to identify potential money laundering. Its objective is to discover previously unknown, potential high value leads for possible investigation.

Another FinCEN program, called "Gateway," provides state and local law enforcement

agencies with *direct* electronic access to all of the forms pursuant to the BSA that are on file in the IRS Detroit Computing Center. Gateway makes greater use of the information captured by the BSA and at the same time provides a coordination mechanism to agencies using the data for investigative purposes. It also saves investigative time and money because agencies do not have to rely on the resources of another agency to obtain BSA information.

WHO, WHAT, WHEN, AND WHERE

1. *Question:* Who should file the revised CTR Form 4789?

Answer: Each financial institution identified in the regulations in 31 CFR Part 103 (other than a casino, which instead must file Form 8362 and the U.S. Postal Service for which there are separate rules), must file a revised CTR Form 4789 for each deposit, withdrawal, exchange of currency, or other payment or transfer, by, through, or to the financial institution which involves a transaction in currency totaling more than \$10,000 in one business day. Multiple transactions must be treated as a single transaction if the financial institution has knowledge that: (1) they are by or on behalf of the same person, and (2) they result in either currency received (Cash In) or currency disbursed (Cash Out) by the financial institution totaling more than \$10,000 in any one business day.

2. *Question:* Should the revised CTR Form 4789 be used to report suspicious activity?

Answer: The revised CTR should NOT be filed for SUSPICIOUS TRANSACTIONS involving \$10,000 or less in currency OR to note that a transaction of more than \$10,000 in currency is suspicious. Any suspicious or unusual activity should be reported by a financial institution in the manner prescribed by its appropriate federal regulator or FinCEN. If a transaction is suspicious and in excess of \$10,000 in currency, then both a revised CTR and the appropriate referral form must be filed.

For banks, a new Suspicious Activity Report (SAR) Form is being prepared for

distribution before the end of 1995¹ for use in reporting suspicious transactions involving \$10,000 or less in currency OR to note that a transaction of more than \$10,000 in currency is suspicious. Until a similar form is developed for non-bank financial institutions, they should write "SUSPICIOUS" across the top of the revised CTR.

3. *Question:* When should financial institutions begin using the revised CTR Form 4789?

Answer: The revised CTR becomes effective on the *business day* of October 1, 1995. Filers must continue to use the current CTR Form 4789 (Rev. July 1994) for reportable transactions that occur before October 1, 1995 (business day).

4. *Question:* Where can I get usable copies of the revised CTR Form 4789?

Answer: In September of 1995, usable copies of the revised CTR will be available from the IRS Forms Distribution Centers by calling 1-800-TAX-FORMS (1-800-829-3676). Prior to September 1995, an ADVANCE COPY of the revised CTR Form 4789 (that has been available since May 1995) could be ordered from the Internal Revenue Service (IRS) Forms Distribution Centers. This ADVANCE COPY of the revised CTR was for use by financial institutions to train employees and make other necessary changes required in order to complete and file the revised CTR, effective on the business day of October 1, 1995.

5. *Question:* May the old CTR be filed after October 1, 1995?

Answer: FinCEN is allowing a necessary transition time until the end of December 1995 for financial institutions to start filing the new CTR. Between October 1 and December 31, 1995, paper filers will *not* be penalized for continuing to file the old CTR or the ADVANCE COPY of the new CTR, which has been available for training purposes since May 1995, while making every "good faith" effort to obtain and file the new CTR as soon as possible after October 1, 1995 (business day). This same

1. Effective April 1, 1996

policy will also apply to magnetic CTR filers. (See *Answer* to *Question #7* below.)

6. *Question:* Where can I get specifications for MAGNETIC FILING of the revised CTR?

Answer: Requests for specifications on magnetic filing of the revised CTR should be directed to the IRS Detroit Computing Center, ATTN: CTR Magnetic Media Coordinator, P.O. Box 33604, Detroit, MI 48232-5604.

7. *Question:* The IRS Detroit Computing Center issued specifications on magnetic filing of the revised CTR during the week of June 12, 1995. It will take at least six (6) months from the time of receipt of these specifications until they are fully installed and usable on financial institutions' systems. Is it acceptable for financial institutions to continue to file magnetically the old CTR Form 4789 (Rev. July 1994) until December 1995?

Answer: Yes, because of the transition time necessary to file the revised CTR magnetically, financial institutions will *not* be penalized for continuing to use the old CTR while making every "good faith" effort to work with the IRS Detroit Computing Center to implement specifications for magnetic filing of the revised CTR. It is expected that this process should be completed at the latest by the end of December 1995. This same policy will also apply to paper CTR filers. (See *Answer* to *Question #5* above.)

8. *Question:* Where should I file the revised CTR?

Answer: File the CTR by the 15th calendar day after the day of the transaction with the IRS Detroit Computing Center, ATTN: CTR, P.O. Box 33604, Detroit, MI 48232-5604 or with your local IRS office. Keep a copy (either paper or electronic) of each CTR for at least five years from the date filed.

Identification Requirements

9. *Question:* Is a U.S. passport acceptable identification since it does not contain an address and is not specifically listed in the regulations (31 CFR Part 103.28)?

Answer: Yes, for purposes of completing the new CTR, a U.S. passport is considered an acceptable form of identification. Although verification of an address by official document or other means (*e.g.*, through credit bureaus) is desirable, acceptable identification may be made by an official document containing name and a photograph (preferably with address) that is normally acceptable by financial institutions as a means of identification when cashing checks for nondepositors.

10. *Question:* What is a cedular card?

Answer: A cedular card is the term used for a personal identification card issued by foreign governments, particularly in Latin America and Spain, to citizens above a certain age (not issued to minors) and within certain categories (excluding certain classifications of citizens, *e.g.*, military).

Specific Instructions

11. *Question:* What should be included on additional sheets attached to the original CTR?

Answer: In order for attached sheets to be clearly associated with the original CTR, it would be desirable to have as much identifying information as possible on the attached sheets, including: (1) the name of the bank filing the form and (2) the date of the transaction. At a minimum, on all attached sheets of paper to the original CTR, the financial institution should note the following: (1) the name(s) of the person(s) or organization(s) on whose behalf the transaction(s) is conducted and (2) the social security or employer identification number(s).

12. *Question:* Must a financial institution amend an incomplete old CTR after October 1, 1995, if the missing information is no longer required on the revised CTR (*e.g.*, a CTR is filed on September 28, 1995, then the financial institution discovers additional information on October 3 that should have been provided as an amendment to the old CTR; however, that information is no longer required on the new CTR)? (*Item 1a: Amends prior report.*)

Answer: Because the revised CTR requires less information, after October 1, 1995, there is no requirement to amend old CTRs when the amendment concerns information on fields that have been eliminated on the revised CTR.

13. *Question:* When should the box for “multiple persons” be checked? (*Item 1b: Multiple persons.*)

Answer: Multiple person transactions are those conducted by or on behalf of two or more individuals; on behalf of two or more organizations, or on behalf of at least one individual and at least one organization. In these cases, box “1b” (multiple persons) should be checked.

14. *Question:* Do all holders of the account, even if they do not come to the bank, need to be put on the revised CTR as “Person(s) on Whose Behalf Transaction(s) Is Conducted”?

Answer: For deposits, all those who are known to benefit from the transaction must be identified on the CTR. However, if a person makes a withdrawal from a joint account, only his name needs to be listed as the beneficiary of the transaction if: (1) he states that the withdrawal is on his own behalf or the financial institution knows that the person making the withdrawal is the only beneficiary, and (2) the financial institution has no reason to believe otherwise.

15. *Question:* When should the box for “multiple transactions” be checked? (*Item 1c: Multiple transactions*)

Answer: Multiple transactions are any two or more transactions which the financial institution has knowledge are conducted by or on behalf of any person during the same business day and which result in a total cash-in or cash-out of over \$10,000. In these cases, box “1c” (multiple transactions) should be checked.

Example: A customer places one deposit bag into the night depository at a bank on Friday night, two deposit bags on Saturday and two on Sunday; then on Monday morning, a teller processes all five deposit bags and deposit slips at the same time, but posts each individual deposit separately.

This should be reported as a multiple transaction. However, if the customer places one bag containing the five deposits in the night depository over a weekend, and the teller processes the deposit on Monday morning, totaling the five deposits and showing a single cash-in transaction, the financial institution may report it as a single transaction so that the CTR reflects the financial institution’s records.

PART I

Section A: Person(s) on Whose Behalf Transaction(s) Is Conducted

One of the major changes on the new CTR is the reversal of Sections A and B from the old CTR: “Person(s) on Whose Behalf Transaction(s) is Conducted” which was Section B on the old CTR is now Section A, and “Individuals(s) Conducting Transaction(s)” which was formerly Section A is now Section B. This was done to place a greater emphasis on all those who benefit from (the beneficiaries of) the transaction by noting that information first in Section A.

16. *Question:* Must the financial institution note whether the number provided in Item 6 is a social security number (SSN) or an employer identification number (EIN) since there is no separate configuration of spaces?

Answer: It is not necessary to note whether the number in Item 6 is an SSN or EIN, and the revised CTR has been simplified to eliminate the separate configuration of these numbers because they may be differentiated solely on the basis of their initial numbers. IRS Service Centers assign EINs, which start with numbers not assigned to SSNs; whereas, the Social Security Administration assigns SSNs, which start with numbers not assigned to EINs.

17. *Question:* While an SSN or EIN is required on a CTR, if a CTR is filed without an SSN or EIN, should the financial institution amend the CTR if it subsequently obtains an SSN or EIN? (Items 6 and 19)

Answer: Yes, the CTR should be amended if an SSN or EIN is subsequently obtained.

18. *Question:* Are the terms “homemaker,” “retired,” or “unemployed” acceptable as descriptions for occupations? (*Item 13*)

Answer: “Homemaker,” “retired,” or “unemployed” are acceptable as occupation descriptions, but financial institutions should attempt to get more specific information. As a basic part of “know your customer” programs, financial institutions should pay particular attention to customers with such non-specific occupations who continually make large cash deposits. “Self-employed” is not acceptable without additional information as it is too non-specific.

Section B: Individual(s) Conducting Transaction(s) (if other than above)

19. *Question:* Instructions state that financial institutions should enter as much information as is available in Section B. Does this mean that if it is not available, then they do not have to provide it? Should the financial institution refuse to conduct the transaction if the customer refuses to provide the required information?

Answer: The law requires financial institutions to file complete and accurate CTRs. The CTR Form 4789 indicates the only circumstances in which incomplete data is acceptable (*e.g.*, Armored Car Service, Mail Deposit or Shipment, etc.). If a financial institution elects to conduct a transaction for which it files an incomplete CTR other than for these specified circumstances, then it should attach an explanation of why the CTR is incomplete.

20. *Question:* If box “a” in Section B is checked for Armored Car Service, should the provider’s name be inserted?

Answer: No, the Armored Car Service provider’s name does not have to be recorded on the CTR.

21. *Question:* Is box “d” for Multiple Transactions on the revised CTR’s Part I—Section B the same as the old CTR’s Part I, box 3d? If so, what is considered a “reasonable effort” for obtaining information when the

aggregation of multiple transactions has exceeded the reporting threshold? (*Part I—Section B box d: Multiple Transactions*)

Answer: Yes, box “d” in Part I—Section B of the revised CTR is the same as box 3d for Multiple Transactions in Part I of the old CTR, and should be checked to indicate that some or all of the information required in Items 15–25 is missing because the transaction being reported is a multiple transaction. A reasonable effort to obtain information for reporting multiple transactions that when aggregated exceeded the reporting threshold might include a check of bank records, telephone calls to customers, and obtaining information from tellers who handled the multiple transactions. However, if complete information is still not obtained, then box “d” in Part I—Section B must be checked to explain why.

PART II

Amount and Type of Transaction(s)

22. *Question:* Should “multiple transactions” be aggregated?

Answer: Yes, to report multiple transactions, all the individual transactions of which the financial institution has knowledge must be aggregated, which means that debits must be added to debits, and credits must be added to credits. If the cash debits or the cash credits totals exceed \$10,000 in a business day, a CTR is required. If debits and credits each exceed \$10,000, they can both be reported on a single CTR. Do not mix debits and credits by off-setting one against the other; that is, do not mix cash-in transactions with cash-out transactions. Following are several examples of how to report aggregated transactions:

Example A: The financial institution has knowledge that an individual deposits \$5,000 in cash into his account and returns later in the day to deposit another \$5,500 in cash into his account. Both cash-ins should be added (totaling \$10,500) and reported on a CTR. Complete Section A on the individual, and enter his ID in Item 14; in Section B check box d (Multiple Transac-

tions) and box e (Conducted On Own Behalf) to explain why Section B is left blank.

Example B: An individual deposits \$5,000 in cash into his personal account and returns later in the day to deposit \$6,000 in cash into his employer's business account. Because the financial institution has knowledge that this individual has deposited \$11,000 in one business day, it must file a CTR. Complete two Section As (one Section A on the individual, entering his ID in Item 14, and the other Section A on his employer's business account, entering N/A in Item 14); in Section B check box d (Multiple Transactions) and box e (Conducted On Own Behalf) to indicate why Section B is left blank.

Example C: An individual acting on behalf of several others, deposits and withdraws various amounts during the day. Regardless of how many visits he makes, if the financial institution has knowledge that either the debit or the credit total exceeds \$10,000, a CTR must be filed. When the individual conducting the transactions does *not* benefit, complete Section B with information on him, entering his ID in Item 25, and complete separate Section As on all beneficiaries of the transactions, entering their identifications in Item 14. (If beneficiaries' identifications are not available because individuals are not present or are not applicable because beneficiaries are organizations, enter N/A in Item 14.) When the individual also benefits from the transactions, enter information on him and all other beneficiaries in separate Section As, indicating his ID and the identifications of others in Item 14, if available and applicable; in Section B check box d (Multiple Transactions) and box e (Conducted On Own Behalf) to indicate why Section B is left blank.

Example D: Two or more individuals conduct separate transactions on behalf of the same account holder (a store) in the same business day. If the financial institution has knowledge that the aggregate of the transactions exceeds \$10,000, a CTR is required. Complete Section A with information on the same account holder (a store), indicating N/A for ID in Item 14, and complete separate Section Bs on the individuals who conducted the transactions but

were not beneficiaries, entering their identifications in Item 25.

23. *Question:* How should trusts and other third party accounts be reported?

Answer: If Jane Doe, the trustee of the John Smith Trust, makes a reportable deposit to the Trust Account, information on Jane Doe, the trustee, including the method used to verify her identification, must be entered in Part I, Section A. Identifying information on the John Smith Trust, who is the beneficiary of the transaction, must also be reported in a separate Section A (on the back of the CTR Form). Then check box e (Conducted On Own Behalf) to indicate why Section B is left blank. However, if the transaction is conducted for Jane Doe, the trustee, by her secretary, then in addition to identifying Jane Doe, the trustee, and the John Smith Trust, the beneficiary, in separate Section "As," report identifying information on the secretary, who actually conducted the transaction, in Part I, Section B.

24. *Question:* When an individual presents an on-us check drawn on an account of someone other than the presenter's account, which box should a reporting bank check? When an individual presents an on-us check drawn on the account of the presenter to withdraw funds from his/her own account, which box should be checked?

Answer: When an individual presents an on-us check drawn on an account of someone other than the presenter's account, the bank should check box 32 (Negotiable Instrument(s) Cashed). When an individual presents an on-us check drawn on the account of the presenter to withdraw funds from his/her own account, box 32 could be checked or box 34 (Deposit(s)/Withdrawal(s)) may be checked to indicate that the transaction is a withdrawal. In any case, list account numbers in Item 35 (Account Number(s) Affected).

25. *Question:* When a corporation/retail store's transaction exceeds its exempt limit, should a CTR be filed?

Answer: Yes, if a customer's transaction(s) exceeds its exempt limit, a CTR must be

filed on the entire amount of the cash transaction, not just the difference between the amount exempted and the amount of the transaction.

26. *Question:* How should the purchase and redemption of a Certificate of Deposit (CD) be reported?

Answer: It is preferred that box 34 (Deposit(s)/Withdrawal(s)) be checked since the purchase of a CD is a deposit and the redemption is a withdrawal. However, it is also acceptable if a bank checks Item 36 (Other) and writes in CD redeemed/purchased. In either case, enter the CD number(s) in Item 35 (Account Number(s) Affected).

27. *Question:* How should such transactions as loan and credit card payments be reported?

Answer: Transactions such as loan and credit card payments should be indicated and described in Item 36 (Other) with account numbers affected recorded in Item 35.

28. *Question:* If a customer uses a check (*i.e.*, a negotiable instrument) to purchase \$20,000 U.S. equivalent worth of foreign currency, how should the revised CTR be completed?

Answer: If a check is used to purchase \$20,000 in foreign currency, check box 36 (Other), indicate “check cashed to purchase foreign currency,” and complete Items 27 (Cash Out-Amount) and 29 (Foreign Currency). It would also be considered acceptable to check Item 32 (Negotiable Instrument Cashed) because the check is a negotiable instrument and complete Items 27 and 29.

PART III

Financial Institution Where Transaction(s) Takes Place

29. *Question:* Should dashes be used in recording the depository institution’s Magnetic Ink Character Recognition (MCR) number? (Item 43)

Answer: No, dashes should not be inserted in recording of the MICR number in Item 43.

30. *Question:* May the preparer and the approver of the new CTR be the same person?

Answer: Yes, the preparer and the approving official of the new CTR may be the same person. This is a change in policy based on standardizing paper filing with magnetic filing of the CTR. However, it is still strongly recommended that financial institutions, as a matter of internal review of CTRs, have two people involved.

31. *Question:* Must the signature of the approving official be an original, or may it be pre-printed? (Item 45)

Answer: The signature of the approving official in Item 45 must be an original signature; it may not be pre-printed.

32. *Question:* May a department’s name be pre-printed instead of the name of a person to contact? (Item 48)

Answer: The name of a person to contact for questions about the CTR (not a department’s name) is preferred in Item 48; however, the name of the compliance office or other designated department would be acceptable.

Bank Secrecy Act Recordkeeping Rule for Funds Transfers and Transmittals of Funds

31 CFR Part 103

Section 1504.0

The following staff interpretive guidance addresses frequently asked questions about the new recordkeeping rules for funds transfers and transmittals of funds, which were issued under the Bank Secrecy Act by the Federal Reserve Board and the Financial Crimes Enforcement Network (FinCEN) of the Department of the Treasury.

The new requirements become effective on May 28.

This guidance is not meant to be comprehensive and does not replace or supersede the terms of the rule itself.

SECTION 103.11—MEANING OF TERMS

1. *Question: **Beneficiary, Beneficiary's Bank.***

Which parties are the beneficiary's bank and the beneficiary with respect to a funds transfer in which payment is made to a customer of a foreign bank?

Answer: The foreign bank receiving a payment order for payment to its customer is the beneficiary's bank. The foreign bank's customer is the beneficiary.

2. *Question: **Beneficiary, Beneficiary's Bank, Recipient, Recipient's Financial Institution, Intermediary Financial Institution.***

Which parties are the beneficiary, the beneficiary's bank, the recipient's financial institution, and the recipient when funds are received by a bank for credit to an account of a licensed transmitter of funds or other person engaged in the business of transmitting funds ("money transmitter") for further credit to the money transmitter's customer?

Answer: The bank holding the money transmitter's account is the beneficiary's bank (and an intermediary financial institution); the money transmitter is both the recipient's financial institution and the beneficiary; the money transmitter's customer is the recipient.

3. *Question: **Financial Institution.*** What types of "financial institutions" are covered by the rule?

Answer: The rule applies to all financial institutions subject to the Bank Secrecy Act regulations. Financial institutions, as defined in §103.11(n), include banks as well as nonbank financial institutions (NBFIs) such as securities brokers or dealers required to be registered with the SEC, currency exchange houses, casinos, and persons engaged in the business of transmitting funds. The definition of financial institution is limited to those institutions located within the United States.

While the terms "beneficiary's bank" and "originator's bank," as defined in §103.11(e) and §103.11(w), respectively, include institutions located outside the United States, the requirements of the Bank Secrecy Act generally do not apply to foreign beneficiary's banks or foreign originator's banks. The definitions of "beneficiary's bank" and "originator's bank" were expanded to include foreign institutions in order to clarify the role of domestic institutions involved in international transactions. Thus, domestic banks involved in international transactions are not required under the rule to contact the foreign bank for missing information on the foreign bank's customer. The Board and the Treasury Department encourage foreign banks, however, to comply with efforts to obtain and include complete information on the parties to a transfer where not otherwise forbidden by law.

4. *Question: **Funds Transfer.*** Does the rule apply only to "wire transfers"?

Answer: No. The rule applies to funds transfers and transmittals of funds, which cover a broad range of methods for moving funds. The rule includes certain internal transfers, e.g., when a bank transfers funds from an originator's account to a beneficiary's account at the same bank (if the originator and beneficiary are different parties), as well as orders made in person or by telephone, facsimile, or electronic messages sent or delivered by a customer or by an NBFI on behalf of a customer to the NBFI's bank. The definition includes all funds trans-

fers that are made within the United States, regardless of whether the transfer originates or terminates abroad.

5. **Question: *Originator.*** If a corporation has one or several individuals who are authorized by the corporation to order funds transfers through the corporation's account, who is the originator in such a transfer?

Answer: The corporation, and not the individual(s) authorized to issue the order on behalf of the corporation, is the originator. Accordingly, the information must be retrievable by name of the corporation, not by the name of the individual ordering the funds transfer.

6. **Question: *Originator, Originator's Bank.*** Which parties are the originator and the originator's bank with respect to a funds transfer initiated by a customer of a foreign bank?

Answer: The customer of the foreign bank, i.e., the sender of the first payment order, is the originator. The foreign bank accepting the payment order from that customer is the originator's bank.

7. **Question: *Originator, Originator's Bank, Transmittor, Transmittor's Financial Institution, Intermediary Financial Institution.*** Which parties are the originator and transmittor of a funds transfer/transmittal of funds when funds are wired by a money transmitter (on behalf of its customer) through an account at a bank?

Answer: The transmittor is the money transmitter's customer; the money transmitter is both the transmittor's financial institution and the originator; the bank is the originator's bank and an intermediary financial institution.

8. **Question: *Originator, Originator's Bank.*** Who is the originator in a transaction where a trustee initiates a funds transfer from an account at a bank held by the trust?

Answer: The trustee is merely the person authorized to act on behalf of the trust, which is a separate legal entity. The trust, itself, is the originator of the funds transfer and the bank holding the account is the originator's bank.

9. **Question: *Originator's Bank.*** If a customer initiates a funds transfer through Bank 1, which uses Bank 2 as its correspondent, which bank is considered the originator's bank?

Answer: The customer is the originator; Bank 1 is the originator's bank; Bank 2 is an intermediary bank.

10. **Question: *Payment Order.*** Is an instruction to a bank to effect payment under a letter of credit a payment order and subject to the recordkeeping requirements?

Answer: This issue is discussed at length in Official Comment 3 to UCC 4A-104. As a general matter, the instruction to a bank to effect payment under a letter of credit is subject to a requirement that the beneficiary perform some act such as delivery of documents. Because the term "payment order" is limited to instructions that do not state a condition to payment to the beneficiary other than time of payment, the transaction is not a payment order and not a funds transfer subject to the recordkeeping requirements. Certain other transactions connected with a letter of credit, however, may meet the definition of "payment order."

SECTION 103.33—RECORDS TO BE MADE AND RETAINED BY FINANCIAL INSTITUTIONS

(The following questions and answers, which use the terminology associated with funds transfers through banks, also are applicable to transmittals of funds through nonbank financial institutions (NBFIs).)

§103.33(e)(1)—Recordkeeping Requirements.

11. **Question:** When does the recordkeeping rule take effect?

Answer: May 28, 1996.

12. **Question:** Are all funds transfers subject to the recordkeeping rule, regardless of the size of the transaction?

- Answer:* No. Only funds transfers equal to or greater than \$3,000 are subject to the rule.
13. *Question:* How long must the information collected under the rule be kept?
- Answer:* Pursuant to §103.38(d), all information required to be collected under the rule must be retained for at least five (5) years.
14. *Question:* Does the rule require any reporting to the government of any information?
- Answer:* No. Information related to a funds transfer may be subject to the Bank Secrecy Act's suspicious activity reporting requirements, however, which became effective on April 1, 1996.
15. *Question:* What is the relationship between the funds transfer recordkeeping rule and the rules for reporting suspicious transactions by financial institutions?
- Answer:* The funds transfer recordkeeping requirements do not affect an institution's responsibility to report a transaction as suspicious under the terms of the rules requiring such reporting. The two rules are separate and distinct requirements under the Bank Secrecy Act. Circumstances under which a bank should report a funds transfer as suspicious are discussed more fully at 61 FR 4326 *et seq.*, February 5, 1996.
16. *Question:* If oral payment order instructions initially are recorded on audio tape, must the record of those instructions required by this rule be kept in that form?
- Answer:* No. The bank may retain either the original or a microfiche, other copy, or electronic record of the instructions. The copy of an audio recording of the payment order need not be a verbatim transcription, so long as it contains the required information.
17. *Question:* May a bank use a code name or pseudonym for its customer?
- Answer:* Banks might, for a number of reasons, use various classification schemes in connection with their funds transfer records. A bank must be able to retrieve the records, however, based on its customer's true name, rather than the code name or pseudonym.
18. *Question:* Is retaining the city and state (or country) considered a sufficient address?
- Answer:* Banks should obtain a complete address including street information when possible.
19. *Question:* If a customer arranges to have its mail held for pick up at a bank location, may it use the bank's address as the address of its customer?
- Answer:* No. The bank should retain a record of the customer's address, rather than the address of the bank location at which the customer's mail is held for pickup.
20. *Question:* In some circumstances, transmittal orders may be "aggregated." For example, a casa de cambio in Texas may collect several transmittal orders for small amounts from different individuals who are sending money to relatives in Mexico and "bundle" them into a single transmittal order to a Texas bank as part of a transmittal of funds to a Mexican casa de cambio. The "aggregate" transmittal order does not identify the individual transmitters or recipients of the underlying transmittal orders. The Texas bank sends the "aggregate" transmittal order to a Mexican bank (for which it holds a clearing account), and the Mexican bank pays the Mexican casa de cambio. The casa de cambio pays the Mexican recipients based on the separate transmittal orders that it received directly from the Texas casa de cambio. What are the recordkeeping requirements for the Texas casa de cambio and the Texas bank?
- Answer:* In this example, the payments are completed by a combination of (1) transmittals of funds between the casas' de cambio customers and (2) a separate funds transfer between the casas de cambio themselves. With respect to the first set of transmittals of funds, the individuals in Texas are the transmitters and the Texas casa de cambio is the transmitter's financial institution, which must collect and retain the information regarding the individual transmittal orders as required by §103.33(f)(1)(i) (except

for any transmittal order that is less than \$3,000). The Texas casa de cambio sends messages (by telephone or telegraph), which are transmittal orders, to the Mexican casa de cambio providing instructions for payment to the recipients. The Mexican casa de cambio is the recipient's financial institution. The Mexican individuals are the recipients.

These transmittals of funds are settled through the separate "aggregated" funds transfer, in which the Texas casa de cambio is the originator and the Texas bank is the originator's bank. This is a separate funds transfer because the Texas bank has aggregated several discrete transmittals of funds, thereby changing the payment order amount as well as the parties to the transfer. The Texas bank is required to collect and retain the information regarding the Texas casa de cambio required by §103.33(e)(1)(i). With respect to the aggregated funds transfer, the Mexican bank is the beneficiary's bank and the Mexican casa de cambio is the beneficiary.

21. *Question:* Are there any differences in recordkeeping requirements for nonbank financial institutions compared to financial institutions?

Answer: There is one incremental recordkeeping requirement on NBFIs. NBFIs, but not banks, must keep the original or a copy of any form relating to the transmittal of funds that is completed or signed by the person placing the transmittal order. (See §103.33(f)(1)(i)(G).) The transmitter's financial institution may either keep the original or a microfilm, other copy, or electronic record of the information contained on the form.

§103.33(e)(2)—Originators other than established customers.

22. *Question:* Is a bank obligated to accept a payment order from someone that is not an established customer?

Answer: No. This rule merely sets forth the requirements for payment orders accepted by a financial institution.

§103.33(e)(3)—Beneficiaries other than established customers.

23. *Question:* If a beneficiary's bank attempts to obtain identification from a beneficiary who is not an established customer, and the person is unable or unwilling to provide the identification, should the bank refuse the transaction?

Answer: The responsibility of a beneficiary's bank that accepts a payment order involves laws other than the funds transfer recordkeeping rule. The recordkeeping rule does not affect that responsibility. If the beneficiary's bank is instructed to make payment to the beneficiary in person and the person claiming to be the beneficiary fails to provide identification required by the rule, the beneficiary's bank's responsibility to make that payment may be affected. If the beneficiary's bank does not believe, however, that the lack of cooperation of the person claiming to be the beneficiary provides an adequate basis for withholding payment, it should note in the record the lack of identification required by the rule. In addition, bank personnel should report any suspicious transactions to law enforcement authorities as required by the suspicious activity reporting rules.

The rule does not require identification when proceeds are not delivered in person to the beneficiary. The beneficiary's bank should retain a copy of the check or other instrument used to effect payment, or the information contained thereon, as well as the name and address of the person to which it was sent.

§103.33(e)(4)—Retrievability Requirements.

24. *Question:* How quickly must records be retrieved?

Answer: The retrievability standard is set forth in §103.38(d). Under this standard, the expected timeliness of retrievability will vary based on the circumstances. Generally, records should be accessible within a reasonable period of time, considering the quantity of records requested, the nature and age of the record, the amount and type

of information provided by the law enforcement agency making the request, as well as the particular bank's volume and capacity to retrieve the records. As a practical matter, the expected timeliness for retrievability will depend on the terms of the request.

25. *Question:* How must records be retrievable?

Answer: Information retained by an originator's bank must be retrievable by the originator's name and, if the originator maintains an account that has been used for funds transfers, by the originator's account number. A beneficiary's bank must retain and retrieve information by the beneficiary's name and, if the beneficiary is an established customer with an account, by account number.

The information need not be retained in any particular manner, as long as the bank retains the required records in such way that it is able to meet the retrieval requirements of the rule. A bank may take intermediary steps as necessary to retrieve a requested record. For example, if a bank were directed to retrieve a transfer based on the name of its customer, the bank may first look up the account number for that customer, and then review the customer account statements for the specific funds transfer(s). Using the transaction number identifying the specific transfer that is included on the customer statement, the bank may then retrieve that transfer from its funds transfer records. In addition, if the bank accepts transfers from noncustomers, the bank also must retrieve records of any noncustomer transfers based on the name provided.

26. *Question:* When there are two or more names on an account, must banks be able to retrieve records by all names on the account or just the primary account holder(s)?

Answer: Whenever a bank is obligated to provide records under this rule and the request contains the specific name of an individual, the bank must be able to retrieve records by that name, regardless of whether the person is a primary account holder.

27. *Question:* Must records retained under the rule be maintained on-site?

Answer: No. There is no requirement for records to be maintained on-site.

28. *Question:* Must a bank automate its funds transfer records and retrieval systems in order to comply with the regulation?

Answer: No. Although an automated recordkeeping and retrieval system is not required by the rule, a bank may wish to consider implementing an automated system, depending on the demand for funds transfer records and its current means of keeping the records. Based on the volume of law enforcement requests, a bank should weigh the costs of implementing an automated system versus the costs of searching manual records. The rule does not require that information be maintained in any particular order. For example, a bank may retain information about its customers in its customer file and information about funds transfers in a separate file and may cross reference and retrieve the information.

§103.33(e)(6) Exceptions.

29. *Question:* What types of transfers are excepted from the rule?

Answer: The following transfers are excepted from the rule:

- i) transfers of less than \$3,000;
- ii) debit transfers;
- iii) transfers governed by the Electronic Fund Transfer Act, as well as any other funds transfers made through ATM, ACH, and POS systems;
- iv) transfers where both the originator and the beneficiary are any of the following:
 - (A) A domestic bank;
 - (B) A wholly-owned domestic subsidiary of a domestic bank;
 - (C) A domestic broker or dealer in securities;
 - (D) A wholly-owned domestic subsidiary of a domestic broker or dealer in securities;
 - (E) The United States;
 - (F) A state or local government; or
 - (G) A federal, state or local government agency or instrumentality;
- (v) transfers where both 1) the originator and the beneficiary are the same person,

and 2) the originator's bank and the beneficiary's bank are the same domestic bank.

30. *Question:* Does the rule apply to transfers from a person's individual bank account to the person's joint bank account at the same domestic bank?

Answer: No. The originator and beneficiary are the same person, and the originator's and beneficiary's bank are the same domestic bank. These transfers are excepted from the rule.

31. *Question:* Does the rule apply to intrabank transfers where the originator and the beneficiary are different persons?

Answer: Yes. Intrabank transfers are excepted from the rule only if the originator and beneficiary are the same person (unless the originator and the beneficiary are both excepted entities, as described in A33).

32. *Question:* Does the rule apply to transfers where the originator and beneficiary are the same person and the originator's bank and beneficiary's bank are separate banks owned by the same bank holding company?

Answer: Yes. The rule applies to these transfers, because although the banks are affiliated, they are separate legal entities. Transfers between U.S. branches of the same domestic bank, even across state lines, are excepted, however, if the originator and the beneficiary are the same person.

33. *Question:* Please clarify the application of the exceptions for funds transfers contained in §103.33(e)(6).

Answer: If both counterparties (originator and beneficiary) to a funds transfer are any of the listed excepted entities, the transaction is excepted. Examples of excepted transfers would include a transfer from the U.S. Treasury to a public school district (a local government instrumentality); a transfer from a domestic bank to a domestic broker/dealer; and a transfer from a domestic broker/dealer to a state treasurer.

34. *Question:* A bank's trust department uses a nominee, which is a partnership (not a

wholly-owned subsidiary of the bank), and this nominee sends recurring wire transfers from the nominee account to an account in the nominee name at another bank. Are these transactions excepted from the recordkeeping requirements?

Answer: It is not uncommon for a bank to establish a nominee for purposes of registering stock certificates, commercial paper, participations, and registered bonds. The nominee generally is a partnership of designated officers or staff members and possesses a legal name (different from the bank) that is registered in accordance with state laws. Because the nominee is a separate legal entity, and not a wholly-owned subsidiary of the bank, its funds transfers are not excepted from the recordkeeping requirements.

35. *Question:* Comment 5 to UCC 4A-104 states that there are limited instances in which the paper on which a check is printed can be used as a means of transmitting a payment order that is covered by Article 4A. For example, if an originator's bank (Bank A) does not have a correspondent relationship with the beneficiary's bank (Bank B), Bank A may send a teller's check to Bank B if the amount of the transfer is small and Bank A and Bank B do not have an account relationship. Bank A may execute the originator's payment order by issuing a teller's check payable to Bank B along with instructions to credit the beneficiary account in that amount. The instruction to Bank B to credit the beneficiary's account is a payment order, and the check is the means by which Bank A pays its obligation as sender of the payment order. The instructions may be given in a separate letter accompanying the check, or printed on the check. According to the Official Commentary to UCC 4A-104, the instruction to pay the beneficiary is the payment order, but the check itself is an instrument under Article 3 and not a payment order. Is this type of transaction subject to the rule's recordkeeping requirements?

Answer: Yes. If a transaction is defined as a funds transfer under UCC 4A and not subject to any of the specific exceptions in the rule, it is subject to the rule's requirements.

The Treasury and the Board have attempted to conform the definitions of the rule as closely as possible to UCC 4A definitions to avoid confusion in the banking industry. The Treasury and the Board do not plan to expand the exceptions to the rule at this

time, but may consider whether modifications to the exceptions would be appropriate as part of Treasury's study of the industry and law enforcement's experience under the rule.

INTRODUCTION

The Office of Foreign Assets Control of the U.S. Department of Treasury ("OFAC") administers and enforces economic and trade sanctions against targeted foreign countries, terrorism sponsoring organizations and international narcotics traffickers based on U.S. foreign policy and national security goals. OFAC acts under Presidential wartime and national emergency powers, as well as authority granted by specific legislation, to impose controls on transactions and freeze foreign assets under U.S. jurisdiction. Many of the sanctions are based on United Nations and other international mandates, are multilateral in scope, and involve close cooperation with allied governments. While OFAC is responsible for promulgating, developing and administering the sanctions for the Secretary under eight basic statutes (not listed here), all of the bank regulatory agencies cooperate in ensuring financial institution compliance with the regulations.

EXAMINATION PROCEDURES

Contained within the BSA Workprogram is a series of questions regarding the examination of

an institution's OFAC compliance program. Specific questions regarding possible applicable transactions or other general OFAC questions can be directed to OFAC offices in a variety of ways, including by phone at 1-800-540-OFAC (6322).

FEDERAL RESERVE COMMUNICATION OF OFAC UPDATES

The Federal Reserve System disseminates OFAC updates to points of contact at each Federal Reserve Bank. Specific questions regarding the dissemination of information or compliance questions can be directed to the Federal Reserve Board's Special Investigations and Examinations Section at 202-452-3168.

OFAC HOME PAGE SITE

General information regarding prohibited transactions, compliance, penalties and other matters can be located on OFAC's home page site: <http://www.ustreas.gov/treasury/services/fac/fac.html>.

INTRODUCTION

This document is intended to answer general, basic questions about how to implement the new CTR exemption procedures. It is not meant to be comprehensive and does not replace or supplement the regulations.

The existing administrative exemption process is being amended to revise, expand and simplify the exemption procedures. A copy of this interim rule is located in section 502 of this manual. We welcome comments on how to simplify or otherwise improve the procedures still further.

Copies of this FinCEN document "new exemption procedures for currency transaction reporting" (published in May 1996) may be obtained: via computer by a modem from the Treasury Bank Secrecy Act (BSA) Bulletin Board at 313-234-1453.

A. New Procedures

1. *What new exemption procedures are in effect?*

The Financial Crimes Enforcement Network has issued an interim rule that eliminates the requirement that banks file currency transaction reports (CTR, Internal Revenue Service form 4789) for transactions by exempt persons.

2. *What is an interim rule?*

An interim rule becomes effective immediately, without a notice and comment period. One reason for its use is to grant immediate relief from an existing regulatory requirement.

3. *Are banks required to adopt the new exemption procedure?*

No. This interim rule *permits* but does not require banks to use the new simplified exemption procedure for certain types of customers. This rule implements Bank Secrecy Act manda-

tory exemption requirements, and grants significant relief to banks. The Financial Crimes Enforcement Network believes that the benefits of this rule will motivate banks to adopt this new procedure voluntarily.

4. *Is there a transition period between the old exemption procedures, and the new exemption procedure, for currency transaction reporting by banks?*

No. There is no formal transition period, because banks are not required to implement these new exemption procedures. A bank may continue to operate under the previous, more labor-intensive and cumbersome procedures if it wishes. But, if a bank does so, the bank remains subject to all the requirements, and to the penalty rules governing that system. The Financial Crimes Enforcement Network anticipates that banks will use the new exemption procedures because they require significantly less effort and afford banks a limitation on liability.

5. *Will this interim rule become permanent?*

The Financial Crimes Enforcement Network is seeking public comment on this rule. The comments will be analyzed and any appropriate amendments will be made. The rule will then be published as a final (or permanent) rule in the *Federal Register*. Again, comments are welcome regarding this rule and any suggestions to improve or clarify it.

B. Suspicious Transaction Reporting and Other Bank Secrecy Act Reporting

6. *If a customer is exempt from currency transaction reporting, is it then also exempt from other BSA requirements?*

No. This is especially important for banks to remember, because of the new suspicious trans-

action reporting requirements. A customer that is exempt from currency transaction reporting is, nonetheless, fully subject to the suspicious transaction reporting requirements.

If a bank knows, suspects, or has reason to suspect that a currency transaction constitutes a suspicious transaction, as defined in the suspicious transaction reporting rules that became effective April 1, 1996, a Suspicious Activity Report is required. Thus, for example, if a bank suspects that a government agency is engaged in suspicious activity, the bank must file a suspicious activity report. Similarly, if a customer is engaged in frequent, large currency transactions that lack any apparent business purpose and the bank knows of no reasonable explanation for the transactions, the bank may be required to file a Suspicious Activity Report.

C. Exempt Person

7. *What is an "exempt person"?*

An "exempt" person is:

- a) a bank (wherever chartered) to the extent of its United States activities;
- b) federal, state, or local government department or agency
- c) any entity exercising governmental authority (such as the power to tax, to exercise eminent domain, or to exercise police powers); and
- d) any corporation whose common stock is listed on the New York Stock Exchange *or* the American Stock Exchange (but not the Emerging Company Market) *or* the NASDAQ National Market (but not the NASDAQ Small-Cap Issues Market).
- e) any subsidiary of any listed exempt corporation *if* it filed a consolidated federal income tax return with the publicly traded corporation.

8. *What documentation do I need to show that an entity is exempt?*

In general, a bank must take steps to assure itself that a customer is exempt comparable to those that a reasonable and prudent bank would take to protect itself from fraud based on misidentification of a person's status. The rule includes operating rules to make this easier.

In the case of a bank or federal, state or local government, the same documentation a bank receives now authorizing the establishment of a

business account with a bank or a governmental unit is generally sufficient. Such documentation might include a corporate resolution by the other bank authorizing the establishment of an account and granting signature authority over its account to named individuals. In addition, any documentation that demonstrates that a customer is a bank is sufficient. A bank is expected to exercise the same prudent standards of due diligence that it employs in the conduct of its banking activities.

The Financial Crimes Enforcement Network is aware that certain small governmental units, such as a volunteer fire department, or a rural water authority may not issue detailed documentation that specifically attests to their governmental status. A bank may rely on reasonable documentation, based on the type and nature of the governmental agency involved. In addition, a bank may rely on community knowledge or knowledge based on the customer's name to make such a determination.

In the case of an entity exercising governmental authority, a bank must determine and document characteristics that make such an authority governmental in nature. Such characteristics include the authority to exercise eminent domain, the authority to tax the public, and the authority to routinely exercise police powers. A clear example of governmental authority is the Port of New Orleans.

It is important to note that government contractors are *not* governmental authorities solely by virtue of the services that they provide to the government.

9. *How does a bank determine that a corporation's common stock is listed on one of the exchanges that make the corporation eligible for exemption?*

The business section of many newspapers, and business weeklies, such as *Barron's*, *the Wall Street Journal*, or *Investor's Daily* contain listings for businesses that are listed on the stock exchanges.

10. *How does a bank determine that a business is a subsidiary of one of the exemption-eligible corporations and that it files a consolidated tax return with the publicly traded corporation?*

Any reasonable documentation will be sufficient. Examples of such documentation might

include a letter signed by a company officer, or by a company official listed as a signatory on a company account, or a copy of the affiliation schedule for the tax return filed.

11. How are franchises treated under these rules?

Franchises are *not* exempt simply because the company that awards the franchise license is exempt. For example, McDonald's owns approximately 20% of all restaurants nationwide. Thus, for the 80% of McDonald's restaurants that are franchises, a bank must determine whether the franchise is itself a publicly traded corporation or its consolidated subsidiary. In many cases the result will be that the franchise is not exempt.

D. Designation of Exemption

12. Is the designation of exemption automatic, once a bank determines that a customer is exempt?

No. There is one additional requirement. To take advantage of this new procedure, a bank must generally make a designation of exemption within 30 days of a reportable transaction, and stop filing CTRs. A designation of exemption is made by filing a single CTR in which Part I, Section A and Part III are fully completed and box 36 is marked "Designation of Exempt Person." The bank must file one such designation of exemption for each customer that it treats as an exempt person.

13. When a bank files a designation of exemption, must it describe why a particular customer is exempt?

No. However, internal records maintained at the bank should indicate why a particular customer is exempt (*e.g.*, a public school is a government agency, General Electric Corp. is listed on the New York Stock Exchange, etc.). In addition, on the designation of exemption, the bank must state the occupation of the exempt person, and may state County government or State police or similar occupations that will indicate why the customer is exempt.

14. Should a bank file a separate exemption for each account, or one for all accounts that an eligible customer has?

A single designation of exemption should be filed for each 'exempt person' that is a customer at a bank, regardless of the number of accounts held by an exempt person.

15. What if an exempt customer does not have an account at the bank?

An exempt customer, which does not have an account at a bank, is nonetheless exempt, and a designation of exemption may be made. Common examples are governmental agencies. It is not uncommon for the United States government, especially the armed forces, to cash large checks at banks at which it does not have an account. Such transactions are by exempt persons.

A bank should bear in mind that large currency transactions by many types of listed corporations, in contrast, may be suspicious, if the corporation does not have an account at the bank. Such suspicious transactions may be required to be reported.

E. Benefits and General Information

16. What is the benefit of this new exemption procedure to the bank?

There are several benefits. First, this is far simpler than the existing system and should reduce the filing burden for banks.

Second—a bank that exempts a customer in this manner *cannot be penalized* for a failure to file a CTR unless the bank knowingly filed a false or incomplete report, or if the bank *knew or had reason to believe* that the customer or the transaction was not exempt or was not transacted by the exempt customer.

17. What is the benefit of this rule to the public?

This rule will significantly reduce the Bank Secrecy Act compliance burden and liability for banks, while maintaining the usefulness of CTRs

for law enforcement, and regulatory purposes. As such, this rule advances the principles of Executive Order 12866 to create “regulations that are effective, consistent, sensible, and understandable.” By making the CTR process more consistent, sensible and understandable, these rules will be more effective for both the government and for the banking industries.

18. Will the Treasury Department exempt other types of businesses?

The Treasury Department is committed to reducing the number of CTRs while retaining filings that are *highly useful* for tax, regulatory, and criminal proceedings. FinCEN has solicited public comments on whether businesses not incorporated that have equity interests publicly traded on major exchanges should be deemed ‘exempt persons.’

The Financial Crimes Enforcement Network is interested in comments on whether privately

held firms should be able to be exempted, under an exemption process that takes into account the lower level of public scrutiny afforded such firms. FinCEN is aware that the new procedure will provide the greatest benefit to large banks in urban areas, and may provide less benefit to smaller, community-based banks. FinCEN remains committed to providing a similar degree of regulatory relief to community-based banks, and intends to propose a regulation that will exempt other types of businesses as well.

19. To whom may a bank go should it have further questions?

Any bank may contact its primary Bank Secrecy Act examination authority, or the Treasury Department’s Financial Crimes Enforcement Network can be contacted regarding questions on the Bank Secrecy Act rule at (800) 949-2732 or (703) 905-3920.

Workpapers are the written documentation of the procedures followed and the conclusions reached during a Bank Secrecy Act examination. In addition, the workpapers are used to document management's responses and commitments to issues raised during the course of the examination. Accordingly, they include, but are not necessarily limited to, examination procedures and verifications, memoranda, schedules, questionnaires, checklists, abstracts of bank documents and analyses prepared or obtained by examiners.

The workpapers are important to the supervisory process because they are expected to support the information and conclusions contained in the related report of examination. The primary purposes of workpapers are to:

- Organize the material assembled during an examination to facilitate review and future reference.
- Aid the examiner in efficiently conducting the examination.
- Document the policies, practices, procedures and internal controls of the institution.
- Provide written support of the examination and audit procedures performed during the examination.
- Document the results of testing and formalize the examiner's conclusions.
- Substantiate the assertions of fact or opinion contained in the report of examination.
- Aid the examiner-in-charge in planning, directing, and coordinating the work of the assistants.
- Guide future examinations in terms of estimated personnel and time requirements.

Workpapers are to be prepared in a manner designed to facilitate an objective review, organized to support an examiner's current findings, and should document the scope of the current examination. The following is a listing of possible workpapers to support the Bank Secrecy Act examination. The list is not meant to be all inclusive and the final contents should be dictated by the scope of the examination:

- Copy of previous findings/management responses.
- Listing of Currency Transaction Reports obtained from the IRS database.

- Cash flow and/or Intelligence data obtained during examination, if applicable.
- Bank Secrecy Act policies and procedures.
- Audit workprogram/independent review program.
- Most recent internal audit/independent review results.
- Bank Secrecy Act training program.
- Exemption list and related documentation.
- IRS and Treasury correspondence regarding special exemptions.
- Know Your Customer policies.
- Copy of completed examiner BSA workprogram.
- Anti-money laundering/suspicious activity reporting program.

Judgment is required as to what workpapers should be retained for each examination. Lengthy documents should be summarized or highlighted (underlined) so that the examiner who is performing the work in the related area can readily locate the important provisions without having to read the entire document. If the documents are voluminous, as may be the case with the Bank Secrecy Act policies and procedures, a summary of the document or table of contents should be included rather than the entire document.

WORKPAPER RETENTION

Examiners should retain on a readily available basis those workpapers from:

- the most recent Federal Reserve System Bank Secrecy Act examination.
- past Federal Reserve System Bank Secrecy Act examinations where adverse findings are cited, up to a five-year period.
- examinations performed by other regulatory agencies where adverse findings are cited (up to five years).
- examinations disclosing conditions which lead, or may eventually lead, to a suspicious activity report or criminal investigation.

These guidelines are the minimum required retention period for workpapers; longer retention periods may be set by individual Reserve Banks.