

## § 1020.312

### § 1020.312 Identification required.

Refer to § 1010.312 of this chapter for identification requirements for reports of transactions in currency filed by banks.

### § 1020.313 Aggregation.

Refer to § 1010.313 of this chapter for reports of transactions in currency aggregation requirements for banks.

### § 1020.314 Structured transactions.

Refer to § 1010.314 of this chapter for rules regarding structured transactions for banks.

### § 1020.315 Transactions of exempt persons.

(a) *General.* No bank is required to file a report otherwise required by § 1010.311 with respect to any transaction in currency between an exempt person and such bank, or, to the extent provided in paragraph (e)(6) of this section, between such exempt person and other banks affiliated with such bank. (A limitation on the exemption described in this paragraph (a) is set forth in paragraph (f) of this section.)

(b) *Exempt person.* For purposes of this section, an exempt person is:

(1) A bank, to the extent of such bank's domestic operations;

(2) A department or agency of the United States, of any State, or of any political subdivision of any State;

(3) 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;

(4) Any entity, other than a bank, whose common stock or analogous equity interests are listed on the New York Stock Exchange or the American Stock Exchange or whose common stock or analogous equity interests have been designated as a NASDAQ National Market Security listed on the NASDAQ Stock Market (except stock or interests listed under the separate "NASDAQ Capital Markets Companies" heading), provided that, for purposes of this paragraph (b)(4), a person that is a financial institution, other than a bank, is an exempt person only

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to the extent of its domestic operations;

(5) Any subsidiary, other than a bank, of any entity described in paragraph (b)(4) of this section (a "listed entity") that is organized under the laws of the United States or of any State and at least 51 percent of whose common stock or analogous equity interest is owned by the listed entity, provided that, for purposes of this paragraph (b)(5), a person that is a financial institution, other than a bank, is an exempt person only to the extent of its domestic operations;

(6) To the extent of its domestic operations and only with respect to transactions conducted through its exemptible accounts, any other commercial enterprise (for purposes of this section, a "non-listed business"), other than an enterprise specified in paragraph (e)(8) of this section, that:

(i) Maintains a transaction account, as defined in paragraph (e)(9) of this section, at the bank for at least two months, except as provided in paragraph (c)(2)(ii) of this section;

(ii) Frequently engages in transactions in currency with the bank in excess of \$10,000; and

(iii) Is incorporated or organized under the laws of the United States or a State, or is registered as and eligible to do business within the United States or a State; or

(7) With respect solely to withdrawals for payroll purposes from existing exemptible accounts, any other person (for purposes of this section, a "payroll customer") that:

(i) Maintains a transaction account, as defined in paragraph (e)(9) of this section, at the bank for at least two months, except as provided in paragraph (c)(2)(ii) of this section;

(ii) Operates a firm that frequently withdraws more than \$10,000 in order to pay its United States employees in currency; and

(iii) Is incorporated or organized under the laws of the United States or a State, or is registered as and eligible to do business within the United States or a State.

(c) *Designation of certain exempt persons*—(1) *General.* Except as provided in paragraph (c)(2) of this section, a bank must designate an exempt person by

filing FinCEN Form 110. Such designation must occur by the close of the 30-calendar day period beginning after the day of the first reportable transaction in currency with that person sought to be exempted from reporting under the terms of this section. The designation must be made separately by each bank that treats the customer as an exempt person, except as provided in paragraph (e)(6) of this section.

(2) *Special rules.* (i) A bank is not required to file a FinCEN Form 110 with respect to the transfer of currency to or from:

(A) Any of the twelve Federal Reserve Banks; or

(B) Any exempt person as described in paragraphs (b)(1) to (3) of this section.

(ii) Notwithstanding subparagraphs (b)(6)(i) and (b)(7)(i) of this section, and if the requirements under this section are otherwise satisfied, a bank may designate a non-listed business or a payroll customer, as described in paragraphs (b)(6) and (7) of this section, as an exempt person before the customer has maintained a transaction account at the bank for at least two months if the bank conducts and documents a risk-based assessment of the customer and forms a reasonable belief that the customer has a legitimate business purpose for conducting frequent transactions in currency.

(d) *Annual review.* At least once each year, a bank must review the eligibility of an exempt person described in paragraphs (b)(4) to (7) of this section to determine whether such person remains eligible for an exemption. As part of its annual review, a bank must review the application of the monitoring system required to be maintained by paragraph (h)(2) of this section to each existing account of an exempt person described in paragraphs (b)(6) or (b)(7) of this section.

(e) *Operating rules—(1) General rule.* Subject to the specific rules of this section, a bank must take such steps to assure itself that a person is an exempt person (within the meaning of the applicable provision of paragraph (b) of this section), to document the basis for its conclusions, and document its compliance, with the terms of this section, that a reasonable and prudent bank

would take and document to protect itself from loan or other fraud or loss based on misidentification of a person's status, and in the case of the monitoring system requirement set forth in paragraph (h)(2) of this section, such steps that a reasonable and prudent bank would take and document to identify suspicious transactions as required by paragraph (h)(2) of this section.

(2) *Governmental departments and agencies.* 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 (b)(2) or (b)(3) 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 (b)(3) 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. Examples of entities that exercise governmental authority include, but are not limited to, the New Jersey Turnpike Authority and the Port Authority of New York and New Jersey.

(3) *Stock exchange listings.* In determining whether a person is described in paragraph (b)(4) of this section, a bank may rely on any New York, American, or NASDAQ Stock Market listing published in a newspaper of general circulation, on any commonly accepted or published stock symbol guide, on any information contained in the Securities and Exchange Commission "EDGAR" System, or on any information contained on an Internet site or sites maintained by the New York Stock Exchange, the American Stock Exchange, or the NASDAQ.

(4) *Listed company subsidiaries.* In determining whether a person is described in paragraph (b)(5) of this section, a bank may rely upon:

(i) Any reasonably authenticated corporate officer's certificate;

(ii) Any reasonably authenticated photocopy of Internal Revenue Service Form 851 (Affiliation Schedule) or the equivalent thereof for the appropriate tax year; or

(iii) A person's Annual Report or Form 10-K, as filed in each case with the Securities and Exchange Commission.

(5) *Aggregated accounts.* In determining the qualification of a customer as a non-listed business or a payroll customer, a bank may treat all exemptible accounts of the customer as a single account. If a bank elects to treat all exemptible accounts of a customer as a single account, the bank must continue to treat such accounts consistently as a single account for purposes of determining the qualification of the customer as a non-listed business or payroll customer.

(6) *Affiliated banks.* The designation required by paragraph (c) of this section may be made by a parent bank holding company or one of its bank subsidiaries on behalf of all bank subsidiaries of the holding company, so long as the designation lists each bank subsidiary to which the designation shall apply.

(7) *Sole proprietorships.* A sole proprietorship may be treated as a non-listed business if it otherwise meets the requirements of paragraph (b)(6) of this section, as applicable. In addition, a sole proprietorship may be treated as a payroll customer if it otherwise meets the requirements of paragraph (b)(7) of this section, as applicable.

(8) *Ineligible businesses.* A business engaged primarily in one or more of the following activities may not be treated as a non-listed business for purposes of this section: Serving as financial institutions or agents of financial institutions of any type; purchase or sale to customers of motor vehicles of any kind, vessels, aircraft, farm equipment or mobile homes; the practice of law, accountancy, or medicine; auctioning of goods; chartering or operation of ships, buses, or aircraft; gaming of any kind (other than licensed parimutuel betting at race tracks); investment advisory services or investment banking services; real estate brokerage; pawn brokerage; title insurance and real estate closing; trade union activities; and

any other activities that may be specified by FinCEN. A business that engages in multiple business activities may be treated as a non-listed business so long as no more than 50% of its gross revenues are derived from one or more of the ineligible business activities listed in this paragraph (e)(8).

(9) *Exemptible accounts of a non-listed business or payroll customer.* The exemptible accounts of a non-listed business or payroll customer include transaction accounts and money market deposit accounts. However, money market deposit accounts maintained other than in connection with a commercial enterprise are not exemptible accounts. A transaction account, for purposes of this section, is any account described in section 19(b)(1)(C) of the Federal Reserve Act, 12 U.S.C. 461(b)(1)(C), and its implementing regulations (12 CFR part 204). A money market deposit account, for purposes of this section, is any interest-bearing account that is described as a money market deposit account in 12 CFR 204.2(d)(2).

(10) *Documentation.* The records maintained by a bank to document its compliance with and administration of the rules of this section shall be maintained in accordance with the provisions of §1010.430.

(f) *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 (a) of this section.

(g) *Limitation on liability.* (1) No bank shall be subject to penalty under this chapter for failure to file a report required by §1010.311 with respect to a transaction in currency by an exempt person with respect to which the requirements of this section have been satisfied, unless the bank:

(i) Knowingly files false or incomplete information with respect to the transaction or the customer engaging in the transaction; or

(ii) Has reason to believe that the customer does not meet the criteria established by this section for treatment of the transactor as an exempt person or that the transaction is not a transaction of the exempt person.

(2) Subject to the specific terms of this section, and absent any specific knowledge of information indicating that a customer no longer meets the requirements of an exempt person, a bank satisfies the requirements of this section to the extent it continues to treat that customer as an exempt person until the completion of that customer's next required periodic review, which as required by paragraph (d) of this section for an exempt person described in paragraph (b)(4) to (7) of this section, shall occur no less than once each year.

(3) 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.

(h) *Obligations to file suspicious activity reports and maintain system for monitoring transactions in currency.* (1) Nothing in this section relieves a bank of the obligation, or reduces in any way such bank's obligation, to file a report required by §1020.320 with respect to any transaction, including any transaction in currency that a bank knows, suspects, or has reason to suspect is a transaction or attempted transaction that is described in §1020.320(a)(2)(i), (ii), or (iii), or relieves a bank of any reporting or recordkeeping obligation imposed by this chapter (except the obligation to report transactions in currency pursuant to this chapter to the extent provided in this section). Thus, for example, a sharp increase from one year to the next in the gross total of currency transactions made by an exempt customer, or similarly anomalous transactions trends or patterns, may trigger the obligation of a bank under §1020.320.

(2) Consistent with its annual review obligations under paragraph (d) of this section, a bank shall establish and maintain a monitoring system that is reasonably designed to detect, for each account of a non-listed business or payroll customer, those transactions in currency involving such account that would require a bank to file a sus-

picious transaction report. The statement in the preceding sentence with respect to accounts of non-listed business and payroll customers does not limit the obligation of banks generally to take the steps necessary to satisfy the terms of paragraph (h)(1) of this section and §1020.320 with respect to all exempt persons.

(i) *Revocation.* Without any action on the part of the Department of the Treasury and subject to the limitation on liability contained in paragraph (g)(2) of this section:

(1) The status of an entity as an exempt person under paragraph (b)(4) of this section ceases once such entity ceases to be listed on the applicable stock exchange; and

(2) The status of a subsidiary as an exempt person under paragraph (b)(5) of this section ceases once such subsidiary ceases to have at least 51 per cent of its common stock or analogous equity interest owned by a listed entity.

(Approved by the Office of Management and Budget under control number 1506-0012)

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#### **§1020.320 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