

(A) The disclosure by a bank, or any director, officer, employee, or agent of a bank, of:

(1) A SAR, or any information that would reveal the existence of a SAR, to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the bank for compliance with the Bank Secrecy Act, or any State regulatory authority administering a State law that requires the bank to comply with the Bank Secrecy Act or otherwise authorizes the State authority to ensure that the bank complies with the Bank Secrecy Act; or

(2) The underlying facts, transactions, and documents upon which a SAR is based, including but not limited to, disclosures:

(i) To another financial institution, or any director, officer, employee, or agent of a financial institution, for the preparation of a joint SAR; or

(ii) In connection with certain employment references or termination notices, to the full extent authorized in 31 U.S.C. 5318(g)(2)(B); or

(B) The sharing by a bank, or any director, officer, employee, or agent of the bank, of a SAR, or any information that would reveal the existence of a SAR, within the bank's corporate organizational structure for purposes consistent with Title II of the Bank Secrecy Act as determined by regulation or in guidance.

(2) *Prohibition on disclosures by government authorities.* A Federal, State, local, territorial, or Tribal government authority, or any director, officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR, except as necessary to fulfill official duties consistent with Title II of the Bank Secrecy Act. For purposes of this section, "official duties" shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for disclosure of non-public information or a request for use in a private legal proceeding, including a request pursuant to 31 CFR 1.11.

(f) *Limitation on liability.* A bank, and any director, officer, employee, or agent of any bank, that makes a vol-

untary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this section or any other authority, including a disclosure made jointly with another institution, shall be protected from liability to any person for any such disclosure, or for failure to provide notice of such disclosure to any person identified in the disclosure, or both, to the full extent provided by 31 U.S.C. 5318(g)(3).

(g) *Compliance.* Banks shall be examined by FinCEN or its delegates for compliance with this section. Failure to satisfy the requirements of this section may be a violation of the Bank Secrecy Act and of this chapter. Such failure may also violate provisions of title 12 of the Code of Federal Regulations.

[75 FR 65812, Oct. 26, 2010, as amended at 76 FR 10517, Feb. 25, 2011]

### Subpart D—Records Required To Be Maintained By Banks

#### § 1020.400 General.

Banks are subject to the recordkeeping requirements set forth and cross referenced in this subpart. Banks should also refer to subpart D of part 1010 of this chapter for recordkeeping requirements contained in that subpart which apply to banks.

#### § 1020.410 Records to be made and retained by banks.

(a) Each agent, agency, branch, or office located within the United States of a bank is subject to the requirements of this paragraph (a) with respect to a funds transfer in the amount of \$3,000 or more, and is required to retain either the original or a microfilm or other copy or reproduction of each of the following:

(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;

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(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:<sup>1</sup>

(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 established customer, in addition to obtaining and retaining the information required in paragraph (a)(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 (a)(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

<sup>1</sup>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.

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 (a)(1)(i) and (a)(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 (a)(1)(iii) and (a)(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 (a)(2) and (a)(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) A futures commission merchant or an introducing broker in commodities;

(F) A wholly owned domestic subsidiary of a futures commission merchant or an introducing broker in commodities;

(G) The United States;

(H) A state or local government;

(I) A Federal, State or local government agency or instrumentality; or

(J) A mutual fund; 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.

(b)(1) With respect to each certificate of deposit sold or redeemed after May 31, 1978, and before October 1, 2003, or each deposit or share account opened with a bank after June 30, 1972, and before October 1, 2003, 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

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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 it has made a reasonable effort to secure such identification, and 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 (c)(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 (b)(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 (b)(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 ambassadors, ministers, career diplomatic or consular officers, or naval, military or other attachés 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

(x) Non-resident aliens who are not engaged in a trade or business in the United States.

(4) In instances described in paragraphs (b)(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.

(5) 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.

(c) 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
- (x) 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 (c)(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 nonbank 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 as determined under section 6109 of the Internal Revenue Code of 1986, 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 as determined under section 6109 of the Internal Revenue Code of 1986, 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.