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Financial Crimes Enforcement Network

FinCEN Advisory

Subject:
Funds Transfers:
Questions &
Answers

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This Advisory provides answers to some of the most frequently asked questions concerning the new BSA recordkeeping rules for funds transfers and transmittals of funds.

The new Bank Secrecy Act recordkeeping rules for funds transfers and transmittals of funds became effective on May 28, 1996. The rules, issued jointly by the Treasury Department's Financial Crimes Enforcement Network (FinCEN) and the Federal Reserve Board, are intended to institute uniform recordkeeping procedures for financial institutions that participate in such transfers and transmittals. The uniform recordkeeping procedures are intended to help law enforcement and regulatory authorities detect and investigate money laundering and other financial crimes by preserving an information trail about persons sending and receiving funds through the financial system.

The new rules have generated many questions, in part because of their necessarily technical nature and their applicability to a wide range of institutions. The attached interpretive guidance responds to frequently asked questions about the rules. The guidance is not meant to be comprehensive and does not replace or supersede the terms of the rules themselves.

These questions and answers do not address the rule requiring the inclusion of certain information in transmittal orders (often called the "travel" rule) that was issued by FinCEN contemporaneously with the issuance of the recordkeeping rules. Questions and answers relating to the travel rule may be issued in the future.

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Attachment



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BANK SECRECY ACT RECORDKEEPING RULE FOR FUNDS TRANSFERS AND TRANSMITTALS OF FUNDS 31 CFR PART 103

The following staff interpretive guidance addresses frequently asked questions about the new record-keeping 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 became 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

- Q1: 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?
- A1: 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.
- Q2: 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?
- A2: 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.
- Q3: Financial Institution.** What types of "financial institutions" are covered by the rule?
- A3: 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.

- Q4: **Funds Transfer.** Does the rule apply only to “wire transfers”?
- A4: 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 transfers that are made within the United States, regardless of whether the transfer originates or terminates abroad.
- Q5: **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?
- A5: 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.
- Q6: **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?
- A6: 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.
- Q7: **Originator, Originator’s Bank, Transmitter, Transmitter’s Financial Institution, Intermediary Financial Institution.** Which parties are the originator and transmitter 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?
- A7: The transmitter is the money transmitter’s customer; the money transmitter is both the transmitter’s financial institution and the originator; the bank is the originator’s bank and an intermediary financial institution.
- Q8: **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?
- A8: 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.
- Q9: **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?

- A9: The customer is the originator; Bank 1 is the originator's bank; Bank 2 is an intermediary bank.
- Q10: **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?
- A10: 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.

- Q11: When does the recordkeeping rule take effect?
- A11: May 28, 1996.
- Q12: Are all funds transfers subject to the recordkeeping rule, regardless of the size of the transaction?
- A12: No. Only funds transfers equal to or greater than \$3,000 are subject to the rule.
- Q13: How long must the information collected under the rule be kept?
- A13: Pursuant to § 103.38(d), all information required to be collected under the rule must be retained for at least five (5) years.
- Q14: Does the rule require any reporting to the government of any information?
- A14: 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.
- Q15: What is the relationship between the funds transfer recordkeeping rule and the rules for reporting suspicious transactions by financial institutions?

- A15: 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.
- Q16: 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?
- A16: 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.
- Q17: May a bank use a code name or pseudonym for its customer?
- A17: 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.
- Q18: Is retaining the city and state (or country) considered a sufficient address?
- A18: Banks should obtain a complete address including street information when possible.
- Q19: 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?
- A19: 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.
- Q20: 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 transmittors 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?
- A20: 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 transmittors and the Texas casa de cambio is the transmittor'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.

- Q21: Are there any differences in recordkeeping requirements for nonbank financial institutions compared to financial institutions?
- A21: 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.

- Q22: Is a bank obligated to accept a payment order from someone that is not an established customer?
- A22: 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.

- Q23: 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?
- A23: 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.

Q24: How quickly must records be retrieved?

A24: 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.

Q25: How must records be retrievable?

A25: 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.

Q26: 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)?

A26: 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.

Q27: Must records retained under the rule be maintained on-site?

A27: No. There is no requirement for records to be maintained on-site.

Q28: Must a bank automate its funds transfer records and retrieval systems in order to comply with the regulation?

A28: 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.

Q29: What types of transfers are excepted from the rule?

A29: 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.

Q30: 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?

A30: 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.

Q31: Does the rule apply to intrabank transfers where the originator and the beneficiary are different persons?

A31: 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).

Q32: 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?

- A32: 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.
- Q33: Please clarify the application of the exceptions for funds transfers contained in § 103.33(e)(6).
- A33: 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.
- Q34: 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 record-keeping requirements?
- A34: 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.
- Q35: 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?
- A35: 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.