



# **USA PATRIOT ACT (P.L. 107-56)**

**AMENDMENTS MADE BY**

**TITLE III SUBTITLE B**

**TO EXISTING LAW**

**JANUARY 2002**

**Showing How Title III Subtitle B of the USA PATRIOT Act  
(P.L. 107-56) Amends Existing Law**

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**Showing How Title III Subtitle B of the USA PATRIOT Act  
(P.L. 107-56) Amends Existing Law<sup>1</sup>**  
(Additions Underscored; Deletions Stricken)

UNITED STATES CODE ANNOTATED  
TITLE 12. BANKS AND BANKING  
CHAPTER 3--FEDERAL RESERVE SYSTEM  
SUBCHAPTER II--BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Current through P.L. 107-19, approved 7-10-01

**§ 248. Enumerated powers**

The Board of Governors of the Federal Reserve System shall be authorized and empowered:

(a) Examination of accounts and affairs of banks; publication of weekly statements; reports of liabilities and assets of depository institutions; covered institutions

(1) To examine at its discretion the accounts, books, and affairs of each Federal reserve bank and of each member bank and to require such statements and reports as it may deem necessary. The said board shall publish once each week a statement showing the condition of each Federal reserve bank and a consolidated statement for all Federal reserve banks. Such statements shall show in detail the assets and liabilities of the Federal reserve banks, single and combined, and shall furnish full information regarding the character of the money held as reserve and the amount, nature, and maturities of the paper and other investments owned or held by Federal reserve banks.

(2) To require any depository institution specified in this paragraph to make, at such intervals as the Board may prescribe, such reports of its liabilities and assets as the Board may determine to be necessary or desirable to enable the Board to discharge its responsibility to monitor and control monetary and credit aggregates. Such reports shall be made (A) directly to the Board in the case of member banks and in the case of other depository institutions whose reserve requirements under sections 461, 463, 464, 465, and 466 of this title exceed zero, and (B) for all other reports to the Board through the (i) Federal Deposit Insurance Corporation in the case of insured State nonmember banks, savings banks, and mutual savings banks, (ii) National Credit Union Administration Board in the case of insured credit unions, (iii) the Director of the Office of Thrift Supervision in the case of any savings association which is an insured depository institution (as defined in section 1813 of this title) or which is a member as defined in section 1422 of this title, and (iv) such State officer or agency as the Board may designate in the case of any other type of bank, savings and loan

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<sup>1</sup> Uncodified language is not reflected (see Appendix).

association, or credit union. The Board shall endeavor to avoid the imposition of unnecessary burdens on reporting institutions and the duplication of other reporting requirements. Except as otherwise required by law, any data provided to any department, agency, or instrumentality of the United States pursuant to other reporting requirements shall be made available to the Board. The Board may classify depository institutions for the purposes of this paragraph and may impose different requirements on each such class.

(b) Permitting or requiring rediscounting of paper at specified rate

To permit, or, on the affirmative vote of at least five members of the Board of Governors, to require Federal reserve banks to rediscount the discounted paper of other Federal reserve banks at rates of interest to be fixed by the Board.

(c) Suspending reserve requirements

To suspend for a period not exceeding thirty days, and from time to time to renew such suspension for periods not exceeding fifteen days, any reserve requirements specified in this chapter.

(d) Supervising and regulating issue and retirement of notes

To supervise and regulate through the Secretary of the Treasury the issue and retirement of Federal Reserve notes, except for the cancellation and destruction, and accounting with respect to such cancellation and destruction, of notes unfit for circulation, and to prescribe rules and regulations under which such notes may be delivered by the Secretary of the Treasury to the Federal Reserve agents applying therefor.

(e) Adding to or reclassifying reserve cities

To add to the number of cities classified as reserve cities under existing law in which national banking associations are subject to the reserve requirements set forth in section 20 of this Act, or to reclassify existing reserve cities or to terminate their designation as such.

(f) Suspending or removing officers or directors of reserve banks

To suspend or remove any officer or director of any Federal reserve bank, the cause of such removal to be forthwith communicated in writing by the Board of Governors of the Federal Reserve System to the removed officer or director and to said bank.

(g) Requiring writing off of doubtful or worthless assets of banks

To require the writing off of doubtful or worthless assets upon the books and balance sheets of Federal reserve banks.

(h) Suspending operations of or liquidating or reorganizing banks

To suspend, for the violation of any of the provisions of this chapter, the operations of any Federal reserve bank, to take possession thereof, administer the same during the period of suspension, and, when deemed advisable, to liquidate or reorganize such bank.

(i) Requiring bonds of agents; safeguarding property in hands of agents

To require bonds of Federal reserve agents, to make regulations for the safeguarding of all collateral, bonds, Federal reserve notes, money, or property of any kind deposited in the hands of such agents, and said board shall perform the duties, functions, or services specified in this chapter, and make all rules and regulations necessary to enable said board effectively to perform the same.

(j) Exercising supervision over reserve banks

To exercise general supervision over said Federal reserve banks.

(k) Delegation of certain functions; power to delegate; review of delegated activities

To delegate, by published order or rule and subject to subchapter II of chapter 5, and chapter 7, of Title 5, any of its functions, other than those relating to rulemaking or pertaining principally to monetary and credit policies, to one or more administrative law judges, members or employees of the Board, or Federal Reserve banks. The assignment of responsibility for the performance of any function that the Board determines to delegate shall be a function of the Chairman. The Board shall, upon the vote of one member, review action taken at a delegated level within such time and in such manner as the Board shall by rule prescribe.

(l) Employing attorneys, experts, assistants, and clerks; salaries and fees

To employ such attorneys, experts, assistants, clerks, or other employees as may be deemed necessary to conduct the business of the board. All salaries and fees shall be fixed in advance by said board and shall be paid in the same manner as the salaries of the members of said board.

(m) Repealed. Pub.L. 106-102, Title VII, § 735, Nov. 12, 1999, 113 Stat. 1479

(n) Board's authority to examine depository institutions and affiliates

To examine, at the Board's discretion, any depository institution, and any affiliate of such depository institution, in connection with any advance to, any discount of any instrument for, or any request for any such advance or discount by, such depository institution under this chapter.

(o) Authority to appoint conservator or receiver

The Board may appoint the Federal Deposit Insurance Corporation as conservator or receiver for a State member bank under section 1821(c)(9) of this title.

(p) Authority

The Board may act in its own name and through its own attorneys in enforcing any provision of this title, regulations promulgated hereunder, or any other law or regulation, or in any action, suit, or proceeding to which the Board is a party and which involves the Board's regulation or supervision of any bank, bank holding company (as defined in section 1841 of this title), or other entity, or the administration of its operations.

(q) UNIFORM PROTECTION AUTHORITY FOR FEDERAL RESERVE FACILITIES.—

(1) Notwithstanding any other provision of law, to authorize personnel to act as law enforcement officers to protect and safeguard the premises, grounds, property, personnel, including members of the Board, of the Board, or any Federal reserve bank, and operations conducted by or on behalf of the Board or a reserve bank.

(2) The Board may, subject to the regulations prescribed under paragraph (5), delegate authority to a Federal reserve bank to authorize personnel to act as law enforcement officers to protect and safeguard the bank's premises, grounds, property, personnel, and operations conducted by or on behalf of the bank.

(3) Law enforcement officers designated or authorized by the Board or a reserve bank under paragraph (1) or (2) are authorized while on duty to carry firearms and make arrests without warrants for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States committed or being committed within the buildings and grounds of the Board or a reserve bank if they have reasonable grounds to believe that the person to be arrested has committed or is committing such a felony. Such officers shall have access to law enforcement information that may be necessary for the protection of the property or personnel of the Board or a reserve bank.

(4) For purposes of this subsection, the term 'law enforcement officers' means personnel who have successfully completed law enforcement training and are authorized to carry firearms and make arrests pursuant to this subsection.

(5) The law enforcement authorities provided for in this subsection may be exercised only pursuant to regulations prescribed by the Board and approved by the Attorney General.

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UNITED STATES CODE ANNOTATED  
TITLE 12. BANKS AND BANKING  
CHAPTER 16--FEDERAL DEPOSIT INSURANCE CORPORATION

Current through P.L. 107-19, approved 7-10-01

**§ 1828. Regulations governing insured depository institutions**

(a) Insurance logo

(1) Insured savings associations

Each insured savings association shall display at each place of business maintained by such association a sign containing only the following items:

(A) A statement that insured deposits are backed by the full faith and credit of the United States Government.

(B) A statement that deposits are federally insured to \$100,000.

(C) The symbol of an eagle.

The sign shall not contain any reference to a Government agency and shall accord each item substantially equal prominence.

(2) Insured banks

Not later than 30 days after August 9, 1989, each insured bank shall display at each place of business maintained by such bank one of the following:

(A) The sign required to be displayed by insured banks under regulations prescribed by the Corporation in effect on January 1, 1989.

(B) The sign prescribed under paragraph (1).

(3) Regulations

The Corporation shall prescribe regulations to carry out the purposes of this subsection, including regulations governing the manner of display or use of such signs, except that the size of the sign prescribed under paragraph (1) shall be similar to that prescribed under paragraph (2)(A). Initial regulations under this subsection shall be prescribed on August 9, 1989.

For each day an insured depository institution continues to violate any provisions of this subsection or any lawful provisions of said regulations, it shall be subject to a penalty of not more than \$100, which the Corporation may recover for its use.

(b) Payment of dividends by defaulting depository institutions

No insured depository institution shall pay any dividends on its capital stock or interest on its capital notes or debentures (if such interest is required to be paid only out of net profits) or distribute any of its capital assets while it remains in default in the payment of any assessment due to the Corporation; and any director or officer of any insured depository institution who participates in the declaration or payment of any such dividend or interest or in any such distribution shall, upon conviction, be fined not more than \$1,000 or imprisoned not more than one year, or both: Provided, That, if such default is due to a dispute between the insured depository institution and the Corporation over the amount of such assessment, this subsection shall not apply, if the insured depository institution deposits security satisfactory to the Corporation for payment upon final determination of the issue.

(c) Merger transactions; consent of banking agencies; emergency approval; notice; uniform standards; antitrust actions; review de novo; limitations; report to Congress; applicability

(1) Except with the prior written approval of the responsible agency, which shall in every case referred to in this paragraph be the Corporation, no insured depository institution shall--

(A) merge or consolidate with any noninsured bank or institution;

(B) assume liability to pay any deposits (including liabilities which would be "deposits" except for the proviso in section 1813(l)(5) of this title) made in, or similar liabilities of, any noninsured bank or institution; or

(C) transfer assets to any noninsured bank or institution in consideration of the assumption of liabilities for any portion of the deposits made in such insured depository institution.

(2) No insured depository institution shall merge or consolidate with any other insured depository institution or, either directly or indirectly, acquire the assets of, or assume liability to pay any deposits made in, any other insured depository institution except with the prior written approval of the responsible agency, which shall be--

(A) the Comptroller of the Currency if the acquiring, assuming, or resulting bank is to be a national bank or a District bank;

(B) the Board of Governors of the Federal Reserve System if the acquiring, assuming, or resulting bank is to be a State member bank (except a District bank);

(C) the Corporation if the acquiring, assuming, or resulting bank is to be a State nonmember insured bank (except a District bank or a savings bank supervised by the Director of the Office of Thrift Supervision); and

(D) the Director of the Office of Thrift Supervision if the acquiring, assuming, or resulting institution is to be a savings association.

(3) Notice of any proposed transaction for which approval is required under paragraph (1) or (2) (referred to hereafter in this subsection as a "merger transaction") shall, unless the responsible agency finds that it must act immediately in order to prevent the probable default of one of the banks or savings associations involved, be published--

(A) prior to the granting of approval of such transaction,

(B) in a form approved by the responsible agency,

(C) at appropriate intervals during a period at least as long as the period allowed for furnishing reports under paragraph (4) of this subsection, and

(D) in a newspaper of general circulation in the community or communities where the main offices of the banks or savings associations involved are located, or, if there is no such newspaper in any such community, then in the newspaper of general circulation published nearest thereto.

(4) In the interests of uniform standards, before acting on any application for approval of a merger transaction, the responsible agency, unless it finds that it must act immediately in order to prevent the probable failure of one of the banks or savings associations involved, shall request reports on the competitive factors involved from the Attorney General and the other Federal banking agencies referred to in this subsection. The reports shall be furnished within thirty calendar days of the date on which they are requested, or within ten calendar days of such date if the requesting agency advises the Attorney General and the other Federal banking agencies that an emergency exists requiring expeditious action. Notwithstanding the preceding sentence, a banking agency shall not be required to file a report requested by the responsible agency under this paragraph if such banking agency advises the responsible agency by the applicable date under the preceding sentence that the report is not necessary because none of the effects described in paragraph (5) are likely to occur as a result of the transaction.

(5) The responsible agency shall not approve--

(A) any proposed merger transaction which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

(B) any other proposed merger transaction whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the



anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

In every case, the responsible agency shall take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served.

(6) The responsible agency shall immediately notify the Attorney General of any approval by it pursuant to this subsection of a proposed merger transaction. If the agency has found that it must act immediately to prevent the probable failure of one of the banks or savings associations involved and reports on the competitive factors have been dispensed with, the transaction may be consummated immediately upon approval by the agency. If the agency has advised the Attorney General and the other Federal banking agencies of the existence of an emergency requiring expeditious action and has requested reports on the competitive factors within ten days, the transaction may not be consummated before the fifth calendar day after the date of approval by the agency. In all other cases, the transaction may not be consummated before the thirtieth calendar day after the date of approval by the agency or, if the agency has not received any adverse comment from the Attorney General of the United States relating to competitive factors, such shorter period of time as may be prescribed by the agency with the concurrence of the Attorney General, but in no event less than 15 calendar days after the date of approval.

(7)(A) Any action brought under the antitrust laws arising out of a merger transaction shall be commenced prior to the earliest time under paragraph (6) at which a merger transaction approved under paragraph (5) might be consummated. The commencement of such an action shall stay the effectiveness of the agency's approval unless the court shall otherwise specifically order. In any such action, the court shall review de novo the issues presented.

(B) In any judicial proceeding attacking a merger transaction approved under paragraph (5) on the ground that the merger transaction alone and of itself constituted a violation of any antitrust laws other than section 2 of Title 15, the standards applied by the court shall be identical with those that the banking agencies are directed to apply under paragraph (5).

(C) Upon the consummation of a merger transaction in compliance with this subsection and after the termination of any antitrust litigation commenced within the period prescribed in this paragraph, or upon the termination of such period if no such litigation is commenced therein, the transaction may not thereafter be attacked in any judicial proceeding on the ground that it alone and of itself constituted a violation of any antitrust laws other than section 2 of Title 15, but nothing in this subsection shall exempt any bank or savings association resulting from a merger transaction from complying with the antitrust laws after the consummation of such transaction.

(D) In any action brought under the antitrust laws arising out of a merger transaction approved by a Federal supervisory agency pursuant to this subsection, such agency, and any State banking supervisory agency having jurisdiction within the State involved, may appear as a party of its own motion and as of right, and be represented by its counsel.

(8) For the purposes of this subsection, the term "antitrust laws" means the Act of July 2, 1890 (the Sherman Antitrust Act), the Act of October 15, 1914 (the Clayton Act), and any other Acts in pari materia.

(9) Each of the responsible agencies shall include in its annual report to the Congress a description of each merger transaction approved by it during the period covered by the report, along with--

- (A) the name and total resources of each bank or savings association involved;
- (B) whether a report was submitted by the Attorney General under paragraph (4), and, if so, a summary by the Attorney General of the substance of such report; and
- (C) a statement by the responsible agency of the basis for its approval.

(10) Until June 30, 1976, the responsible agency shall not grant any approval required by law which has the practical effect of permitting a conversion from the mutual to the stock form of organization, including approval of any application pending on the date of enactment of this subsection, except that this sentence shall not be deemed to limit now or hereafter the authority of the responsible agency to grant approvals in cases where the responsible agency finds that it must act in order to maintain the safety, soundness, and stability of an insured depository institution. The responsible agency may by rule, regulation, or otherwise and under such civil penalties (which shall be cumulative to any other remedies) as it may prescribe take whatever action it deems necessary or appropriate to implement or enforce this subsection.

(11) The provisions of this subsection do not apply to any merger transaction involving a foreign bank if no party to the transaction is principally engaged in business in the United States.

(d) Branch banks

(1) No State nonmember insured bank (except a District bank) shall establish and operate any new domestic branch unless it shall have the prior written consent of the Corporation, and no State nonmember insured bank (except a District bank) shall move its main office or any such branch from one location to another without such consent. No foreign bank may move any insured branch from one location to another without such consent. The factors to be considered in granting or withholding the consent of the Corporation under this subsection shall be those enumerated in section 1816 of this title.

(2) No State nonmember insured bank shall establish or operate any foreign branch, except with the prior written consent of the Corporation and upon such conditions and pursuant to such regulations as the Corporation may prescribe from time to time.

(3) Exclusive authority for additional branches

(A) In general

Effective June 1, 1997, a State nonmember bank may not acquire, establish, or operate a branch in any State other than the bank's home State (as defined in section 1831u(f)(4) of this title) or a State in which the bank already has a branch unless the acquisition, establishment, or operation of a branch in such State by a State nonmember bank is authorized under this subsection or section 1823(f), 1823(k), or 1831u of this title.

(B) Retention of branches

In the case of a State nonmember bank which relocates the main office of such bank from 1 State to another State after May 31, 1997, the bank may retain and operate branches within the State which was the bank's home State (as defined in section 1831u(f)(4) of this title) before the relocation of such office only to the extent the bank would be authorized, under this section or any other provision of law referred to in subparagraph (A), to acquire, establish, or commence to operate a branch in such State if

(i) the bank had no branches in such State; or

(ii) the branch resulted from--

(I) an interstate merger transaction approved pursuant to section 1831u of this title; or

(II) a transaction after May 31, 1997, pursuant to which the bank received assistance from the Corporation under section 1823(c) of this title.

(4) State "opt-in" election to permit interstate branching through de novo branches

(A) In general

Subject to subparagraph (B), the Corporation may approve an application by an insured State nonmember bank to establish and operate a de novo branch in a State (other than the bank's home State) in which the bank does not maintain a branch if--

(i) there is in effect in the host State a law that--

(I) applies equally to all banks; and

(II) expressly permits all out-of-State banks to establish de novo branches in such State; and

(ii) the conditions established in, or made applicable to this paragraph by, subparagraph (B) are met.

(B) Conditions on establishment and operation of interstate branch

(i) Establishment

An application by an insured State nonmember bank to establish and operate a de novo branch in a host State shall be subject to the same requirements and conditions to which an application for a merger transaction is subject under paragraphs (1), (3), and (4) of section 1831u(b) of this title.

(ii) Operation

Subsections (c) and (d)(2) of section 1831u of this title shall apply with respect to each branch of an insured State nonmember bank which is established and operated pursuant to an application approved under this paragraph in the same manner and to the same extent such provisions of such section apply to a branch of a State bank which resulted from a merger transaction under such section 1831u of this title.

(C) De novo branch defined

For purposes of this paragraph, the term "de novo branch" means a branch of a State bank which--

(i) is originally established by the State bank as a branch; and

(ii) does not become a branch of such bank as a result of--

(I) the acquisition by the bank of an insured depository institution or a branch of an insured depository institution; or

(II) the conversion, merger, or consolidation of any such institution or branch.

(D) Home State defined

The term "home State" means the State by which a State bank is chartered.

(E) Host State defined

The term "host State" means, with respect to a bank, a State, other than the home State of the bank, in which the bank maintains, or seeks to establish and maintain, a branch.

(e) Indemnity insurance

The Corporation may require any insured depository institution to provide protection and indemnity against burglary, defalcation, and other similar insurable losses. Whenever any insured depository institution refuses to comply with any such requirement the Corporation may contract for such protection and indemnity and add the cost thereof to the assessment otherwise payable by such bank.

(f) Publication of reports

Whenever any insured depository institution (except a national bank or a District bank), after written notice of the recommendations of the Corporation based on a report of examination of such insured depository institution by an examiner of the Corporation, shall fail to comply with such recommendations within one hundred and twenty days after such notice, the Corporation shall have the power, and is authorized, to publish only such part of such report of examination as relates to any recommendation not complied with: Provided, That notice of intention to make such publication shall be given to the insured depository institution at least ninety days before such publication is made.

(g) Interest or dividend on demand deposits; definitions; regulation of interest rates

(1) The Board of Directors shall by regulation prohibit the payment of interest or dividends on demand deposits in insured nonmember banks and in insured branches of foreign banks and for such purpose it may define the term "demand deposits"; but such exceptions from this prohibition shall be made as are now or may hereafter be prescribed with respect to deposits payable on demand in member banks by section 19 of the Federal Reserve Act, as amended, or by regulation of the Board of Governors of the Federal Reserve System. The Board of Directors may from time to time, after consulting with the Board of Governors of the Federal Reserve System and the Director of the Office of Thrift Supervision, prescribe rules governing the advertisement of interest or dividends on deposits by insured nonmember banks (including insured mutual savings banks) on time and savings deposits. The Board of Directors is authorized for the purposes of this subsection to define the terms "time deposits" and "savings deposits", to determine what shall be deemed a payment of interest, and to prescribe such regulations as it may deem necessary to effectuate the purposes of this subsection and to prevent evasions thereof. The provisions of this

subsection and of regulations issued thereunder shall also apply, in the discretion of the Board of Directors, to obligations other than deposits that are undertaken by insured nonmember banks or their affiliates. As used in this subsection, the term "affiliate" has the same meaning as when used in section 221a(b) of this title, except that the term "member bank", as used in such section 221a(b), shall be deemed to refer to an insured nonmember bank. During the period commencing on October 15, 1962, and ending on October 15, 1968, the provisions of this subsection shall not apply to the rate of interest which may be paid by insured nonmember banks on time deposits of foreign governments, monetary and financial authorities of foreign governments when acting as such, or international financial institutions of which the United States is a member. The authority conferred by this subsection shall also apply to noninsured banks in any State if the total amount of time and savings deposits held in all such banks in the State, plus the total amount of deposits, shares, and withdrawable accounts held in all building and loan, savings and loan, and homestead associations (including cooperative banks) in the State which are not members of a Federal home loan bank, is more than 20 per centum of the total amount of such deposits, shares, and withdrawable accounts held in all banks, and building and loan, savings and loan, and homestead associations (including cooperative banks) in the State. Such authority shall only be exercised by the Board of Directors with respect to such noninsured banks prior to July 31, 1970, to limit the rates of interest or dividends which such banks may pay on time and savings deposits to maximum rates not lower than 5 1/2 per centum per annum. Whenever it shall appear to the Board of Directors that any noninsured bank or any affiliate thereof is engaged or has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this subsection or of any regulations thereunder, the Board of Directors may, in its discretion, bring an action in the United States district court for the judicial district in which the principal office of the noninsured bank or affiliate thereof is located to enjoin such acts or practices, to enforce compliance with this subsection or any regulations thereunder, or for a combination of the foregoing, and such courts shall have jurisdiction of such actions, and, upon a proper showing, an injunction, restraining order, or other appropriate order may be granted without bond.

(2) Notwithstanding the provisions of paragraph (1), an insured nonmember bank may permit withdrawals to be made automatically from a savings deposit that consists only of funds in which the entire beneficial interest is held by one or more individuals through payment to the bank itself or through transfer of credit to a demand deposit or other account pursuant to written authorization from the depositor to make such payments or transfers in connection with checks or drafts drawn upon the bank, pursuant to terms and conditions prescribed by the Board of Directors.

#### (h) Penalties

Any insured depository institution which willfully fails or refuses to file any certified statement or pay any assessment required under this chapter shall be subject to a penalty of not more than \$100 for each day that such violations continue, which penalty the Corporation may recover for its use: Provided, That this subsection shall not be applicable under the circumstances stated in the proviso of subsection (b) of this section.

(i) Reduction or retirement of capital stock, notes, or debentures; conversion of insured Federal depository institutions to insured State depository institutions or noninsured institutions; consent of banking agencies

(1) No insured State nonmember bank (except a District bank) shall, without the prior consent of the Corporation, reduce the amount or retire any part of its common or preferred capital stock, or retire any part of its capital notes or debentures.

(2) No insured Federal depository institution shall convert into an insured State depository institution if its capital stock or its surplus will be less than the capital stock or surplus, respectively, of the converting bank at the time of the shareholder's meeting approving such conversion, without the prior written consent of--

(A) the Comptroller of the Currency if the resulting bank is to be a District bank;

(B) the Board of Governors of the Federal Reserve System if the resulting bank is to be a State member bank (except a District bank);

(C) the Corporation if the resulting bank is to be a State nonmember insured bank (except a District bank); and

(D) the Director of the Office of Thrift Supervision if the acquiring, assuming, or resulting institution is to be a savings association.

(3) Without the prior written consent of the Corporation, no insured depository institution shall convert into a noninsured bank or institution.

(4) In granting or withholding consent under this subsection, the responsible agency shall consider--

(A) the financial history and condition of the bank,

(B) the adequacy of its capital structure,

(C) its future earnings prospects,

(D) the general character and fitness of its management,

(E) the convenience and needs of the community to be served, and

(F) whether or not its corporate powers are consistent with the purposes of this chapter.

(j) Restrictions on transactions with affiliates and insiders

(1) Transactions with affiliates

(A) In general

Sections 371c and 371c-1 of this title shall apply with respect to every nonmember insured bank in the same manner and to the same extent as if the nonmember insured bank were a member bank.

(B) Affiliate defined

For the purpose of subparagraph (A), any company that would be an affiliate (as defined in sections 371c and 371c-1 of this title) of a nonmember insured bank if the nonmember insured bank were a member bank shall be deemed to be an affiliate of that nonmember insured bank.

(2) Extensions of credit to officers, directors, and principal shareholders

Sections 375a and 375b of this title shall apply with respect to every nonmember insured bank in the same manner and to the same extent as if the nonmember insured bank were a member bank.

(3) Avoiding extraterritorial application to foreign banks

(A) Transactions with affiliates

Paragraph (1) shall not apply with respect to a foreign bank solely because the foreign bank has an insured branch.

(B) Extensions of credit to officers, directors, and principal shareholders

Paragraph (2) shall not apply with respect to a foreign bank solely because the foreign bank has an insured branch, but shall apply with respect to the insured branch.

(C) Foreign bank defined

For purposes of this paragraph, the term "foreign bank" has the same meaning as in section 3101(7) of this title.

(k) Authority to regulate or prohibit certain forms of benefits to institution-affiliated parties

(1) Golden parachutes and indemnification payments

The Corporation may prohibit or limit, by regulation or order, any golden parachute payment or indemnification payment.

(2) Factors to be taken into account

The Corporation shall prescribe, by regulation, the factors to be considered by the Corporation in taking any action pursuant to paragraph (1) which may include such factors as the following:

(A) Whether there is a reasonable basis to believe that the institution-affiliated party has committed any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the depository institution or depository institution holding company that has had a material affect on the financial condition of the institution.

(B) Whether there is a reasonable basis to believe that the institution-affiliated party is substantially responsible for the insolvency of the depository institution or depository institution holding company, the appointment of a conservator or receiver for the depository institution, or the depository institution's troubled condition (as defined in the regulations prescribed pursuant to section 1831i(f) of this title.

(C) Whether there is a reasonable basis to believe that the institution-affiliated party has materially violated any applicable Federal or State banking law or regulation that has had a material affect on the financial condition of the institution.

(D) Whether there is a reasonable basis to believe that the institution-affiliated party has violated or conspired to violate--

(i) section 215, 656, 657, 1005, 1006, 1007, 1014, 1032, or 1344 of Title 18; or

(ii) section 1341 or 1343 of such title affecting a federally insured financial institution.

(E) Whether the institution-affiliated party was in a position of managerial or fiduciary responsibility.

(F) The length of time the party was affiliated with the insured depository institution or depository institution holding company and the degree to which--

(i) the payment reasonably reflects compensation earned over the period of employment; and

(ii) the compensation involved represents a reasonable payment for services rendered.

(3) Certain payments prohibited

No insured depository institution or depository institution holding company may prepay the salary or any liability or legal expense of any institution-affiliated party if such payment is made--

(A) in contemplation of the insolvency of such institution or holding company or after the commission of an act of insolvency; and

(B) with a view to, or has the result of--

(i) preventing the proper application of the assets of the institution to creditors; or

(ii) preferring one creditor over another.

(4) Golden parachute payment defined

For purposes of this subsection--

(A) In general

The term "golden parachute payment" means any payment (or any agreement to make any payment) in the nature of compensation by any insured depository institution or depository institution holding company for the benefit of any institution-affiliated party pursuant to an obligation of such institution or holding company that--

(i) is contingent on the termination of such party's affiliation with the institution or holding company; and--

(ii) is received on or after the date on which--

(I) the insured depository institution or depository institution holding company, or any insured depository institution subsidiary of such holding company, is insolvent;

(II) any conservator or receiver is appointed for such institution;

(III) the institution's appropriate Federal banking agency determines that the insured depository institution is in a troubled condition (as defined in the regulations prescribed pursuant to section 1831i(f) of this title;

(IV) the insured depository institution has been assigned a composite rating by the appropriate Federal banking agency or the Corporation of 4 or 5 under the Uniform Financial Institutions Rating System; or

(V) the insured depository institution is subject to a proceeding initiated by the Corporation to terminate or suspend deposit insurance for such institution.

(B) Certain payments in contemplation of an event

Any payment which would be a golden parachute payment but for the fact that such payment was made before the date referred to in subparagraph (A)(ii) shall be treated as a golden parachute payment if the payment was made in contemplation of the occurrence of an event described in any subclause of such subparagraph.



(C) Certain payments not included

The term "golden parachute payment" shall not include--

(i) any payment made pursuant to a retirement plan which is qualified (or is intended to be qualified) under section 401 of Title 26 or other nondiscriminatory benefit plan;

(ii) any payment made pursuant to a bona fide deferred compensation plan or arrangement which the Board determines, by regulation or order, to be permissible; or

(iii) any payment made by reason of the death or disability of an institution-affiliated party.

(5) Other definitions

For purposes of this subsection--

(A) Indemnification payment

Subject to paragraph (6), the term "indemnification payment" means any payment (or any agreement to make any payment) by any insured depository institution or depository institution holding company for the benefit of any person who is or was an institution-affiliated party, to pay or reimburse such person for any liability or legal expense with regard to any administrative proceeding or civil action instituted by the appropriate Federal banking agency which results in a final order under which such person--

(i) is assessed a civil money penalty;

(ii) is removed or prohibited from participating in conduct of the affairs of the insured depository institution; or

(iii) is required to take any affirmative action described in section 1818(b)(6) of this title with respect to such institution.

(B) Liability or legal expense

The term "liability or legal expense" means--

(i) any legal or other professional expense incurred in connection with any claim, proceeding, or action;

(ii) the amount of, and any cost incurred in connection with, any settlement of any claim, proceeding, or action; and

(iii) the amount of, and any cost incurred in connection with, any judgment or penalty imposed with respect to any claim, proceeding, or action.

(C) Payment

The term "payment" includes--

(i) any direct or indirect transfer of any funds or any asset; and

(ii) any segregation of any funds or assets for the purpose of making, or pursuant to an agreement to make, any payment after the date on which such funds or assets are segregated, without regard to whether the obligation to make such payment is contingent on--

(I) the determination, after such date, of the liability for the payment of such amount; or

(II) the liquidation, after such date, of the amount of such payment.

(6) Certain commercial insurance coverage not treated as covered benefit payment

No provision of this subsection shall be construed as prohibiting any insured depository institution or depository institution holding company from purchasing any commercial insurance policy or fidelity bond, except that, subject to any requirement described in paragraph (5)(A)(iii), such insurance policy or bond shall not cover any legal or liability expense of the institution or holding company which is described in paragraph (5)(A).

(l) Acquisition of foreign banks or entities

When authorized by State law, a State nonmember insured bank may, but only with the prior written consent of the Corporation and upon such conditions and under such regulations as the Corporation may prescribe from time to time, acquire and hold, directly or indirectly, stock or other evidences of ownership in one or more banks or other entities organized under the law of a foreign country or a dependency or insular possession of the United States and not engaged, directly or indirectly, in any activity in the United States except as, in the judgment of the Board of Directors, shall be incidental to the international or foreign business of such foreign bank or entity; and, notwithstanding the provisions of subsection (j) of this section, such State nonmember insured bank may, as to such foreign bank or entity, engage in transactions that would otherwise be covered thereby, but only in the manner and within the limit prescribed by the Corporation by general or specific regulation or ruling.

(m) Activities of savings associations and their subsidiaries

(1) Procedures

When an insured savings association establishes or acquires a subsidiary or when an insured savings association elects to conduct any new activity through a subsidiary that the insured savings association controls, the insured savings association--

(A) shall notify the Corporation and the Director of the Office of Thrift Supervision not less than 30 days prior to the establishment, or acquisition, of any such subsidiary, and not less than 30 days prior to the commencement of any such activity, and in either case shall provide at that time such information as each such agency may, by regulation, require; and

(B) shall conduct the activities of the subsidiary in accordance with regulations and orders of the Director of the Office of Thrift Supervision.

(2) Enforcement powers

With respect to any subsidiary of an insured savings association:

(A) the Corporation and the Director of the Office of Thrift Supervision shall each have, with respect to such subsidiary, the respective powers that each has with respect to the insured savings association pursuant to this section or section 1818 of this title; and

(B) the Director of the Office of Thrift Supervision may determine, after notice and opportunity for hearing, that the continuation by the insured savings association of its ownership or control of, or its relationship to, the subsidiary--

(i) constitutes a serious risk to the safety, soundness, or stability of the insured savings association, or

(ii) is inconsistent with sound banking principles or with the purposes of this chapter.

Upon making any such determination, the Corporation or the Director of the Office of Thrift Supervision shall have authority to order the insured savings association to divest itself of control of the subsidiary. The Director of the Office of Thrift Supervision may take any other corrective measures with respect to the subsidiary, including the authority to require the subsidiary to terminate the activities or operations posing such risks, as the Director may deem appropriate.

(3) Activities incompatible with deposit insurance

(A) In general

The Corporation may determine by regulation or order that any specific activity poses a serious threat to the Savings Association Insurance Fund. Prior to adopting any such regulation, the Corporation shall consult with the Director of the Office of Thrift Supervision and shall provide appropriate State supervisors the opportunity to comment thereon, and the Corporation shall specifically take such comments into consideration. Any such regulation shall be issued in accordance with section 553 of Title 5. If the Board of Directors makes such a determination with respect to an activity, the Corporation shall have authority to order that no Savings Association Insurance Fund member may engage in the activity directly.

(B) Authority of director

This section does not limit the authority of the Office of Thrift Supervision to issue regulations to promote safety and soundness or to enforce compliance with other applicable laws.

(C) Additional authority of FDIC to prevent serious risks to insurance fund

Notwithstanding subparagraph (A), the Corporation may prescribe and enforce such regulations and issue such orders as the Corporation determines to be necessary to prevent actions or practices of savings associations that pose a serious threat to the Savings Association Insurance Fund or the Bank Insurance Fund.

(4) "Subsidiary" defined

As used in this subsection, the term "subsidiary" does not include an insured depository institution.

(5) Applicability to certain savings banks

Subparagraphs (A) and (B) of paragraph (1) of this subsection do not apply to

(A) any Federal savings bank that was chartered prior to October 15, 1982, as a savings bank under State law, or

(B) a savings association that acquired its principal assets from an institution that was chartered prior to October 15, 1982, as a savings bank under State law.

(n) Calculation of Capital

No appropriate Federal banking agency shall allow any insured depository institution to include an unidentifiable intangible asset in its calculation of compliance with the appropriate capital standard, if such unidentifiable intangible asset was acquired after April 12, 1989, except to the extent permitted under section 1464(t) of this title.

(o) Real estate lending

(1) Uniform regulations

Not more than 9 months after December 19, 1991, each appropriate Federal banking agency shall adopt uniform regulations prescribing standards for extensions of credit that are

- (A) secured by liens on interests in real estate; or
- (B) made for the purpose of financing the construction of a building or other improvements to real estate.

(2) Standards

(A) Criteria

In prescribing standards under paragraph (1), the agencies shall consider--

- (i) the risk posed to the deposit insurance funds by such extensions of credit;
- (ii) the need for safe and sound operation of insured depository institutions; and
- (iii) the availability of credit.

(B) Variations permitted

In prescribing standards under paragraph (1), the appropriate Federal banking agencies may differentiate among types of loans--

- (i) as may be required by Federal statute;
- (ii) as may be warranted, based on the risk to the deposit insurance fund; or
- (iii) as may be warranted, based on the safety and soundness of the institutions.

(3) Loan evaluation standard

No appropriate Federal banking agency shall adversely evaluate an investment or a loan made by an insured depository institution, or consider such a loan to be nonperforming, solely because the loan is made to or the investment is in commercial, residential, or industrial property, unless such investment or loan may affect the institution's safety and soundness.

(4) Effective date

The regulations adopted under paragraph (1) shall become effective not later than 15 months after December 19, 1991. Such regulations shall continue in effect except as uniformly amended by the appropriate Federal banking agencies, acting in concert.

(p) Periodic review of capital standards

Each appropriate Federal banking agency shall, in consultation with the other Federal banking agencies, biennially review its capital standards for insured depository institutions to determine whether those standards require sufficient capital to facilitate prompt corrective action to prevent or minimize loss to the deposit insurance funds, consistent with section 1831o of this title.

(q) Sovereign risk

Section 633 of this title shall apply to every nonmember insured bank in the same manner and to the same extent as if the nonmember insured bank were a member bank.

(r) Subsidiary depository institutions as agents for certain affiliates

(1) In general

Any bank subsidiary of a bank holding company may receive deposits, renew time deposits, close loans, service loans, and receive payments on loans and other obligations as an agent for a depository institution affiliate.

(2) Bank acting as agent is not a branch

Notwithstanding any other provision of law, a bank acting as an agent in accordance with paragraph (1) for a depository institution affiliate shall not be considered to be a branch of the affiliate.

(3) Prohibitions on activities

A depository institution may not--

(A) conduct any activity as an agent under paragraph (1) or (6) which such institution is prohibited from conducting as a principal under any applicable Federal or State law; or

(B) as a principal, have an agent conduct any activity under paragraph (1) or (6) which the institution is prohibited from conducting under any applicable Federal or State law.

(4) Existing authority not affected

No provision of this subsection shall be construed as affecting--

(A) the authority of any depository institution to act as an agent on behalf of any other depository institution under any other provision of law; or

(B) whether a depository institution which conducts any activity as an agent on behalf of any other depository institution under any other provision of law shall be considered to be a branch of such other institution.

(5) Agency relationship required to be consistent with safe and sound banking practices

An agency relationship between depository institutions under paragraph (1) or (6) shall be on terms that are consistent with safe and sound banking practices and all applicable regulations of any appropriate Federal banking agency.

(6) Affiliated insured savings associations

An insured savings association which was an affiliate of a bank on July 1, 1994, may conduct activities as an agent on behalf of such bank in the same manner as an insured bank affiliate of such bank may act as agent for such bank under this subsection to the extent such activities are conducted only in--

(A) any State in which--

(i) the bank is not prohibited from operating a branch under any provision of Federal or State law; and

(ii) the savings association maintained an office or branch and conducted business as of July 1, 1994; or

(B) any State in which--

(i) the bank is not expressly prohibited from operating a branch under a State law described in section 1831u(a)(2) of this title; and

(ii) the savings association maintained a main office and conducted business as of July 1, 1994.

(s) Prohibition on certain affiliations

(1) In general

No depository institution may be an affiliate of, be sponsored by, or accept financial support, directly or indirectly, from any Government-sponsored enterprise.

(2) Exception for members of a Federal home loan bank

Paragraph (1) shall not apply with respect to the membership of a depository institution in a Federal home loan bank.

(3) Routine business financing

Paragraph (1) shall not apply with respect to advances or other forms of financial assistance provided by a Government-sponsored enterprise pursuant to the statutes governing such enterprise.

(4) Student loans

(A) In general

This subsection shall not apply to any arrangement between the Holding Company (or any subsidiary of the Holding Company other than the Student Loan Marketing Association) and a depository institution, if the Secretary approves the affiliation and determines that--

(i) the reorganization of such Association in accordance with section 1087-3 of Title 20, as amended, will not be adversely affected by the arrangement;

(ii) the dissolution of the Association pursuant to such reorganization will occur before the end of the 2-year period beginning on the date on which such arrangement is consummated or on such earlier date as the Secretary deems appropriate: Provided, That the Secretary may extend this period for not more than 1 year at a time if the Secretary determines that such extension is in the public interest and is appropriate to achieve an orderly reorganization of the Association or to prevent market disruptions in connection with such reorganization, but no such extensions shall in the aggregate exceed 2 years;

(iii) the Association will not purchase or extend credit to, or guarantee or provide credit enhancement to, any obligation of the depository institution;

(iv) the operations of the Association will be separate from the operations of the depository institution; and

(v) until the "dissolution date" (as that term is defined in section 1087-3 of Title 20, as amended) has occurred, such depository institution will not

use the trade name or service mark "Sallie Mae" in connection with any product or service it offers if the appropriate Federal banking agency for such depository institution determines that--

(I) the depository institution is the only institution offering such product or service using the "Sallie Mae" name; and

(II) such use would result in the depository institution having an unfair competitive advantage over other depository institutions.

(B) Terms and conditions

In approving any arrangement referred to in subparagraph (A) the Secretary may impose any terms and conditions on such an arrangement that the Secretary considers appropriate, including:

(i) imposing additional restrictions on the issuance of debt obligations by the Association; or

(ii) restricting the use of proceeds from the issuance of such debt.

(C) Additional limitations

In the event that the Holding Company (or any subsidiary of the Holding Company) enters into such an arrangement, the value of the Association's "investment portfolio" shall not at any time exceed the lesser of—

(i) the value of such portfolio on October 21, 1998; or

(ii) the value of such portfolio on the date such an arrangement is consummated. The term "investment portfolio" shall mean all investments shown on the consolidated balance sheet of the Association other than--

(I) any instrument or assets described in section 1087-2(d) of Title 20, as amended;

(II) any direct noncallable obligations of the United States or any agency thereof for which the full faith and credit of the United States is pledged; or

(III) cash or cash equivalents.

(D) Enforcement

The terms and conditions imposed under subparagraph (B) may be enforced by the Secretary in accordance with section 1087-3 of Title 20.

(E) Definitions

For purposes of this paragraph, the following definition shall apply--

(i) Association; holding company

Notwithstanding any provision in section 1813 of this title, the terms "Association" and "Holding Company" have the same meanings as in section 1087-3(i) of Title 20.

(ii) Secretary

The term "Secretary" means the Secretary of the Treasury.

(5) "Government-sponsored enterprise" defined

For purposes of this subsection, the term "Government-sponsored enterprise" has the meaning given to such term in section 1404(e)(1)(A) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(t) Recordkeeping requirements

(1) Requirements

Each appropriate Federal banking agency, after consultation with and consideration of the views of the Commission, shall establish recordkeeping requirements for banks relying on exceptions contained in paragraphs (4) and (5) of section 78c(a) of Title 15. Such recordkeeping requirements shall be sufficient to demonstrate compliance with the terms of such exceptions and be designed to facilitate compliance with such exceptions.

(2) Availability to Commission; confidentiality

Each appropriate Federal banking agency shall make any information required under paragraph (1) available to the Commission upon request. Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any such information. Nothing in this paragraph shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency or any self-regulatory organization requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of Title 5, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552.

(3) Definition

As used in this subsection the term 'Commission' means the Securities and Exchange Commission.

(u) Limitation on claims

(1) In general

No person may bring a claim against any Federal banking agency (including in its capacity as conservator or receiver) for the return of assets of an affiliate or controlling shareholder of the insured depository institution transferred to, or for the benefit of, an insured depository institution by such affiliate or controlling shareholder of the insured depository institution, or a claim against such Federal banking agency for monetary damages or other legal or equitable relief in connection with such transfer, if at the time of the transfer--

(A) the insured depository institution is subject to any direction issued in writing by a Federal banking agency to increase its capital;

(B) the insured depository institution is under capitalized (as defined in section 1831o of this title); and

(C) for that portion of the transfer that is made by an entity covered by section 1844(g) of this title or section 1831v of this title, the Federal banking agency has followed the procedure set forth in such section.

(2) Definition of claim

For purposes of paragraph (1), the term "claim"--

(A) means a cause of action based on Federal or State law that--

(i) provides for the avoidance of preferential or fraudulent transfers or conveyances; or



(ii) provides similar remedies for preferential or fraudulent transfers or conveyances; and

(B) does not include any claim based on actual intent to hinder, delay, or defraud pursuant to such a fraudulent transfer or conveyance law.

(v) Loans by insured institutions on their own stock

(1) General prohibition

No insured depository institution may make any loan or discount on the security of the shares of its own capital stock.

(2) Exclusion

For purposes of this subsection, an insured depository institution shall not be deemed to be making a loan or discount on the security of the shares of its own capital stock if it acquires the stock to prevent loss upon a debt previously contracted for in good faith.

(w) WRITTEN EMPLOYMENT REFERENCES MAY CONTAIN SUSPICIONS OF INVOLVEMENT IN ILLEGAL ACTIVITY.—

(1) AUTHORITY TO DISCLOSE INFORMATION.—Notwithstanding any other provision of law, any insured depository institution, and any director, officer, employee, or agent of such institution, may disclose in any written employment reference relating to a current or former institution-affiliated party of such institution which is provided to another insured depository institution in response to a request from such other institution, information concerning the possible involvement of such institution-affiliated party in potentially unlawful activity.

(2) INFORMATION NOT REQUIRED.—Nothing in paragraph (1) shall be construed, by itself, to create any affirmative duty to include any information described in paragraph (1) in any employment reference referred to in paragraph (1).

(3) MALICIOUS INTENT.—Notwithstanding any other provision of this subsection, voluntary disclosure made by an insured depository institution, and any director, officer, employee, or agent of such institution under this subsection concerning potentially unlawful activity that is made with malicious intent, shall not be shielded from liability from the person identified in the disclosure.

(4) DEFINITION.—For purposes of this subsection, the term ‘insured depository institution’ includes any uninsured branch or agency of a foreign bank.

UNITED STATES CODE ANNOTATED  
TITLE 12. BANKS AND BANKING  
CHAPTER 16--FEDERAL DEPOSIT INSURANCE CORPORATION

Current through P.L. 107-19, approved 7-10-01

**§ 1829b. Retention of records by insured depository institutions**

(a) Congressional findings and declaration of purpose

(1) Findings. ~~The~~ Congress finds that \_\_\_\_\_

(A) adequate records maintained by insured depository institutions have a high degree of usefulness in criminal, tax, and regulatory investigations and or proceedings, and that, given the threat posed to the security of the Nation on and after the terrorist attacks against the United States on September 11, 2001, such records may also have a high degree of usefulness in the conduct of intelligence or counterintelligence activities, including analysis, to protect against domestic and international terrorism; and

358(d)

~~(B) The Congress further finds that~~ microfilm or other reproductions and other records made by banks insured depository institutions of checks, as well as records kept by banks such institutions, of the identity of persons maintaining or authorized to act with respect to accounts therein, have been of particular value in ~~this respect~~ proceedings described in subparagraph (A).

(2) Purpose. It is the purpose of this section to require the maintenance of appropriate types of records by insured depository institutions in the United States where such records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, recognizes that, given the threat posed to the security of the Nation on and after the terrorist attacks against the United States on September 11, 2001, such records may also have a high degree of usefulness in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.

(b) Recordkeeping regulations

(1) In general

Where the Secretary of the Treasury (referred to in this section as the "Secretary") determines that the maintenance of appropriate types of records and other evidence by insured depository institutions has a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, he shall prescribe regulations to carry out the purposes of this section.

(2) Domestic funds transfers

Whenever the Secretary and the Board of Governors of the Federal Reserve System (hereafter in this section referred to as the "Board") determine that the maintenance of records, by insured depository institutions, of payment orders which direct transfers of funds over wholesale funds transfer systems has a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, the Secretary

and the Board shall jointly prescribe regulations to carry out the purposes of this section with respect to the maintenance of such records.

(3) International funds transfers

(A) In general

The Secretary and the Board shall jointly prescribe, after consultation with State banking supervisors, final regulations requiring that insured depository institutions, businesses that provide check cashing services, money transmitting businesses, and businesses that issue or redeem money orders, travelers' checks or other similar instruments maintain such records of payment orders which--

(i) involve international transactions; and

(ii) direct transfers of funds over wholesale funds transfer systems or on the books of any insured depository institution, or on the books of any business that provides check cashing services, any money transmitting business, and any business that issues or redeems money orders, travelers' checks or similar instruments,

that will have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

(B) Factors for consideration

In prescribing the regulations required under subparagraph (A), the Secretary and the Board shall consider--

(i) the usefulness in criminal, tax, or regulatory investigations or proceedings of any record required to be maintained pursuant to the proposed regulations; and

(ii) the effect the recordkeeping required pursuant to such proposed regulations will have on the cost and efficiency of the payment system.

(C) Availability of records

Any records required to be maintained pursuant to the regulations prescribed under subparagraph (A) shall be submitted or made available to the Secretary or the Board upon request.

(c) Identity of persons having accounts and persons authorized to act with respect to such accounts; exemptions

Subject to the requirements of any regulations prescribed jointly by the Secretary and the Board under paragraph (2) or (3) of subsection (b) of this section, each insured depository institution shall maintain such records and other evidence, in such form as the Secretary shall require, of the identity of each person having an account in the United States with the insured depository institution and of each individual authorized to sign checks, make withdrawals, or otherwise act with respect to any such account. The Secretary may make such exemptions from any requirement otherwise imposed under this subsection as are consistent with the purposes of this section.

(d) Reproduction of checks, drafts, and other instruments; record of transactions; identity of party

Each insured depository institution shall make, to the extent that the regulations of the Secretary so require--

(1) a microfilm or other reproduction of each check, draft, or similar instrument drawn on it and presented to it for payment; and

(2) a record of each check, draft, or similar instrument received by it for deposit or collection, together with an identification of the party for whose account it is to be deposited or collected, unless the insured depository institution has already made a record of the party's identity pursuant to subsection (c) of this section.

(e) Identity of persons making reportable currency and foreign transactions

Subject to the requirements of any regulations prescribed jointly by the Secretary and the Board under paragraph (2) or (3) of subsection (b) of this section whenever any individual engages (whether as principal, agent, or bailee) in any transaction with an insured depository institution which is required to be reported or recorded under subchapter II of chapter 53 of Title 31, the insured depository institution shall require and retain such evidence of the identity of that individual as the Secretary may prescribe as appropriate under the circumstances.

(f) Additions to or substitutes for required records

Subject to the requirements of any regulations prescribed jointly by the Secretary and the Board under paragraph (2) or (3) of subsection (b) of this section and in addition to or in lieu of the records and evidence otherwise referred to in this section, each insured depository institution shall maintain such records and evidence as the Secretary may prescribe to carry out the purposes of this section.

(g) Retention period

Any type of record or evidence required under this section shall be retained for such period as the Secretary may prescribe for the type in question. Any period so prescribed shall not exceed six years unless the Secretary determines, having regard for the purposes of this section, that a longer period is necessary in the case of a particular type of record or evidence.

(h) Report to Congress by Secretary of the Treasury

The Secretary shall include in his annual report to the Congress information on his implementation of the authority conferred by this section and any similar authority with respect to recordkeeping or reporting requirements conferred by other provisions of law.

(i) Application of provisions to foreign banks

The provisions of this section shall not apply to any foreign bank except with respect to the transactions and records of any insured branch of such a bank.

(j) Civil penalties

(1) Penalty imposed

Any insured depository institution and any director, officer, or employee of an insured depository institution who willfully or through gross negligence violates, or any person who willfully causes such a violation, any regulation prescribed under

subsection (b) of this section shall be liable to the United States for a civil penalty of not more than \$10,000.

(2) Treatment of continuing violation

A separate violation of any regulation prescribed under subsection (b) of this section occurs for each day the violation continues and at each office, branch, or place of business at which such violation occurs.

(3) Assessment

Any penalty imposed under paragraph (1) shall be assessed, mitigated, and collected in the manner provided in subsections (b) and (c) of section 5321 of Title 31.

UNITED STATES CODE ANNOTATED  
TITLE 12. BANKS AND BANKING  
CHAPTER 21--FINANCIAL RECORDKEEPING

Current through P.L. 107-19, approved 7-10-01

**§ 1953. Recordkeeping and procedures**

(a) Regulations. If ~~Where~~ the Secretary determines that the maintenance of appropriate records and procedures by any uninsured bank or uninsured institution, or any person engaging in the business of carrying on in the United States any of the functions referred to in subsection (b) ~~of this section~~, has a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, and that, given the threat posed to the security of the Nation on and after the terrorist attacks against the United States on September 11, 2001, such records may also have a high degree of usefulness in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism, he may by regulation require such bank, institution, or person--

**358(e)**

(1) to require, retain, or maintain, with respect to its functions as an uninsured bank or uninsured institution or its functions referred to in subsection (b) of this section, any records or evidence of any type which the Secretary is authorized under section 1829b of this title to require insured banks to require, retain, or maintain; and

(2) to maintain procedures to assure compliance with requirements imposed under this chapter. For the purposes of any civil or criminal penalty, a separate violation of any requirement under this paragraph occurs with respect to each day and each separate office, branch, or place of business in which the violation occurs or continues.

(b) Institutions subject to recordkeeping requirements

The authority of the Secretary of the Treasury under subsection (a) of this section extends to any financial institution (as defined in section 5312(a)(2) of Title 31), other than any insured bank (as defined in section 1813(h) of this title) and any insured institution (as

defined in section 1724(a) of this title), and any partner, officer, director, or employee of any such financial institution.

(c) Acceptance of automated records

The Secretary shall permit an uninsured bank or financial institution to retain or maintain records referred to in subsection (a) of this section in electronic or automated form, subject to terms and conditions established by the Secretary.

UNITED STATES CODE ANNOTATED  
TITLE 12. BANKS AND BANKING  
CHAPTER 35--RIGHT TO FINANCIAL PRIVACY

Current through P.L. 107-19, approved 7-10-01

**§ 3412. Use of information**

(a) Transfer of financial records to other agencies or departments; certification

Financial records originally obtained pursuant to this chapter shall not be transferred to another agency or department unless the transferring agency or department certifies in writing that there is reason to believe that the records are relevant to a legitimate law enforcement inquiry, or intelligence or counterintelligence activity, investigation or analysis related to international terrorism within the jurisdiction of the receiving agency or department.

**358(f)**

(b) Mailing of copy of certification and notice to customer

When financial records subject to this chapter are transferred pursuant to subsection (a) of this section, the transferring agency or department shall, within fourteen days, send to the customer a copy of the certification made pursuant to subsection (a) of this section and the following notice, which shall state the nature of the law enforcement inquiry with reasonable specificity: "Copies of, or information contained in, your financial records lawfully in possession of \_\_\_\_\_ have been furnished to \_\_\_\_\_ pursuant to the Right of Financial Privacy Act of 1978 [2 U.S.C.A. § 3401 et seq.] for the following purpose: . If you believe that this transfer has not been made to further a legitimate law enforcement inquiry, you may have legal rights under the Financial Privacy Act of 1978 or the Privacy Act of 1974 [5 U.S.C.A. § 552a]."

(c) Court-ordered delays in mailing

Notwithstanding subsection (b) of this section, notice to the customer may be delayed if the transferring agency or department has obtained a court order delaying notice pursuant to section 3409(a) and (b) of this title and that order is still in effect, or if the receiving agency or department obtains a court order authorizing a delay in notice pursuant to section 3409(a) and (b) of this title. Upon the expiration of any such period of delay, the transferring

agency or department shall serve to the customer the notice specified in subsection (b) of this section and the agency or department that obtained the court order authorizing a delay in notice pursuant to section 3409(a) and (b) of this title shall serve to the customer the notice specified in section 3409(b) of this title.

(d) Exchanges of examination reports by supervisory agencies; transfer of financial records to defend customer action; withholding of information

Nothing in this chapter prohibits any supervisory agency from exchanging examination reports or other information with another supervisory agency. Nothing in this chapter prohibits the transfer of a customer's financial records needed by counsel for a Government authority to defend an action brought by the customer. Nothing in this chapter shall authorize the withholding of information by any officer or employee of a supervisory agency from a duly authorized committee or subcommittee of the Congress.

(e) Federal Financial Institutions Examination Council supervisory agencies; Securities and Exchange Commission; authorization of exchange of financial records or other information

Notwithstanding section 3401(6) of this title or any other provision of law, the exchange of financial records, examination reports or other information with respect to a financial institution, holding company, or any subsidiary of a depository institution or holding company, among and between the five member supervisory agencies of the Federal Financial Institutions Examination Council, the Securities and Exchange Commission, and the Commodity Futures Trading Commission is permitted.

(f) Transfer to Attorney General

(1) In general

Nothing in this chapter shall apply when financial records obtained by an agency or department of the United States are disclosed or transferred to the Attorney General or the Secretary of the Treasury upon the certification by a supervisory level official of the transferring agency or department that--

(A) there is reason to believe that the records may be relevant to a violation of Federal criminal law; and

(B) the records were obtained in the exercise of the agency's or department's supervisory or regulatory functions.

(2) Limitation on use

Records so transferred shall be used only for criminal investigative or prosecutive purposes, for civil actions under section 1833a of this title, or for forfeiture under sections 981 or 982 of Title 18 by the Department of Justice and only for criminal investigative purposes relating to money laundering and other financial crimes by the Department of the Treasury and shall, upon completion of the investigation or prosecution (including any appeal), be returned only to the transferring agency or department. No agency or department so transferring such records shall be deemed to have waived any privilege applicable to those records under law.

UNITED STATES CODE ANNOTATED  
TITLE 12. BANKS AND BANKING  
CHAPTER 35--RIGHT TO FINANCIAL PRIVACY

Current through P.L. 107-19, approved 7-10-01

**§ 3414. Special procedures**<sup>2</sup>

(a)(1) Nothing in this chapter (except sections 3415, 3417, 3418, and 3421 of this title) shall apply to the production and disclosure of financial records pursuant to requests from--

(A) a Government authority authorized to conduct foreign counter- or foreign positive-intelligence activities for purposes of conducting such activities; ~~or~~

(B) the Secret Service for the purpose of conducting its protective functions (18 U.S.C. 3056; 3 U.S.C. 202, Public Law 90-331, as amended); or

(C) a Government authority authorized to conduct investigations of, or intelligence or counterintelligence analyses related to, international terrorism for the purpose of conducting such investigations or analyses.

(2) In the instances specified in paragraph (1), the Government authority shall submit to the financial institution the certificate required in section 3403(b) of this title signed by a supervisory official of a rank designated by the head of the Government authority.

(3) No financial institution, or officer, employee, or agent of such institution, shall disclose to any person that a Government authority described in paragraph (1) has sought or obtained access to a customer's financial records.

(4) The Government authority specified in paragraph (1) shall compile an annual tabulation of the occasions in which this section was used.

(5)(A) Financial institutions, and officers, employees, and agents thereof, shall comply with a request for a customer's or entity's financial records made pursuant to this subsection by the Federal Bureau of Investigation when the Director of the Federal Bureau of Investigation (or the Director's designee) certifies in writing to the financial institution that such records are sought for foreign counterintelligence purposes.

(B) The Federal Bureau of Investigation may disseminate information obtained pursuant to this paragraph only as provided in guidelines approved by the Attorney General for foreign intelligence collection and foreign counterintelligence investigations conducted by the Federal Bureau of Investigation, and, with respect to dissemination to an agency of the United States, only if such information is clearly relevant to the authorized responsibilities of such agency.

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<sup>2</sup> Changes made by Title III Subtitle B only are reflected. Title V also amends this section. These changes are reflected in a separate document.



(C) On a semiannual basis the Attorney General shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate concerning all requests made pursuant to this paragraph.

(D) No financial institution, or officer, employee, or agent of such institution, shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to a customer's or entity's financial records under this paragraph.

(b)(1) Nothing in this chapter shall prohibit a Government authority from obtaining financial records from a financial institution if the Government authority determines that delay in obtaining access to such records would create imminent danger of--

- (A) physical injury to any person;
- (B) serious property damage; or
- (C) flight to avoid prosecution.

(2) In the instances specified in paragraph (1), the Government shall submit to the financial institution the certificate required in section 3403(b) of this title signed by a supervisory official of a rank designated by the head of the Government authority.

(3) Within five days of obtaining access to financial records under this subsection, the Government authority shall file with the appropriate court a signed, sworn statement of a supervisory official of a rank designated by the head of the Government authority setting forth the grounds for the emergency access. The Government authority shall thereafter comply with the notice provisions of section 3409(c) of this title.

(4) The Government authority specified in paragraph (1) shall compile an annual tabulation of the occasions in which this section was used.

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CHAPTER 35--RIGHT TO FINANCIAL PRIVACY

Current through P.L. 107-19, approved 7-10-01

**§ 3420. Grand jury information; notification of certain persons prohibited**

(a) Financial records about a customer obtained from a financial institution pursuant to a subpoena issued under the authority of a Federal grand jury--

(1) shall be returned and actually presented to the grand jury unless the volume of such records makes such return and actual presentation impractical in which case the grand jury shall be provided with a description of the contents of the records.; [FN1]

(2) shall be used only for the purpose of considering whether to issue an indictment or presentment by that grand jury, or of prosecuting a crime for which that indictment or presentment is issued, or for a purpose authorized by rule 6(e) of the Federal Rules of Criminal Procedure, or for a purpose authorized by section 1112(a);

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(3) shall be destroyed or returned to the financial institution if not used for one of the purposes specified in paragraph (2); and

(4) shall not be maintained, or a description of the contents of such records shall not be maintained by any Government authority other than in the sealed records of the grand jury, unless such record has been used in the prosecution of a crime for which the grand jury issued an indictment or presentment or for a purpose authorized by rule 6(e) of the Federal Rules of Criminal Procedure.

(b)(1) No officer, director, partner, employee, or shareholder of, or agent or attorney for, a financial institution shall, directly or indirectly, notify any person named in a grand jury subpoena served on such institution in connection with an investigation relating to a possible--

(A) crime against any financial institution or supervisory agency or crime involving a violation of the Controlled Substance Act [FN2] [21 U.S.C.A. § 801 et seq.], the Controlled Substances Import and Export Act [21 U.S.C.A. § 951 et seq.], section 1956 or 1957 of Title 18, sections 5313, 5316, and 5324 of Title 31, or section 6050I of Title 26; or

(B) conspiracy to commit such a crime, about the existence or contents of such subpoena, or information that has been furnished to the grand jury in response to such subpoena.

(2) Section 1818 of this title and section 1786(k)(2) of this title shall apply to any violation of this subsection.

[FN1] So in original.

[FN2] So in original. Probably should be "Controlled Substances Act".

UNITED STATES CODE ANNOTATED  
TITLE 15. COMMERCE AND TRADE  
CHAPTER 41--CONSUMER CREDIT PROTECTION  
SUBCHAPTER III--CREDIT REPORTING AGENCIES

Current through P.L. 107-19, approved 7-10-01

*New section added at end of subchapter:*

**§ 626. Disclosures to governmental agencies for counterterrorism purposes**

(a) DISCLOSURE.—Notwithstanding section 604 or any other provision of this title, a consumer reporting agency shall furnish a consumer report of a consumer and all other information in a consumer's file to a government agency authorized to conduct investigations of, or intelligence or counterintelligence activities or analysis related to, international

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terrorism when presented with a written certification by such government agency that such information is necessary for the agency's conduct or such investigation, activity or analysis.

(b) FORM OF CERTIFICATION.—The certification described in subsection (a) shall be signed by a supervisory official designated by the head of a Federal agency or an officer of a Federal agency whose appointment to office is required to be made by the President, by and with the advice and consent of the Senate.

(c) CONFIDENTIALITY.—No consumer reporting agency, or officer, employee, or agent of such consumer reporting agency, shall disclose to any person, or specify in any consumer report, that a government agency has sought or obtained access to information under subsection (a).

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(d) RULE OF CONSTRUCTION.—Nothing in section 625 shall be construed to limit the authority of the Director of the Federal Bureau of Investigation under this section.

(e) SAFE HARBOR.—Notwithstanding any other provision of this title, any consumer reporting agency or agent or employee thereof making disclosure of consumer reports or other information pursuant to this section in good-faith reliance upon a certification of a governmental agency pursuant to the provisions of this section shall not be liable to any person for such disclosure under this subchapter, the constitution of any State, or any law or regulation of any State or any political subdivision of any State.

UNITED STATES CODE ANNOTATED  
TITLE 31. MONEY AND FINANCE  
SUBTITLE I--GENERAL  
CHAPTER 3--DEPARTMENT OF THE TREASURY  
SUBCHAPTER I--ORGANIZATION

*New section 310 added after existing section 309 (existing section 310 is redesignated as section 311):*

**§ 310. Financial Crimes Enforcement Network**

(a) IN GENERAL.—The Financial Crimes Enforcement Network established by order of the Secretary of the Treasury (Treasury Order Numbered 105-08, in this section referred to as 'FinCEN') on April 25, 1990, shall be a bureau in the Department of the Treasury.

(b) DIRECTOR.—

(1) APPOINTMENT.—The head of FinCEN shall be the Director, who shall be appointed by the Secretary of the Treasury.

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(2) DUTIES AND POWERS.—The duties and powers of the Director are as follows:

(A) Advise and make recommendations on matters relating to financial intelligence, financial criminal activities, and other financial activities to the Under Secretary of the Treasury for Enforcement.

(B) Maintain a government-wide data access service, with access, in accordance with applicable legal requirements, to the following:

(i) Information collected by the Department of the Treasury, including report information filed under subchapter II of chapter 53 of this title (such as reports on cash transactions, foreign financial agency transactions and relationships, foreign currency transactions, exporting and importing monetary instruments, and suspicious activities), chapter 2 of title I of Public Law 91–508, and section 21 of the Federal Deposit Insurance Act.

(ii) Information regarding national and international currency flows.

(iii) Other records and data maintained by other Federal, State, local, and foreign agencies, including financial and other records developed in specific cases.

(iv) Other privately and publicly available information.

(C) Analyze and disseminate the available data in accordance with applicable legal requirements and policies and guidelines established by the Secretary of the Treasury and the Under Secretary of the Treasury for Enforcement to—

(i) identify possible criminal activity to appropriate Federal, State, local, and foreign law enforcement agencies;

(ii) support ongoing criminal financial investigations and prosecutions and related proceedings, including civil and criminal tax and forfeiture proceedings;

(iii) identify possible instances of noncompliance with subchapter II of chapter 53 of this title, chapter 2 of title I of Public Law 91–508, and section 21 of the Federal Deposit Insurance Act to Federal agencies with statutory responsibility for enforcing compliance with such provisions and other appropriate Federal regulatory agencies;

(iv) evaluate and recommend possible uses of special currency reporting requirements under section 5326;

(v) determine emerging trends and methods in money laundering and other financial crimes;

(vi) support the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism; and

(vii) support government initiatives against money laundering.

(D) Establish and maintain a financial crimes communications center to furnish law enforcement authorities with intelligence information related to emerging or ongoing investigations and undercover operations.

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(E) Furnish research, analytical, and informational services to financial institutions, appropriate Federal regulatory agencies with regard to financial institutions, and appropriate Federal, State, local, and foreign law enforcement authorities, in accordance with policies and guidelines established by the Secretary of the Treasury or the Under Secretary of the Treasury for Enforcement, in the interest of detection, prevention, and prosecution of terrorism, organized crime, money laundering, and other financial crimes.

(F) Assist Federal, State, local, and foreign law enforcement and regulatory authorities in combatting the use of informal, nonbank networks and payment and barter system mechanisms that permit the transfer of funds or the equivalent of funds without records and without compliance with criminal and tax laws.

(G) Provide computer and data support and data analysis to the Secretary of the Treasury for tracking and controlling foreign assets.

(H) Coordinate with financial intelligence units in other countries on anti-terrorism and anti-money laundering initiatives, and similar efforts.

(I) Administer the requirements of subchapter II of chapter 53 of this title, chapter 2 of title I of Public Law 91–508, and section 21 of the Federal Deposit Insurance Act, to the extent delegated such authority by the Secretary of the Treasury.

(J) Such other duties and powers as the Secretary of the Treasury may delegate or prescribe.

(c) REQUIREMENTS RELATING TO MAINTENANCE AND USE OF DATA BANKS.—The Secretary of the Treasury shall establish and maintain operating procedures with respect to the governmentwide data access service and the financial crimes communications center maintained by FinCEN which provide—

(1) for the coordinated and efficient transmittal of information to, entry of information into, and withdrawal of information from, the data maintenance system maintained by the Network, including—

(A) the submission of reports through the Internet or other secure network, whenever possible;

(B) the cataloguing of information in a manner that facilitates rapid retrieval by law enforcement personnel of meaningful data; and

(C) a procedure that provides for a prompt initial review of suspicious activity reports and other reports, or such other means as the Secretary may provide, to identify information that warrants immediate action; and

(2) in accordance with section 552a of title 5 and the Right to Financial Privacy Act of 1978, appropriate standards and guidelines for determining—

(A) who is to be given access to the information maintained by the Network;

(B) what limits are to be imposed on the use of such information; and

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(C) how information about activities or relationships which involve or are closely associated with the exercise of constitutional rights is to be screened out of the data maintenance system.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for FinCEN such sums as may be necessary for fiscal years 2002, 2003, 2004, and 2005.

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SUBCHAPTER II--RECORDS AND REPORTS ON MONETARY INSTRUMENTS  
TRANSACTIONS

Current through P.L. 107-19, approved 7-10-01

**§ 5311. Declaration of purpose**

It is the purpose of this subchapter (except section 5315) to require certain reports or records where they have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.

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**§ 5312. Definitions and application**

(a) In this subchapter--

(1) "financial agency" means a person acting 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.

(2) "financial institution" means--

(A) an insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h) ) );

(B) a commercial bank or trust company;

(C) a private banker;

(D) an agency or branch of a foreign bank in the United States;

(E) an insured institution (as defined in section 401(a) of the National Housing Act (12 U.S.C. 1724(a) ) );

(F) a thrift institution;

(G) a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

(H) a broker or dealer in securities or commodities;

(I) an investment banker or investment company;

(J) a currency exchange;

(K) an issuer, redeemer, or cashier of travelers' checks, checks, money orders, or similar instruments;

(L) an operator of a credit card system;

(M) an insurance company;

(N) a dealer in precious metals, stones, or jewels;

(O) a pawnbroker;

(P) a loan or finance company;

(Q) a travel agency;

(R) a licensed sender of money or any other person who engages as a business in the transmission of funds, including any person who engages as a business in an informal money transfer system or any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside of the conventional financial institutions system;

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(S) a telegraph company;

(T) a business engaged in vehicle sales, including automobile, airplane, and boat sales;

(U) persons involved in real estate closings and settlements;

(V) the United States Postal Service;

(W) an agency of the United States Government or of a State or local government carrying out a duty or power of a business described in this paragraph;

(X) a casino, gambling casino, or gaming establishment with an annual gaming revenue of more than \$1,000,000 which;

(i) is licensed as a casino, gambling casino, or gaming establishment under the laws of any State or any political subdivision of any State; or

(ii) is an Indian gaming operation conducted under or pursuant to the Indian Gaming Regulatory Act other than an operation which is limited to class I gaming (as defined in section 4(6) of such Act);

(Y) any business or agency which engages in any activity which the Secretary of the Treasury determines, by regulation, to be an activity which is similar to, related to, or a substitute for any activity in which any business described in this paragraph is authorized to engage; or

(Z) any other business designated by the Secretary whose cash transactions have a high degree of usefulness in criminal, tax, or regulatory matters.

(3) "monetary instruments" means--

(A) United States coins and currency;

(B) as the Secretary may prescribe by regulation, coins and currency of a foreign country, travelers' checks, bearer negotiable instruments, bearer investment securities, bearer securities, stock on which title is passed on delivery, and similar material; and

(C) as the Secretary of the Treasury shall provide by regulation for purposes of sections 5333 and 5316, checks, drafts, notes, money orders, and other similar instruments which are drawn on or by a foreign financial institution and are not in bearer form.

(4) NONFINANCIAL TRADE OR BUSINESS.—The term 'nonfinancial trade or business' means any trade or business other than a financial institution that is subject to the reporting requirements of section 5313 and regulations prescribed under such section.

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(45) "person", in addition to its meaning under section 1 of title 1, includes a trustee, a representative of an estate and, when the Secretary prescribes, a governmental entity.

(56) "United States" means the States of the United States, the District of Columbia, and, when the Secretary prescribes by regulation, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands, a territory or possession of the United States, or a military or diplomatic establishment.

(b) In this subchapter--

(1) "domestic financial agency" and "domestic financial institution" apply to an action in the United States of a financial agency or institution.

(2) "foreign financial agency" and "foreign financial institution" apply to an action outside the United States of a financial agency or institution.

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## **§ 5317. Search and forfeiture of monetary instruments**

(a) The Secretary of the Treasury may apply to a court of competent jurisdiction for a search warrant when the Secretary reasonably believes a monetary instrument is being transported and a report on the instrument under section 5316 of this title has not been filed or contains a material omission or misstatement. The Secretary shall include a statement of information in support of the warrant. On a showing of probable cause, the court may issue a search warrant for a designated person or a designated or described place or physical object. This subsection does not affect the authority of the Secretary under another law.

(b) Searches at border.--For purposes of ensuring compliance with the requirements of section 5316, a customs officer may stop and search, at the border and without a search warrant, any vehicle, vessel, aircraft, or other conveyance, any envelope or other container, and any person entering or departing from the United States.

(c) If a report required under section 5316 with respect to any monetary instrument is not filed (or if filed, contains a material omission or misstatement of fact), the instrument and any interest in property, including a deposit in a financial institution, traceable to such instrument may be seized and forfeited to the United States Government. Any property, real or personal, involved in a transaction or attempted transaction in violation of section 5324(b~~c~~), or any property traceable to such property, may be seized and forfeited to the United States Government. A monetary instrument transported by mail or a common carrier, messenger, or bailee is being transported under this subsection from the time the instrument is delivered to the United States Postal Service, common carrier, messenger, or bailee through the time it is delivered to the addressee, intended recipient, or agent of the addressee or intended recipient without being transported further in, or taken out of, the United States.

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## **§ 5318. Compliance, exemptions, and summons authority**

(a) General powers of Secretary.--The Secretary of the Treasury may (except under section 5315 of this title and regulations prescribed under section 5315)--

(1) except as provided in subsection (b)(2), delegate duties and powers under this subchapter to an appropriate supervising agency and the United States Postal Service;

(2) require a class of domestic financial institutions or nonfinancial trades or businesses to maintain appropriate procedures to ensure compliance with this subchapter and regulations prescribed under this subchapter or to guard against money laundering;

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(3) examine any books, papers, records, or other data of domestic financial institutions or nonfinancial trades or businesses relevant to the recordkeeping or reporting requirements of this subchapter;

(4) summon a financial institution or nonfinancial trade or business, an officer or employee of a financial institution or nonfinancial trade or business (including a former officer or employee), or any person having possession, custody, or care of the reports and records required under this subchapter, to appear before the Secretary of the Treasury or his delegate at a time and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to an investigation described in subsection (b);

(5) exempt from the requirements of this subchapter any class of transactions within any State if the Secretary determines that--

(A) under the laws of such State, that class of transactions is subject to requirements substantially similar to those imposed under this subchapter; and

(B) there is adequate provision for the enforcement of such requirements; and

(6) prescribe an appropriate exemption from a requirement under this subchapter and regulations prescribed under this subchapter. The Secretary may revoke an exemption under this paragraph or paragraph (5) by actually or constructively notifying the parties affected. A revocation is effective during judicial review.

(b) Limitations on summons power.--

(1) Scope of power.--The Secretary of the Treasury may take any action described in paragraph (3) or (4) of subsection (a) only in connection with investigations for the purpose of civil enforcement of violations of this subchapter, section 21 of the Federal Deposit Insurance Act, section 411 of the National Housing Act, or chapter 2 of Public Law 91-508 (12 U.S.C. 1951 et seq.) or any regulation under any such provision.

(2) Authority to issue.--A summons may be issued under subsection (a)(4) only by, or with the approval of, the Secretary of the Treasury or a supervisory level delegate of the Secretary of the Treasury.

(c) Administrative aspects of summons.--

(1) Production at designated site.--A summons issued pursuant to this section may require that books, papers, records, or other data stored or maintained at any place be produced at any designated location in any State or in any territory or other place subject to the jurisdiction of the United States not more than 500 miles distant from any place where the financial institution or nonfinancial trade or business operates or conducts business in the United States.

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(2) Fees and travel expenses.--Persons summoned under this section 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.

(3) No liability for expenses.--The United States shall not be liable for any expense, other than an expense described in paragraph (2), incurred in connection with the production of books, papers, records, or other data under this section.

(d) Service of summons.--Service of a summons issued under this section may be by registered mail or in such other manner calculated to give actual notice as the Secretary may prescribe by regulation.

(e) Contumacy or refusal.--

(1) Referral to Attorney General.--In case of contumacy by a person issued a summons under paragraph (3) or (4) of subsection (a) or a refusal by such person to obey such summons, the Secretary of the Treasury shall refer the matter to the Attorney General.

(2) Jurisdiction of court.--The Attorney General may invoke the aid of any court of the United States within the jurisdiction of which--

(A) the investigation which gave rise to the summons is being or has been carried on;

(B) the person summoned is an inhabitant; or

(C) the person summoned carries on business or may be found,

to compel compliance with the summons.

(3) Court order.--The court may issue an order requiring the person summoned to appear before the Secretary or his delegate to produce books, papers, records, and other data, to give testimony as may be necessary to explain how such material was compiled and maintained, and to pay the costs of the proceeding.

(4) Failure to comply with order.--Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(5) Service of process.--All process in any case under this subsection may be served in any judicial district in which such person may be found.

(f) Written and signed statement required.--No person shall qualify for an exemption under subsection (a)(5) unless the relevant financial institution or nonfinancial trade or business prepares and maintains a statement which--

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(1) describes in detail the reasons why such person is qualified for such exemption; and

(2) contains the signature of such person.

(g) Reporting of suspicious transactions.--

(1) In general.--The Secretary may require any financial institution, and any director, officer, employee, or agent of any financial institution, to report any suspicious transaction relevant to a possible violation of law or regulation.

(2) Notification prohibited.--

(A) In general. If a financial institution, ~~and a~~ or any director, officer, employee, or agent of any financial institution, ~~who~~ voluntarily or pursuant to this section or any other authority, reports a suspicious transaction, or that reports a suspicious transaction ~~pursuant to this section or any other authority,~~ may not notify

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any person involved in the transaction that the transaction has been reported, to a government agency

(i) the financial institution, director, officer, employee, or agent may not notify any person involved in the transaction that the transaction has been reported; and

(ii) no officer or employee of the Federal Government or of any State, local, tribal, or territorial government within the United States, who has any knowledge that such report was made may disclose to any person involved in the transaction that the transaction has been reported, other than as necessary to fulfill the official duties of such officer or employee.

(B) DISCLOSURES IN CERTAIN EMPLOYMENT REFERENCES.—

(i) RULE OF CONSTRUCTION.—Notwithstanding the application of subparagraph (A) in any other context, subparagraph (A) shall not be construed as prohibiting any financial institution, or any director, officer, employee, or agent of such institution, from including information that was included in a report to which subparagraph (A) applies—

(I) in a written employment reference that is provided in accordance with section 18(w) of the Federal Deposit Insurance Act in response to a request from another financial institution; or

(II) in a written termination notice or employment reference that is provided in accordance with the rules of a self-regulatory organization registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission, except that such written reference or notice may not disclose that such information was also included in any such report, or that such report was made.

(ii) INFORMATION NOT REQUIRED.—Clause (i) shall not be construed, by itself, to create any affirmative duty to include any information described in clause (i) in any employment reference or termination notice referred to in clause (i).

(3) Liability for disclosures.—

(A) In general. Any financial institution that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this subsection or any other authority, and any director, officer, employee, or agent of such institution who makes, or requires another to make any such disclosure, 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 of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such disclosure or for any failure to notify provide notice of such disclosure to the person involved in the transaction or any other person who is the subject of such disclosure or any other person identified in the disclosure.

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(B) RULE OF CONSTRUCTION.—Subparagraph (A) shall not be construed as creating—

(i) any inference that the term ‘person’, as used in such subparagraph, may be construed more broadly than its ordinary usage so as to include any government or agency of government; or

(ii) any immunity against, or otherwise affecting, any civil or criminal action brought by any government or agency of government to enforce any constitution, law, or regulation of such government or agency.

(4) Single designee for reporting suspicious transactions.--

(A) In general.--In requiring reports under paragraph (1) of suspicious transactions, the Secretary of the Treasury shall designate, to the extent practicable and appropriate, a single officer or agency of the United States to whom such reports shall be made.

(B) Duty of designee.--The officer or agency of the United States designated by the Secretary of the Treasury pursuant to subparagraph (A) shall refer any report of a suspicious transaction to any appropriate law enforcement, ~~or~~ supervisory agency, or United States intelligence agency for use in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.

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(C) Coordination with other reporting requirements.--Subparagraph (A) shall not be construed as precluding any supervisory agency for any financial institution from requiring the financial institution to submit any information or report to the agency or another agency pursuant to any other applicable provision of law.

(h) Anti-money laundering programs.--

(1) In general.--In order to guard against money laundering through financial institutions, ~~the Secretary may require each~~ financial institutions to carry out shall establish anti-money laundering programs, including, at a minimum\_\_

(A) the development of internal policies, procedures, and controls,

(B) the designation of a compliance officer,

(C) an ongoing employee training program, and

(D) an independent audit function to test programs.

**352(a)**

(2) Regulations.--The Secretary of the Treasury, after consultation with the appropriate Federal functional regulator (as defined in section 509 of the Gramm-Leach-Bliley Act), may prescribe minimum standards for programs established under paragraph (1), and may exempt from the application of those standards any financial institution that is not subject to the provisions of the rules contained in part 103 of title 31, of the Code of Federal Regulations, or any successor rule thereto, for so long as such financial institution is not subject to the provisions of such rules.

**359(c)**

(1)<sup>3</sup> APPLICABILITY OF RULES.—Any rules promulgated pursuant to the authority contained in section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b) shall apply, in addition to any other financial institution to which such rules apply, to any person that engages as a business in the transmission of funds, including any person who engages as a business in an informal money transfer system or any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside of the conventional financial institutions system.

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**§ 5319. Availability of reports**

**358(c)**

The Secretary of the Treasury shall make information in a report filed ~~under section 5313, 5314, or 5316 of this title~~ this subchapter available to an agency, including any State financial institutions supervisory agency, United States intelligence agency or self-regulatory organization registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission, upon request of the head of the agency or organization. The report shall be available for a purpose that is consistent with those sections or a regulation prescribed under those sections this subchapter. The Secretary may only require reports on the use of such information by any State financial institutions supervisory agency for other than supervisory purposes or by United States intelligence agencies. However, a report and records of reports are exempt from disclosure under section 552 of title 5.

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<sup>3</sup> Should be (i).

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Current through P.L. 107-19, approved 7-10-01

**§ 5321. Civil penalties**

**365(c)**

(a)(1) A domestic financial institution or nonfinancial trade or business, and a partner, director, officer, or employee of a domestic financial institution or nonfinancial trade or business, willfully violating this subchapter or a regulation prescribed or order issued under this subchapter (except sections 5314 and 5315 of this title or a regulation prescribed under sections 5314 and 5315), or willfully violating a regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91-508, is liable to the United States Government for a civil penalty of not more than the greater of the amount (not to exceed \$100,000) involved in the transaction (if any) or \$25,000. For a violation of section 5318(a)(2) of this title or a regulation prescribed under section 5318(a)(2), a separate violation occurs for each day the violation continues and at each office, branch, or place of business at which a violation occurs or continues.

**353(a)**

(2) The Secretary of the Treasury may impose an additional civil penalty on a person not filing a report, or filing a report containing a material omission or misstatement, under section 5316 of this title or a regulation prescribed under section 5316. A civil penalty under this paragraph may not be more than the amount of the monetary instrument for which the report was required. A civil penalty under this paragraph is reduced by an amount forfeited under section 5317(b) of this title.

(3) A person not filing a report under a regulation prescribed under section 5315 of this title or not complying with an injunction under section 5320 of this title enjoining a violation of, or enforcing compliance with, section 5315 or a regulation prescribed under section 5315, is liable to the Government for a civil penalty of not more than \$10,000.

(4) Structured transaction violation.--

(A) Penalty authorized.--The Secretary of the Treasury may impose a civil money penalty on any person who violates any provision of section 5324.

(B) Maximum amount limitation.--The amount of any civil money penalty imposed under subparagraph (A) shall not exceed the amount of the coins and currency (or such other monetary instruments as the Secretary may prescribe) involved in the transaction with respect to which such penalty is imposed.

(C) Coordination with forfeiture provision.--The amount of any civil money penalty imposed by the Secretary under subparagraph (A) shall be reduced by the amount of any forfeiture to the United States in connection with the transaction with respect to which such penalty is imposed.

(5) Foreign financial agency transaction violation.--

(A) Penalty authorized.--The Secretary of the Treasury may impose a civil money penalty on any person who willfully violates or any person willfully causing any violation of any provision of section 5314.

(B) Maximum amount limitation.--The amount of any civil money penalty imposed under subparagraph (A) shall not exceed--

(i) in the case of violation of such section involving a transaction, the greater of--

(I) the amount (not to exceed \$100,000) of the transaction; or  
(II) \$25,000; and

(ii) in the case of violation of such section involving a failure to report the existence of an account or any identifying information required to be provided with respect to such account, the greater of--

(I) an amount (not to exceed \$100,000) equal to the balance in the account at the time of the violation; or

(II) \$25,000.

(6) Negligence.--

**365(c)**

(A) In general.--The Secretary of the Treasury may impose a civil money penalty of not more than \$500 on any financial institution or nonfinancial trade or business which negligently violates any provision of this subchapter or any regulation prescribed under this subchapter.

**365(c)**

(B) Pattern of negligent activity.--If any financial institution or nonfinancial trade or business engages in a pattern of negligent violations of any provision of this subchapter or any regulation prescribed under this subchapter, the Secretary of the Treasury may, in addition to any penalty imposed under subparagraph (A) with respect to any such violation, impose a civil money penalty of not more than \$50,000 on the financial institution or nonfinancial trade or business.

~~{(7) Repealed. Pub.L. 104-208, Div. A, Title II, § 2223(3), Sept. 30, 1996, 110 Stat. 3009-415}~~

**363(a)**

**365(c)**

~~(7) PENALTIES FOR INTERNATIONAL COUNTER MONEY LAUNDERING VIOLATIONS.—The Secretary may impose a civil money penalty in an amount equal to not less than 2 times the amount of the transaction, but not more than \$1,000,000, on any financial institution or nonfinancial trade or business or agency that violates any provision of subsection (i) or (j) of section 5318 or any special measures imposed under section 5318A.~~

(b) Time limitations for assessments and commencement of civil actions.--

(1) Assessments.--The Secretary of the Treasury may assess a civil penalty under subsection (a) at any time before the end of the 6-year period beginning on the date of the transaction with respect to which the penalty is assessed.

(2) Civil actions.--The Secretary may commence a civil action to recover a civil penalty assessed under subsection (a) at any time before the end of the 2-year period beginning on the later of--

(A) the date the penalty was assessed; or

(B) the date any judgment becomes final in any criminal action under section 5322 in connection with the same transaction with respect to which the penalty is assessed.



(c) The Secretary may remit any part of a forfeiture under subsection (c) or (d) of section 5317 of this title or civil penalty under subsection (a)(2) of this section.

(d) Criminal penalty not exclusive of civil penalty.--A civil money penalty may be imposed under subsection (a) with respect to any violation of this subchapter notwithstanding the fact that a criminal penalty is imposed with respect to the same violation.

(e) Delegation of assessment authority to banking agencies.--

(1) In general.--The Secretary of the Treasury shall delegate, in accordance with section 5318(a)(1) and subject to such terms and conditions as the Secretary may impose in accordance with paragraph (3), any authority of the Secretary to assess a civil money penalty under this section on depository institutions (as defined in section 3 of the Federal Deposit Insurance Act) to the appropriate Federal banking agencies (as defined in such section 3).

(2) Authority of agencies.--Subject to any term or condition imposed by the Secretary of the Treasury under paragraph (3), the provisions of this section shall apply to an appropriate Federal banking agency to which is delegated any authority of the Secretary under this section in the same manner such provisions apply to the Secretary.

(3) Terms and conditions.--

(A) In general.--The Secretary of the Treasury shall prescribe by regulation the terms and conditions which shall apply to any delegation under paragraph (1).

(B) Maximum dollar amount.--The terms and conditions authorized under subparagraph (A) may include, in the Secretary's sole discretion, a limitation on the amount of any civil penalty which may be assessed by an appropriate Federal banking agency pursuant to a delegation under paragraph (1).

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**§ 5322. Criminal penalties**

(a) A person willfully violating this subchapter or a regulation prescribed or order issued under this subchapter (except section 5315 or 5324 of this title or a regulation prescribed under section 5315 or 5324), or willfully violating a regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91-508, shall be fined not more than \$250,000, or imprisoned for not more than five years, or both.

**353(b)**

(b) A person willfully violating this subchapter or a regulation prescribed or order issued under this subchapter (except section 5315 or 5324 of this title or a regulation prescribed under section 5315 or 5324) or willfully violating a regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91-508, while violating another law of the United States or as part of a pattern of any illegal activity involving more than \$100,000 in a 12-month period, shall be fined not more than \$500,000, imprisoned for not more than 10 years, or both.

(c) For a violation of section 5318(a)(2) of this title or a regulation prescribed under section 5318(a)(2), a separate violation occurs for each day the violation continues and at each office, branch, or place of business at which a violation occurs or continues.

**363(b)**

(d) A financial institution or agency that violates any provision of subsection (i) or (j) of section 5318, or any special measures imposed under section 5318A, or any regulation prescribed under subsection (i) or (j) of section 5318 or section 5318A, shall be fined in an amount equal to not less than 2 times the amount of the transaction, but not more than \$1,000,000.

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**§ 5324. Structuring transactions to evade reporting requirement prohibited**

**365(b)**

(a) Domestic coin and currency transactions involving financial institutions.--No person shall, for the purpose of evading the reporting requirements of section 5313(a) or 5325 or any regulation prescribed under any such section, the reporting or recordkeeping requirements imposed by any order issued under section 5326, or the recordkeeping requirements imposed by any regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91-508—

**353(c)**

(1) cause or attempt to cause a domestic financial institution to fail to file a report required under section 5313(a) or 5325 or any regulation prescribed under any such section, to file a report or to maintain a record required by an order issued under section 5326, or to maintain a record required pursuant to any regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91-508;

(2) cause or attempt to cause a domestic financial institution to file a report required under section 5313(a) or 5325 or any regulation prescribed under any such section, to file a report or to maintain a record required by any order issued under section 5326, or to maintain a record required pursuant to any regulation prescribed under section 5326, or to maintain a record required pursuant to any regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91-508, that contains a material omission or misstatement of fact; or

(3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.

(b) DOMESTIC COIN AND CURRENCY TRANSACTIONS INVOLVING NONFINANCIAL TRADES OR BUSINESSES.—No person shall, for the purpose of evading the report requirements of section 5333 or any regulation prescribed under such section—

**365(b)**

(1) cause or attempt to cause a nonfinancial trade or business to fail to file a report required under section 5333 or any regulation prescribed under such section;

(2) cause or attempt to cause a nonfinancial trade or business to file a report required under section 5333 or any regulation prescribed under such section that contains a material omission or misstatement of fact; or

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(3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with 1 or more nonfinancial trades or businesses.

(bc) International monetary instrument transactions.--No person shall, for the purpose of evading the reporting requirements of section 5316--

(1) fail to file a report required by section 5316, or cause or attempt to cause a person to fail to file such a report;

(2) file or cause or attempt to cause a person to file a report required under section 5316 that contains a material omission or misstatement of fact; or

(3) structure or assist in structuring, or attempt to structure or assist in structuring, any importation or exportation of monetary instruments.

(ed) Criminal penalty.--

(1) In general.--Whoever violates this section shall be fined in accordance with title 18, United States Code, imprisoned for not more than 5 years, or both.

(2) Enhanced penalty for aggravated cases.--Whoever violates this section while violating another law of the United States or as part of a pattern of any illegal activity involving more than \$100,000 in a 12-month period shall be fined twice the amount provided in subsection (b)(3) or (c)(3) (as the case may be) of section 3571 of title 18, United States Code, imprisoned for not more than 10 years, or both.

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Current through P.L. 107-19, approved 7-10-01

**§ 5326. Records of certain domestic coin and currency transactions**

(a) In general.--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 reporting requirements are necessary to carry out the purposes of this subtitle and prevent evasions thereof, the Secretary may issue an order requiring any domestic financial institution or nonfinancial trade or business or group of domestic financial institutions or nonfinancial trades or businesses in a geographic area--

**365(c)**

(1) to obtain such information as the Secretary may describe in such order concerning--

(A) any transaction in which such financial institution or nonfinancial trade or business 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; and

(B) any other person participating in such transaction;

(2) to maintain a record of such information for such period of time as the Secretary may require; and

(3) to file a report with respect to any transaction described in paragraph (1)(A) in the manner and to the extent specified in the order.

(b) Authority to order depository institutions to obtain reports from customers.--

(1) In general.--The Secretary of the Treasury may, by regulation or order, require any depository institution (as defined in section 3(c) of the Federal Deposit Insurance Act)--

(A) to request any financial institution or nonfinancial trade or business (other than a depository institution) which engages in any reportable transaction with the depository institution to provide the depository institution with a copy of any report filed by the financial institution or nonfinancial trade or business under this subtitle with respect to any prior transaction (between such financial institution or nonfinancial trade or business and any other person) which involved any portion of the coins or currency (or monetary instruments) which are involved in the reportable transaction with the depository institution; and

**365(c)**

(B) if no copy of any report described in subparagraph (A) is received by the depository institution in connection with any reportable transaction to which such subparagraph applies, to submit (in addition to any report required under this subtitle with respect to the reportable transaction) a written notice to the Secretary that the

financial institution or nonfinancial trade or business failed to provide any copy of such report.

(2) Reportable transaction defined.--For purposes of this subsection, the term "reportable transaction" means any transaction involving coins or currency (or such other monetary instruments as the Secretary may describe in the regulation or order) the total amounts or denominations of which are equal to or greater than an amount which the Secretary may prescribe.

(c) Nondisclosure of orders.--No financial institution or nonfinancial trade or business or officer, director, employee or agent of a financial institution or nonfinancial trade or business subject to an order under this section may disclose the existence of, or terms of, the order to any person except as prescribed by the Secretary.

**353(d)**

(d) Maximum effective period for order.--No order issued under subsection (a) shall be effective for more than ~~60~~ 180 days unless renewed pursuant to the requirements of subsection (a).

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Current through P.L. 107-19, approved 7-10-01

**§ 5328. Whistleblower protections**

(a) Prohibition against discrimination.--No financial institution or nonfinancial trade or business may discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to the request of the employee) provided information to the Secretary of the Treasury, the Attorney General, or any Federal supervisory agency regarding a possible violation of any provision of this subchapter or section 1956, 1957, or 1960 of title 18, or any regulation under any such provision, by the financial institution or nonfinancial trade or business or any director, officer, or employee of the financial institution or nonfinancial trade or business.

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(b) Enforcement.--Any employee or former employee who believes that such employee has been discharged or discriminated against in violation of subsection (a) may file a civil action in the appropriate United States district court before the end of the 2-year period beginning on the date of such discharge or discrimination.

(c) Remedies.--If the district court determines that a violation has occurred, the court may order the financial institution or nonfinancial trade or business which committed the violation to--

- (1) reinstate the employee to the employee's former position;
- (2) pay compensatory damages; or
- (3) take other appropriate actions to remedy any past discrimination.

(d) Limitation.--The protections of this section shall not apply to any employee who--  
(1) deliberately causes or participates in the alleged violation of law or regulation; or  
(2) knowingly or recklessly provides substantially false information to the Secretary, the Attorney General, or any Federal supervisory agency.

(e) Coordination with other provisions of law.--This section shall not apply with respect to any financial institution or nonfinancial trade or business which is subject to section 33 of the Federal Deposit Insurance Act, section 213 of the Federal Credit Union Act, or section 21A(q) of the Home Owners' Loan Act (as added by section 251(c) of the Federal Deposit Insurance Corporation Improvement Act of 1991).

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Current through P.L. 107-19, approved 7-10-01

**§ 5330. Registration of money transmitting businesses**

(a) Registration with Secretary of the Treasury required.--

(1) In general.--Any person who owns or controls a money transmitting business shall register the business (whether or not the business is licensed as a money transmitting business in any State) with the Secretary of the Treasury not later than the end of the 180-day period beginning on the later of--

(A) the date of enactment of the Money Laundering Suppression Act of 1994;

or

(B) the date on which the business is established.

(2) Form and manner of registration.--Subject to the requirements of subsection (b), the Secretary of the Treasury shall prescribe, by regulation, the form and manner for registering a money transmitting business pursuant to paragraph (1).

(3) Businesses remain subject to State law.--This section shall not be construed as superseding any requirement of State law relating to money transmitting businesses operating in such State.

(4) False and incomplete information.--The filing of false or materially incomplete information in connection with the registration of a money transmitting business shall be considered as a failure to comply with the requirements of this subchapter.

(b) Contents of registration.--The registration of a money transmitting business under subsection (a) shall include the following information:

(1) The name and location of the business.

(2) The name and address of each person who--

(A) owns or controls the business;

(B) is a director or officer of the business; or

(C) otherwise participates in the conduct of the affairs of the business.

(3) The name and address of any depository institution at which the business maintains a transaction account (as defined in section 19(b)(1)(C) of the Federal Reserve Act).

(4) An estimate of the volume of business in the coming year (which shall be reported annually to the Secretary).

(5) Such other information as the Secretary of the Treasury may require.

(c) Agents of money transmitting businesses.--

(1) Maintenance of lists of agents of money transmitting businesses.--Pursuant to regulations which the Secretary of the Treasury shall prescribe, each money transmitting business shall--

(A) maintain a list containing the names and addresses of all persons authorized to act as an agent for such business in connection with activities described in subsection (d)(1)(A) and such other information about such agents as the Secretary may require; and

(B) make the list and other information available on request to any appropriate law enforcement agency.

(2) Treatment of agent as money transmitting business.--The Secretary of the Treasury shall prescribe regulations establishing, on the basis of such criteria as the Secretary determines to be appropriate, a threshold point for treating an agent of a money transmitting business as a money transmitting business for purposes of this section.

(d) Definitions.--For purposes of this section, the following definitions shall apply:

(1) Money transmitting business.--The term "money transmitting business" means any business other than the United States Postal Service which--

(A) provides check cashing, currency exchange, or money transmitting or remittance services, or issues or redeems money orders, travelers' checks, and other similar instruments or any other person who engages as a business in the transmission of funds, including any person who engages as a business in an informal money transfer system or any network of people who engage as a business in facilitating the

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transfer of money domestically or internationally outside of the conventional financial institutions system;

(B) is required to file reports under section 5313; and

(C) is not a depository institution (as defined in section 5313(g)).

(2) Money transmitting service.--The term "money transmitting service" includes accepting currency or funds denominated in the currency of any country and transmitting the currency or funds, or the value of the currency or funds, by any means through a financial agency or institution, a Federal reserve bank or other facility of the Board of Governors of the Federal Reserve System, or an electronic funds transfer network.

(e) Civil penalty for failure to comply with registration requirements.--

(1) In general.--Any person who fails to comply with any requirement of this section or any regulation prescribed under this section shall be liable to the United States for a civil penalty of \$5,000 for each such violation.

(2) Continuing violation.--Each day a violation described in paragraph (1) continues shall constitute a separate violation for purposes of such paragraph.

(3) Assessments.--Any penalty imposed under this subsection shall be assessed and collected by the Secretary of the Treasury in the manner provided in section 5321 and any such assessment shall be subject to the provisions of such section.

**§ 5331. Reports relating to coins and currency received in nonfinancial trade or business**

(a) COIN AND CURRENCY RECEIPTS OF MORE THAN \$10,000.—

Any person—

(1) who is engaged in a trade or business; and

(2) who, in the course of such trade or business, receives more than \$10,000 in coins or currency in 1 transaction (or 2 or more related transactions), shall file a report described in subsection (b) with respect to such transaction (or related transactions) with the Financial Crimes Enforcement Network at such time and in such manner as the Secretary may, by regulation, prescribe.

(b) FORM AND MANNER OF REPORTS.—A report is described in this subsection if such report—

(1) is in such form as the Secretary may prescribe;

(2) contains—

(A) the name and address, and such other identification information as the Secretary may require, of the person from whom the coins or currency was received;

(B) the amount of coins or currency received;

(C) the date and nature of the transaction; and

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(D) such other information, including the identification of the person filing the report, as the Secretary may prescribe.

(c) EXCEPTIONS.—

(1) AMOUNTS RECEIVED BY FINANCIAL INSTITUTIONS.—Subsection (a) shall not apply to amounts received in a transaction reported under section 5313 and regulations prescribed under such section.

(2) TRANSACTIONS OCCURRING OUTSIDE THE UNITED STATES.—Except to the extent provided in regulations prescribed by the Secretary, subsection (a) shall not apply to any transaction if the entire transaction occurs outside the United States.

(d) CURRENCY INCLUDES FOREIGN CURRENCY AND CERTAIN MONETARY INSTRUMENTS.—

(1) IN GENERAL.—For purposes of this section, the term ‘currency’ includes—

(A) foreign currency; and

(B) to the extent provided in regulations prescribed by the Secretary, any monetary instrument (whether or not in bearer form) with a face amount of not more than \$10,000.

(2) SCOPE OF APPLICATION.—Paragraph (1)(B) shall not apply to any check drawn on the account of the writer in a financial institution referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), (J), (K), (R), or (S) of section 5312(a)(2).

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PART 1--NATIONAL MONEY LAUNDERING AND RELATED FINANCIAL CRIMES  
STRATEGY

Current through P.L. 107-19, approved 7-10-01

**§ 5341. National money laundering and related financial crimes strategy**

(a) Development and transmittal to Congress.--

(1) Development.--The President, acting through the Secretary and in consultation with the Attorney General, shall develop a national strategy for combating money laundering and related financial crimes.

(2) Transmittal to Congress.--By February 1 of 1999, 2000, 2001, 2002, and 2003, the President shall submit a national strategy developed in accordance with paragraph (1) to the Congress.

(3) Separate presentation of classified material.--Any part of the strategy that involves information which is properly classified under criteria established by Executive Order shall be submitted to the Congress separately in classified form.

(b) Development of strategy.--The national strategy for combating money laundering and related financial crimes shall address any area the President, acting through the Secretary and in consultation with the Attorney General, considers appropriate, including the following:

(1) Goals, objectives, and priorities.--Comprehensive, research-based goals, objectives, and priorities for reducing money laundering and related financial crime in the United States.

(2) Prevention.--Coordination of regulatory and other efforts to prevent the exploitation of financial systems in the United States for money laundering and related financial crimes, including a requirement that the Secretary shall--

(A) regularly review enforcement efforts under this subchapter [31 U.S.C.A. § 5340 et seq.] and other provisions of law and, when appropriate, modify existing regulations or prescribe new regulations for purposes of preventing such criminal activity; and

(B) coordinate prevention efforts and other enforcement action with the Board of Governors of the Federal Reserve System, the Securities and Exchange Commission, the Federal Trade Commission, other Federal banking agencies, the National Credit Union Administration Board, and such other Federal agencies as the Secretary, in consultation with the Attorney General, determines to be appropriate.

(3) Detection and prosecution initiatives.--A description of operational initiatives to improve detection and prosecution of money laundering and related financial crimes and the seizure and forfeiture of proceeds and instrumentalities derived from such crimes.

(4) Enhancement of the role of the private financial sector in prevention.--The enhancement of partnerships between the private financial sector and law enforcement agencies with regard to the prevention and detection of money laundering and related financial crimes, including providing incentives to strengthen internal controls and to adopt on an industrywide basis more effective policies.

(5) Enhancement of interGovernmental cooperation.--The enhancement of--

(A) cooperative efforts between the Federal Government and State and local officials, including State and local prosecutors and other law enforcement officials; and

(B) cooperative efforts among the several States and between State and local officials, including State and local prosecutors and other law enforcement officials, for financial crimes control which could be utilized or should be encouraged.

(6) Project and budget priorities.--A 3-year projection for program and budget priorities and achievable projects for reductions in financial crimes.

(7) Assessment of funding.--A complete assessment of how the proposed budget is intended to implement the strategy and whether the funding levels contained in the proposed budget are sufficient to implement the strategy.

(8) Designated areas.--A description of geographical areas designated as 'high-risk money laundering and related financial crime areas' in accordance with, but not limited to, section 5342.

(9) Persons consulted.--Persons or officers consulted by the Secretary pursuant to subsection (d).

(10) Data regarding trends in money laundering and related financial crimes.--The need for additional information necessary for the purpose of developing and analyzing data in order to ascertain financial crime trends.

(11) Improved communications systems.--A plan for enhancing the compatibility of automated information and facilitating access of the Federal Government and State and local governments to timely, accurate, and complete information.

(12) DATA REGARDING FUNDING OF TERRORISM.—Data concerning money laundering efforts related to the funding of acts of international terrorism, and efforts directed at the prevention, detection, and prosecution of such funding.

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(c) Effectiveness report.--At the time each national strategy for combating financial crimes is transmitted by the President to the Congress (other than the first transmission of any such strategy) pursuant to subsection (a), the Secretary shall submit a report containing an evaluation of the effectiveness of policies to combat money laundering and related financial crimes.

(d) Consultations.--In addition to the consultations required under this section with the Attorney General, in developing the national strategy for combating money laundering and related financial crimes, the Secretary shall consult with--

(1) the Board of Governors of the Federal Reserve System and other Federal banking agencies and the National Credit Union Administration Board;

(2) State and local officials, including State and local prosecutors;

(3) the Securities and Exchange Commission;

(4) the Commodities and Futures Trading Commission;

(5) the Director of the Office of National Drug Control Policy, with respect to money laundering and related financial crimes involving the proceeds of drug trafficking;

(6) the Chief of the United States Postal Inspection Service;

(7) to the extent appropriate, State and local officials responsible for financial institution and financial market regulation;

(8) any other State or local government authority, to the extent appropriate;

(9) any other Federal Government authority or instrumentality, to the extent appropriate; and

(10) representatives of the private financial services sector, to the extent appropriate.

## Appendix

Amendments reflected in this document are as follows.

<u>U.S. Code Title</u>	<u>Section Amended</u>	<u>As Amended by P.L. 107-56</u>
Title 12	§ 248	Sec. 364
	§ 1828	Sec. 355
	§ 1829b	Sec. 358(d)
	§ 1953	Sec. 358(e)
	§ 3412	Sec. 358(f)
	§ 3414	Sec. 358(f)
	§ 3420	Sec. 358(f)
Title 15	New § 626	Sec. 358(g)
Title 31	New § 310	Sec. 361(a)
	§ 5311	Sec. 358(a)
	§ 5312	Sec. 359(a) Sec. 365(c)
	§ 5317	Sec. 365(b)
	§ 5318	Sec. 351(a) Sec. 351(b) Sec. 352(a) Sec. 358(b) Sec. 359(c) Sec. 365(c)
	§ 5319	Sec. 358(c)
	§ 5321	Sec. 353(a) Sec. 363(a) Sec. 365(c)
	§ 5322	Sec. 353(b) Sec. 363(b)
	§ 5324	Sec. 353(c) Sec. 365(b)

<u>U.S. Code Title</u>	<u>Section Amended</u>	<u>As Amended by P.L. 107-56</u>
Title 31 cont'd	§ 5326	Sec. 353(d) Sec. 365(c)
	§ 5328	Sec. 365(c)
	§ 5330	Sec. 359(b)
	New § 5331	Sec. 365(a)
	§ 5341	Sec. 354

The sections of Title III Subtitle B that are not reflected in this document are as follows:

Sec. 352(b)&(c) Anti-Money Laundering Programs

Sec. 356 Reporting of Suspicious Activities by Securities Brokers and Dealers; Investment Company Study

Sec. 357 Special Report on Administration of Bank Secrecy Provisions

Sec. 359(d) Reporting of Suspicious Activities by Underground Banking Systems

Sec. 360 Use of Authority of United States Executive Directors

Sec. 361(b) Financial Crimes Enforcement Network

Sec. 362 Establishment of Highly Secure Network

Sec. 366 Efficient Use of Currency Transaction Report System