

Currency Transaction Reporting Exemptions — Overview

Objective. *Assess the bank’s compliance with statutory and regulatory requirements for exemptions from the currency transaction reporting requirements.*

U.S. Treasury regulations have historically recognized that the routine reporting of some types of large currency transactions does not necessarily aid law enforcement authorities and may place unreasonable burdens on banks. Consequently, a bank may exempt certain types of customers from currency transaction reporting.

The Money Laundering Suppression Act of 1994 (MLSA) established a two-phase exemption process. Under Phase I exemptions, transactions in currency by banks, governmental departments or agencies, and listed public companies and their subsidiaries are exempt from reporting. Under Phase II exemptions, transactions in currency by smaller businesses that meet specific criteria laid out in FinCEN’s regulations may be exempted from reporting.

Phase I CTR Exemptions (31 CFR 1020.315(b)(1)-(5))

FinCEN’s rule identifies five categories of Phase I exempt persons:

- A bank, to the extent of its domestic operations.
- A federal, state, or local government agency or department.
- Any entity exercising governmental authority within the United States.
- Any entity (other than a bank) whose common stock or analogous equity interests are listed on the New York Stock Exchange or the American Stock Exchange or have been designated as a NASDAQ National Market Security listed on the NASDAQ Stock Market (with some exceptions).
- Any subsidiary (other than a bank) of any “listed entity” that is organized under U.S. law and at least 51 percent of whose common stock or analogous equity interest is owned by the listed entity.

Filing Time Frames

Banks must file a one-time Designation of Exempt Person report (DOEP) to exempt each eligible listed public company or eligible subsidiary from currency transaction reporting. The report must be filed electronically through the BSA E-Filing System within 30 days after the first transaction in currency that the bank wishes to exempt.

Banks do not need to file a DOEP for Phase I-eligible customers that are banks, federal, state, or local governments, or entities exercising governmental authority. Nevertheless, a bank should take the same steps to assure itself of a customer’s initial eligibility for exemption, and document the basis for the conclusion, that a reasonable and prudent bank would take to protect itself from loan or other fraud or loss based on misidentification of a person’s status. Exemption of a Phase I entity covers all transactions in currency with the exempted entity, not only transactions in currency conducted through an account.

Annual Review

The information supporting each designation of a Phase I-exempt listed public company or subsidiary must be reviewed and verified by the bank at least once per year. Annual reports, stock quotes from newspapers, or other information, such as electronic media could be used to document the review. Banks do not need to confirm the continued exemption eligibility of Phase I customers that are banks, government agencies, or entities exercising governmental authority.

Phase II CTR Exemptions (31 CFR 1020.315(b)(6)-(7))

A business that does not fall into any of the Phase I categories may still be exempted under the Phase II exemptions if it qualifies as either a “non-listed business” or as a “payroll customer.”

Non-Listed Businesses

A “non-listed business” is defined as a commercial enterprise to the extent of its domestic operations and only with respect to transactions conducted through its exemptible accounts and that: (i) has maintained a transaction account at the exempting bank for at least two months or prior to the passing of two months’ time if the bank undertakes a risk-based analysis of that customer that allows it to form and document a reasonable belief that the customer has a legitimate business purpose for conducting frequent large currency transactions; (ii) frequently⁸⁸ engages in transactions in currency with the bank in excess of \$10,000; and (iii) is incorporated or organized under the laws of the United States or a state, or is registered as and eligible to do business within the United States or a state.

Ineligible Businesses

Certain businesses are ineligible for treatment as an exempt non-listed business (31 CFR 1020.315(e)(8)). An ineligible business is defined as a business engaged primarily in one or more of the following specified activities:

- Serving as a financial institution or as agents for a financial institution of any type.
- Purchasing or selling motor vehicles of any kind, vessels, aircraft, farm equipment, or mobile homes.⁸⁹
- Practicing law, accounting, or medicine.
- Auctioning of goods.
- Chartering or operation of ships, buses, or aircraft.

⁸⁸ FinCEN has noted that, for purposes of 31 CFR 1020.315(b)(6)(ii): “[Banks] may designate an otherwise eligible customer for Phase II exemption after the customer has within a year conducted five or more reportable cash transactions.” Refer to 73 Fed. Reg. 74010, 74014 (December 5, 2008).

⁸⁹ Refer to FinCEN’s administrative ruling, [Definition of Motor Vehicles of Any Kind, Motor Vehicles, Vessels, Aircraft, and Farm Equipment as it Relates to Potential CTR Exemption for a Non-Listed Business](#), FIN-2012-G005, September 10, 2012.

- Operating a pawn brokerage.
- Engaging in gaming of any kind (other than licensed pari-mutuel betting at race tracks).
- Engaging in investment advisory services or investment banking services.
- Operating a real estate brokerage.
- Operating in title insurance activities and real estate closings.
- Engaging in trade union activities.
- Engaging in any other activity that may, from time to time, be specified by FinCEN, such as marijuana-related businesses.⁹⁰

A business that engages in multiple business activities may qualify for an exemption as a non-listed business as long as no more than 50 percent of its gross revenues per year⁹¹ are derived from one or more of the ineligible business activities listed in the rule.

A bank must consider and maintain materials and other supporting information that allow it to substantiate that the decision to exempt the customer from currency transaction reporting was based upon a reasonable determination that the customer derives no more than 50 percent of its annual gross revenues from ineligible business activities. Such a reasonable determination should be based upon its understanding of the nature of the customer's business, the purpose of the customer's accounts, and the actual or anticipated activity in those accounts.⁹²

Payroll Customers

A “payroll customer” is defined solely with respect to withdrawals for payroll purposes from existing exemptible accounts and as a person who: (i) has maintained a transaction account at the bank for at least two months or prior to the passing of two months' time if the bank undertakes a risk-based analysis of that customer that allows it to form and document a reasonable belief that the customer has a legitimate business purpose for conducting frequent large currency transactions; (ii) operates a firm that frequently⁹³ withdraws more than

⁹⁰ See FinCEN's Guidance: [BSA Expectations Regarding Marijuana-Related Businesses](#), FIN-2014-001, February 14, 2014.

⁹¹ Questions often arise in determining the “gross revenue” of gaming activities, such as lottery sales. FinCEN has ruled that for the purpose of determining if a business derives more than 50 percent of its gross revenue from gaming, the term gross revenue is intended to encompass the amount of money that a business actually earns from a particular activity, rather than the sales volume of such activity conducted by the business. For example, if a business engages in lottery sales, the “gross revenue” from this activity would be the amount of money that the business actually earns from lottery sales, rather than the amount of money that the business takes in on behalf of the state lottery system. Refer to FinCEN Ruling 2002-1, at the [FinCEN Web site](#).

⁹² For additional details, refer to [Guidance on Supporting Information Suitable for Determining the Portion of a Business Customer's Annual Gross Revenues that is Derived from Activities Ineligible for Exemption from Currency Transaction Reporting Requirements](#), FIN-2009-G001, April 27, 2009.

⁹³ FinCEN issued a final rule substituting the term “frequently” for “regularly” in the provision of the exemption rules dealing with payroll customers 77 Fed. Reg. 33639, (June 7, 2012) and issued guidance

\$10,000 in order to pay its U.S. employees in currency; and (iii) is incorporated or organized under the laws of the United States or a state, or is registered as and is eligible to do business within the United States or a state.

Filing Time Frames

After a bank has decided to exempt a Phase II customer, the bank must file a Designation of Exempt Person report through the BSA E-Filing System within 30 days after the first transaction in currency that the bank plans to exempt.

Annual Review

The information supporting each designation of a Phase II exempt person must be reviewed and verified by the bank at least annually. The bank should document the annual review. Moreover, consistent with this annual review, a bank must review and verify at least annually that management monitors these Phase II accounts for suspicious transactions.

Safe Harbor for Failure to File CTRs

The rules (31 CFR 1020.315(e)(10)(g); provide a safe harbor that a bank is not liable for the failure to file a CTR for a transaction in currency by an exempt person, unless the bank knowingly provides false or incomplete information or has reason to believe that the customer does not qualify as an exempt customer. In the absence of any specific knowledge or information indicating that a customer no longer meets the requirements of an exempt person, the bank is entitled to a safe harbor from civil penalties to the extent it continues to treat that customer as an exempt customer until the date of the customer's annual review.

Effect on Other Regulatory Requirements

The exemption procedures do not have any effect on the requirement that banks file SARs or on other recordkeeping requirements. For example, the fact that a customer is an exempt person has no effect on a bank's obligation to retain records of funds transfers by that person, or to retain records in connection with the sale of monetary instruments to that person.

If a bank has improperly exempted accounts or ceases to treat a customer as exempt, it may revoke the exemption by filing a Designation of Exempt Persons (DOEP) report and checking the "Exemption Revoked" box or revoke the exemption by filing CTRs on the customer. In the case of improperly exempted accounts, the bank should begin filing CTRs and should contact FinCEN's Regulatory Helpline⁹⁴ to request a determination on whether the backfiling of unreported currency transactions is necessary.

Additional information can be found on the [FinCEN Web site](#).

updating the exemption eligibility for payroll customers. Refer to [Guidance on Determining Eligibility for Exemption from Currency Transaction Reporting Requirements](#), FIN-2012-G003, June 11, 2012.

⁹⁴ Please direct all inquiries to the FinCEN Resource Center by calling the toll-free number (800) 767-2825 or (703) 905-3591 or by e-mailing FRC@fincen.gov.