



OCC BULLETIN

Comptroller of the Currency
Administrator of National Banks

Subject: Bank Secrecy Act/Anti-Money
Laundering

Description: Requests by Law Enforcement
for Financial Institutions to
Maintain Accounts

TO: Chief Executive Officers, BSA Officers, and Compliance Officers of All National Banks; Federal Branches and Agencies; Technology Service Providers; Department and Division Heads; and All Examining Personnel.

On June 13, 2007, the Financial Crimes Enforcement Network (FinCEN) issued new guidance addressing “Requests by Law Enforcement for Financial Institutions to Maintain Accounts.” The guidance details procedures an institution should follow when a law enforcement agency requests it to maintain an account that may be associated with suspicious or criminal activity.

While banks are not required to maintain such an account, complying with a law enforcement request may aid efforts in combating money laundering and terrorist financing. In an attempt to comply with a law enforcement request, a financial institution should first ask for the request in writing from an appropriate source, such as an attorney within the United States Attorney’s Office, or a supervisor of a state or local law enforcement agency. The written request should, at a minimum, state that a law enforcement agency is requesting that the financial institution maintain a specific account; the agency’s name and affiliation; the name of the account; the purpose of the request, e.g., monitoring; and the duration of the requested activity.

Financial institutions that choose to maintain accounts at the request of law enforcement must continue to comply with all applicable Bank Secrecy Act recordkeeping requirements, including the requirement to file Suspicious Activity Reports.

Attached is a copy of the FinCEN issuance.

/signed/

Ann F. Jaedicke
Deputy Comptroller for Compliance Policy

Attachment: FinCEN Guidance
[<http://www.occ.treas.gov/ftp/bulletin/2007-37a.pdf>]



Department of the Treasury Financial Crimes Enforcement Network

Guidance

FIN-2007-G002

Issued: June 13, 2007

Subject: Requests by Law Enforcement for Financial Institutions to Maintain Accounts

The Financial Crimes Enforcement Network (FinCEN) is issuing the following guidance for financial institutions with account relationships that law enforcement may have an interest in ensuring remain open notwithstanding suspicious or potential criminal activity in connection with the account.¹ Ultimately, the decision to maintain or close an account should be made by a financial institution in accordance with its own standards and guidelines. Although there is no requirement that a financial institution maintain a particular account relationship, financial institutions should be mindful that complying with such a request may further law enforcement efforts to combat money laundering, terrorist financing, and other crimes.

If a law enforcement agency requests that a financial institution maintain a particular account, the financial institution should ask for a written request. A written request from a federal law enforcement agency should be issued by a supervisory agent or by an attorney within a United States Attorney's Office or another office of the Department of Justice. If a state or local law enforcement agency requests that an account be maintained, then the financial institution should obtain a written request from a supervisor of the state or local law enforcement agency or from an attorney within a state or local prosecutor's office. The written request should indicate that the agency has requested that the financial institution maintain the account and the purpose of the request. For example, if a state or local law enforcement agency is requesting that the financial institution maintain the account for purposes of monitoring, the written request should include a statement to that effect.² The request should also indicate the duration for the request, not to exceed six months. Law enforcement may issue subsequent

¹ FinCEN consulted with the staffs of the Department of Justice, the Federal Bureau of Investigation, the Internal Revenue Service's Criminal Investigation Division, the United States Secret Service, the Bureau of Immigration and Customs Enforcement, the Drug Enforcement Administration, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration, the Commodity Futures Trading Commission, and the Securities and Exchange Commission prior to issuing this guidance.

² Nothing in this guidance is intended to alter or modify the duties or obligations of financial institutions under the Right to Financial Privacy Act (12 U.S.C. § 3401, et seq.), 18 U.S.C. § 1510, or similar provisions of law.

requests for account maintenance after the expiration of the initial request. Although there is no recordkeeping requirement under the Bank Secrecy Act for this type of correspondence, FinCEN recommends that financial institutions maintain documentation of such requests for at least five years after the request has expired. If a financial institution is aware – through a subpoena, 314(a) request, National Security Letter, or similar communication – that an account is under investigation, FinCEN recommends that the financial institution notify law enforcement before making any decision regarding the status of the account.

Financial institutions are reminded that, as part of their Bank Secrecy Act/Anti-Money Laundering compliance program requirement, they are required to have written policies, procedures, and processes that, among other things, address the identification and reporting of suspicious activity.³ If the financial institution chooses to maintain the account, it is required to comply with all applicable Bank Secrecy Act recordkeeping and reporting requirements, including the requirement to file Suspicious Activity Reports, even if the bank is keeping an account open or maintaining a customer relationship at the request of law enforcement.

³ See 31 C.F.R. Part 103, Subpart I.