

## TRANSACTIONS OF EXEMPT PERSONS

**Objective:** *Assess the bank's compliance with the BSA regulatory requirements for exemptions from the currency transaction reporting requirements.*

### Regulatory Requirements for Transactions of Exempt Persons

This section outlines the regulatory requirements for banks in 31 CFR Chapter X regarding transactions of exempt persons. Specifically, this section covers:

- [31 CFR 1020.315](#)

A bank must electronically file a Currency Transaction Report (CTR) for each transaction in currency (deposit, withdrawal, exchange of currency, or other payment or transfer) of more than \$10,000 by, through, or to the bank.<sup>1</sup> However, banks may exempt certain types of customers from currency transaction reporting.<sup>2</sup> Pursuant to the Money Laundering Suppression Act of 1994, FinCEN established a process for banks to designate certain customers (referred to as Phase I and Phase II exempt persons) as exempt from the requirement to report currency transactions.

### Exempt Persons

#### Phase I CTR Exemptions<sup>3</sup>

FinCEN's regulation identifies five categories of Phase I exempt persons:

- (1) A bank, to the extent of its domestic operations.
- (2) A federal, state, or local government agency or department.
- (3) Any entity established under federal, state, or local laws and exercising governmental authority on behalf of the United States or a state or local government.
- (4) The domestic operations of any entity (other than a bank) whose common stock or analogous equity interests are listed on the [New York Stock Exchange](#) or the [NYSE American](#) or have been designated as a NASDAQ National Market Security listed on the [NASDAQ Stock Market](#), with some exceptions ("listed entity").
- (5) The domestic operations of 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.

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<sup>1</sup> [31 CFR 1010.100\(m\)](#) defines currency as coin and paper money of the United States or any other country that is designated as legal tender and that circulates and is customarily used and accepted as a medium of exchange in the country of issuance. Effective July 1, 2012, FinCEN mandated electronic filing of certain BSA reports, including the CTR. [77 Fed. Reg. 12367](#). Forms to be used in making reports of currency transactions may be obtained from BSA E-Filing System ([31 CFR 1010.306\(e\)](#)).

<sup>2</sup> [31 CFR 1020.315](#). See also FinCEN (June 11, 2012), FIN-2012-G003 "[Guidance on Determining Eligibility for Exemption from Currency Transaction Reporting Requirements](#)."

<sup>3</sup> [31 CFR 1020.315\(b\)\(1\)-\(5\)](#).

## Phase II CTR Exemptions<sup>4</sup>

Under Phase II exemptions, there are two other categories of customers (certain non-listed businesses and payroll customers) whose currency transactions that meet specific criteria may be exempted from reporting requirements.

(6) To the extent of their domestic operations and only with respect to transactions conducted through their exemptible accounts, any other commercial enterprise (referred to as “non-listed businesses”) that:

- Has maintained a transaction account at the exempting bank for at least two months, or
  - If prior to the passing of two months’ time, the bank conducts and documents a risk-based assessment of the customer and forms a reasonable belief that the customer has a legitimate business purpose for conducting frequent transactions in currency;<sup>5</sup>
- Frequently engages in transactions in currency with the bank in excess of \$10,000;<sup>6</sup> and
- 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.

(7) With respect solely to withdrawals for payroll purposes from existing exemptible accounts, any other person (referred to as a “payroll customer”) that:

- Has maintained a transaction account at the bank for at least two months, or
  - If prior to the passing of two months’ time, the bank conducts and documents a risk-based assessment of the customer and forms a reasonable belief that the customer has a legitimate business purpose for conducting frequent transactions in currency;<sup>7</sup>
- Operates a firm that frequently withdraws more than \$10,000 to pay its United States employees in currency; and
- 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.

## Designation of Certain Exempt Persons

If a bank chooses to use the exemption process, then it must designate an exempt person by filing a one-time Designation of Exempt Person (DOEP) report. The report must be filed

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<sup>4</sup> [31 CFR 1020.315\(b\)\(6\)-\(7\)](#).

<sup>5</sup> [31 CFR 1020.315\(c\)\(2\)\(ii\)](#).

<sup>6</sup> 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.” See also FinCEN (December 5, 2008), 73 Fed. Reg. 74010, 74014 “[Final Rule: Exemptions from the Requirement to Report Transactions in Currency](#).”

<sup>7</sup> [31 CFR 1020.315\(c\)\(2\)\(ii\)](#).

electronically through the [BSA E-Filing System](#) by the close of the 30-calendar-day period beginning after the day of the first reportable transaction in currency with the person that the bank wishes to exempt.<sup>8</sup>

Banks do not need to file a DOEP for any of the 12 Federal Reserve Banks or for any Phase I eligible customer that is a bank to the extent of the bank's domestic operations; a department or agency of the United States, of any state, or of any political subdivision of any state; and any federal, state, or local government entities exercising governmental authority on behalf of the United States or any such state or political subdivision.<sup>9</sup> Exemption of a Phase I person covers any transaction in currency with the exempted person, not only a transaction in currency conducted through an account.<sup>10</sup>

## Annual Review

At least once each year, banks must review the eligibility of an exempt person that is a listed public company, a listed public company subsidiary, a non-listed business, or a payroll customer to determine whether such person remains eligible for an exemption.<sup>11</sup> Banks do not need to confirm through an annual review the continued exemption eligibility of certain customers. These include banks (to the extent of their domestic operations); a department or agency of the United States, of any state, or of any political subdivision of any state; and any federal, state, or local government entities exercising governmental authority on behalf of the United States or any such state or political subdivision. In determining whether a person remains eligible for an exemption, banks typically document the annual review and may use annual reports, stock quotes from newspapers, or other information, such as electronic media. Moreover, as part of this annual review, the bank must review the application of the suspicious activity monitoring system (required by this regulation)<sup>12</sup> to each existing account of a Phase II exempt person (a non-listed business or a payroll customer).<sup>13</sup>

## Operating Rules

Subject to specific rules in the Transactions of Exempt Persons regulation, a bank must take reasonable and prudent steps to assure itself that a person is an exempt person. Banks are required to document the basis for their conclusions and their compliance with the Transactions of Exempt Persons regulation.<sup>14</sup>

For aggregated accounts, in determining the qualification of a customer as a non-listed business or a payroll customer, a bank may treat all exemptible accounts of the customer as a single account. If a bank elects to treat all exemptible accounts of a customer as a single account, the

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<sup>8</sup> [31 CFR 1020.315\(c\)\(1\)](#).

<sup>9</sup> [31 CFR 1020.315\(c\)\(2\)](#).

<sup>10</sup> [31 CFR 1020.315\(b\)\(6\)](#) and [31 CFR 1020.315\(b\)\(7\)](#) specify that exemptions for Phase II customers apply only for transactions through exemptible accounts; no similar statement is found in [31 CFR 1020.315\(b\)\(1-5\)](#), which applies to Phase I customers.

<sup>11</sup> [31 CFR 1020.315\(d\)](#).

<sup>12</sup> [31 CFR 1020.315\(h\)\(2\)](#).

<sup>13</sup> [31 CFR 1020.315\(d\)](#).

<sup>14</sup> [31 CFR 1020.315\(e\)\(1\)](#).

bank must continue to treat such accounts consistently as a single account for purposes of determining the qualification of the customer as a non-listed business or payroll customer.<sup>15</sup>

The designation of an exempt person may be made by a parent holding company or one of its bank subsidiaries on behalf of all bank subsidiaries of the holding company, as long as the designation lists each bank subsidiary to which the designation shall apply.<sup>16</sup>

A sole proprietorship<sup>17</sup> may be treated as a non-listed business<sup>18</sup> or as a payroll customer<sup>19</sup> if it otherwise meets the requirements outlined previously in the [Phase II CTR Exemptions](#) subsection as applicable.<sup>20</sup>

## Ineligible Businesses

Certain businesses are ineligible for treatment as an exempt non-listed business.<sup>21</sup> An ineligible business is defined in this regulation as a business engaged primarily in one or more of the following specified activities:

- Serving as financial institutions or agents of financial institutions of any type.
- Purchasing or selling motor vehicles of any kind, vessels, aircraft, farm equipment, or mobile homes.<sup>22</sup>
- Practicing law, accounting, or medicine.
- Auctioning of goods.
- Chartering or operation of ships, buses, or aircraft.
- Pawn brokerage.
- Gaming of any kind (other than licensed parimutuel betting at racetracks).
- Investment advisory services or investment banking services.
- Real estate brokerage.
- Title insurance and real estate closings.
- Trade union activities.

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<sup>15</sup> [31 CFR 1020.315\(e\)\(5\)](#).

<sup>16</sup> [31 CFR 1020.315\(e\)\(6\)](#).

<sup>17</sup> FinCEN (February 10, 2020), FIN-2020-R001 [“FinCEN CTR \(Form 112\) Reporting of Certain Currency Transactions for Sole Proprietorships and Legal Entities Operating Under a “Doing Business As” \(DBA\) Name.”](#)

<sup>18</sup> [31 CFR 1020.315\(b\)\(6\)](#).

<sup>19</sup> [31 CFR 1020.315\(b\)\(7\)](#).

<sup>20</sup> [31 CFR 1020.315\(e\)\(7\)](#).

<sup>21</sup> [31 CFR 1020.315\(e\)\(8\)](#).

<sup>22</sup> FinCEN (September 10, 2012), FIN-2012-G005 [“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.”](#)

- Any other activity that may, from time to time, be specified by FinCEN, such as marijuana-related businesses.<sup>23</sup>

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 gross revenues are derived from one or more of the ineligible business activities listed in the regulation.<sup>24</sup> FinCEN guidance states that the bank must consider and maintain materials and other supporting information that allow the bank 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 annual gross revenues from ineligible business activities.<sup>25</sup> This guidance further states that such a reasonable determination should be based on the bank's 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.<sup>26</sup>

### **Safe Harbor for Failure to File CTRs**

A bank is not liable for the failure to file a CTR for a transaction in currency by an exempt person as long as the bank is in compliance with the exemption rules, unless the bank knowingly provides false or incomplete information with respect to the transaction or the customer engaging in the transaction or has reason to believe that the customer does not qualify as an exempt person or that the transaction is not a transaction of the exempt person. In the absence of any specific knowledge of information indicating that a customer no longer meets the requirements of an exempt person, the bank may treat the customer as an exempt person until the date of the customer's next annual review.<sup>27</sup>

### **Effect on Other Regulatory Requirements**

Nothing in the Transactions of Exempt Persons regulation relieves a bank of the obligation to file SARs or relieves a bank of any reporting or recordkeeping obligation imposed by FinCEN's BSA regulations, other than the CTR filing requirements, as described above.<sup>28</sup> For example, the fact that a customer is an exempt person has no effect on the 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.

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<sup>23</sup> FinCEN (February 14, 2014), FIN-2014-G001 "[BSA Expectations Regarding Marijuana-Related Businesses](#)." A business engaged in marijuana-related activity may not be treated as a non-listed business under 31 CFR 1020.315(e)(8), and therefore, is not eligible for consideration for an exemption with respect to a bank's CTR obligations.

<sup>24</sup> [31 CFR 1020.315\(e\)\(8\)](#). This is explained in more detail in FinCEN (April 27, 2009), FIN-2009-G001 "[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](#)."

<sup>25</sup> [31 CFR 1020.315\(e\)\(1\) and \(e\)\(8\)](#).

<sup>26</sup> FinCEN (April 27, 2009), FIN-2009-G001 "[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](#)."

<sup>27</sup> [31 CFR 1020.315\(g\)\(2\)](#).

<sup>28</sup> [31 CFR 1020.315\(h\)](#).

## Revocation of Exemption

If the bank has improperly exempted accounts or ceases to treat a customer as exempt, it must begin filing CTRs on reportable transactions and may revoke the exemption by filing a DOEP report and checking the “Exemption Revoked” box. In the case of improperly exempted accounts, the bank should contact FinCEN’s Resource Center to request a determination on whether to backfile unreported currency transactions.<sup>29</sup> Additional information can be found in the [Currency Transaction Reporting](#) section of this Manual and on the [FinCEN website](#).

## Examiner Assessment of the CTR Exemption Process

Examiners should assess the adequacy of the bank’s policies, procedures, and processes (internal controls) related to the bank’s process for exempting customers from CTR filing. Specifically, examiners should determine whether these internal controls are designed to mitigate and manage ML/TF and other illicit financial activity risks and comply with exemption requirements. In addition to reviewing correspondence from FinCEN’s BSA E-Filing System regarding DOEP filings, examiners may also review other information, such as recent independent testing or audit reports, to aid in their assessment of the bank’s process for exempting customers from CTR filing.

Examiners should also consider general internal controls concepts, such as dual controls, segregation of duties, and management approval for certain actions, as they relate to the bank’s process for exempting customers from CTR filing. For example, employees who complete DOEPs generally should not also be responsible for the decision to file the reports. Other internal controls may include BSA compliance officer or other senior management approval for staff actions where segregation of duties cannot be achieved.

Examiners should determine whether the bank’s internal controls for exempting customers from CTR filing are designed to assure ongoing compliance with exemption requirements and are commensurate with the bank’s size or complexity and organizational structure. More information can be found in the [Assessing the BSA/AML Compliance Program - BSA/AML Internal Controls](#) section of this Manual.

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<sup>29</sup> 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](mailto:FRC@fincen.gov).

## TRANSACTIONS OF EXEMPT PERSONS EXAMINATION AND TESTING PROCEDURES

**Objective:** *Assess the bank's compliance with the BSA regulatory requirements for exemptions from the currency transaction reporting requirements.*

1. Review the bank's policies, procedures, and processes that address exempting customers from CTR filings. Determine whether the policies, procedures and processes provide steps for:
  - Assuring that a person is an exempt person, including completing the required annual reviews of eligibility,
  - Documenting the basis for conclusions regarding eligibility, and
  - Documenting compliance with the regulation.
2. Select a sample of filed Designation of Exempt Person reports to determine whether:
  - The reports are filed in accordance with FinCEN instructions within 30 days of the first reportable transaction that the bank sought to exempt.
  - The customer is eligible for designation as exempt (see categories of [Phase I](#) exempt persons and [Phase II](#) exempt persons).
  - The bank maintains documentation to support that designated non-listed businesses do not receive more than 50 percent of gross revenue from ineligible business activities.
3. Determine that the information supporting the eligibility of each exempt person that is a listed public company, a listed public company subsidiary, a non-listed business, or a payroll customer is reviewed by the bank at least once a year to determine whether the person remains eligible for an exemption. Determine that the bank appropriately documents the annual review and information used to confirm eligibility.
4. Determine whether the bank's internal controls are designed to assure ongoing compliance with CTR exemption requirements and are commensurate with the bank's size or complexity and organizational structure.
5. On the basis of examination and testing procedures completed, form a conclusion about the adequacy of policies, procedures, and processes the bank has developed to meet BSA regulatory requirements associated with exemptions from currency transaction reporting.