

Answers to Frequently Asked Bank Secrecy Act (BSA) Questions

The following provides answers to basic questions that are frequently asked regarding the BSA. The answers are not meant to be comprehensive, apply to all factual situations, or to replace or supersede the BSA regulations. Additional questions and answers will be posted on a periodic basis.

Question 1: Is a depository institution required to file a Designation of Exempt Person form (TD F 90-22.53) in order to exempt transactions with a Federal Reserve Bank?

Answer 1: Depository institutions are not required to file a Designation of Exempt Person form (TD F 90-22.53) with respect to the transfer of currency to or from any of the 12 Federal Reserve Banks in accordance with an Interim Rule published by FinCEN in the *Federal Register* (65 FR 46356-46361) on July 28, 2000. This Interim Rule, which amends the CTR exemption regulation at 31 CFR Section 103.22(d), became effective on July 31, 2000. (7/2000)

Question 2(a): Where can a depository institution obtain a copy of the Designation of Exempt Person form (TD F 90-22.53), which must be used to designate an eligible customer as an exempt person from currency transaction reporting rules of the Department of the Treasury (31 CFR Section 103.22(d)(2))?

Answer 2(a): The Designation of Exempt Person form may be obtained by calling the IRS Forms Distribution Center at 1-800-829-3676. This form is also available from FinCEN's web site at <http://www.fincen.gov/>, under "BSA Forms." (7/2000)

Question 2(b): Where does a depository institution file the Designation of Exempt Person form?

Answer 2(b): The Designation of Exempt Person form should be filed with the U.S. Department of the Treasury, P.O. Box 33112, Detroit, Michigan 48232-0112. This is the Post Office mailing address for receipt of these forms by the IRS Detroit Computing Center. Magnetic media filers of these forms should mail magnetic media/diskettes to the IRS Detroit Computing Center, FinCEN, 985 Michigan Avenue, Detroit, Michigan 48226. (7/2000)

Question 2(c): Does the IRS Detroit Computing Center ("IRS-DCC") provide depository institutions with a confirmation of receipt of the Designation of Exempt Person form (TD F 90-22.53)?

Answer 2(c): The IRS-DCC does not send a confirmation to depository institutions upon its receipt of the Designation of Exempt Person form by paper filers. However, magnetic media filers receive a computer generated confirmation that the filing has been received. If a depository institution needs confirmation that a paper form has been received, it may call IRS-DCC at (313) 234-2011 and procedures for submitting a written request and the cost will be explained. (7/2000)

Question 3: The reformed CTR exemption regulation (31 CFR Section 103.22(d)(3)(ii)) states "when designating another bank as an exempt person, a bank must either make the filing required by paragraph (d)(3)(i) of this section or file, in such a format and manner as FinCEN may specify, a current list of its domestic bank customers." What is the format and manner specified by FinCEN to provide a list of exempted domestic banks?

Answer 3: FinCEN will provide notification if a special procedure, such as listing the exempted domestic banks, becomes available so that bank customers can be exempted in a more streamlined way. At this time, database system constraints do not allow such a procedure to be implemented. Therefore, a depository institution should file the Designation of Exempt Person form (TD F 90-22.53) for each of the domestic bank customers that it wishes to exempt. (7/2000)

4. There are frequently asked questions regarding **Repeated SAR Filings on the same Activity**. The following discussion is contained in Section 5 of The SAR Activity Review - Trends, Tips & Issues (October 2000).

One of the purposes of filing SARs is to identify violations or potential violations of law to the appropriate law enforcement authorities for criminal investigation. This is accomplished by the filing of a SAR that identifies the activity of concern. Should this activity continue over a period of time, it is useful for such information to be made known to law enforcement (and the bank supervisors). As a general rule of thumb, organizations should report continuing suspicious activity with a report being filed at least every 90 days. This will serve the purposes of notifying law enforcement of the continuing nature of the activity, as well as provide a reminder to the organization that it must continue to review the suspicious activity to determine if other actions may be appropriate, such as terminating its relationship with the customer or employee that is the subject of the filing. (12/2000)

5. There are frequently asked questions regarding **Cessation of Relationship/Closure of Account** as a result of the identification of suspicious activity. The following discussion is contained in Section 5 of The SAR Activity Review - Trends, Tips & Issues (October 2000). The closure of a customer account as the result of the identification of suspicious activity is a determination for an organization to make in light of the information available to the organization. A filing of a SAR, on its own, should not be the basis for terminating a customer relationship. Rather, a determination should be made with the knowledge of the facts and circumstances giving rise to the SAR filing, as well as other available information that could tend to impact on such a decision. It may be advisable to include the organization's counsel, as well as other senior staff, in such determinations. (12/2000)

6. There are frequently asked questions regarding **Timing for SAR Filings**. The following discussion is contained in Section 5 of The SAR Activity Review - Trends, Tips & Issues (October 2000).

The SAR rules require that a SAR be filed no later than 30 calendar days from the date of the initial detection of the suspicious activity, unless no suspect can be identified, in which case, the time period for filing a SAR is extended to 60 days.

It may be appropriate for organizations to conduct a review of the activity to determine whether a need exists to file a SAR. The fact that a review of customer activity or transactions is determined to be necessary is not necessarily indicative of the need to file a SAR, even if a reasonable review of the activity or transactions might take an extended period of time. The time to file a SAR starts when the organization, in the course of its review or on account of other factors, reaches the position in which it knows, or has reason to suspect, that the activity or transactions under review meets one or more of the definitions of suspicious activity.

Of course, an expeditious review, wherever possible, is recommended and can be of significant assistance to law enforcement. In situations involving violations of law requiring immediate attention, the organization should immediately notify appropriate law enforcement and supervisory authorities, in addition to filing a SAR. (12/2000)

7. There are frequently asked questions regarding the Disclosure of SARs and Underlying Suspicious Activity. The following discussion is contained in Section 5 of The SAR Activity Review - Trends, Tips & Issues (October 2000).

Federal law (31 U.S.C. 5318(g)(2)) prohibits the notification of any person that is involved in the activity being reported on a SAR that the activity has been reported. This prohibition effectively precludes the disclosure of a SAR or the fact that a SAR has been filed. However, this prohibition does not preclude, under federal law, a disclosure in an appropriate manner of the facts that are the basis of the SAR, so long as the disclosure is not made in a way that indicates or implies that a SAR has been filed or that the information is included on a filed SAR.

The prohibition against disclosure can raise special issues when SAR records are sought by subpoena or court order. The SAR regulations direct organizations facing those issues to contact their primary supervisor, as well as FinCEN, to obtain guidance and direction on how to proceed. In several matters to date, government agencies have intervened to ensure that the protection for filing organizations and the integrity of the data contained within the SAR database remain intact. (12/2000)

The IRS Detroit Computing Center may be contacted at 1-800-800-2877 to assist you with questions regarding the use of the reformed CTR exemption regulations (31 CFR Section 103.22(d)(2)), completion of the Designation of Exempt Person form (TD F 90-22.53), completion of the CTR form (Form 4789), and CTR paper or magnetic filing issues. For other BSA related questions, you may call FinCEN's Regulatory Helpline at 1-800-949-2732, leave a message with your name, name of your financial institution, and telephone number, and one of our staff will return your call promptly.