

## REGULATORY ALERT

NATIONAL CREDIT UNION ADMINISTRATION  
1775 Duke Street, Alexandria, VA 22314

DATE: August 16, 1996  
NO.: 96-RA-5

TO ALL FEDERALLY INSURED CREDIT UNIONS:

RE: Interim Exemption Procedures for Currency Transaction Reporting

Regulatory Alert 96-RA-2, dated May 1, 1996, notified you of an interim rule issued by the Department of the Treasury regarding exemptions from the Bank Secrecy Act. The Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) has issued responses to frequently asked questions about the new Currency Transaction Report (CTR) exemption procedures (enclosure). These procedures took effect on May 1, 1996. If you have any questions concerning this rule or the following, please contact FinCEN at (800) 949-2732 or (703) 905-3920.

**Please note: this guidance was written by FinCEN for banks. The exact language of FinCEN's guidance is presented. Other depository institutions, including credit unions are affected by this rule. Some of the information may not pertain to credit unions' operations, but is presented for your information.**

Sincerely,

---

Norman E. D'Amours  
Chairman

Enclosure

---

### INTERIM EXEMPTION PROCEDURE FOR CURRENCY TRANSACTION REPORTING

#### INTRODUCTION

The following is intended to answer general, basic questions about how to implement the new CTR exemption procedures. It is not meant to be comprehensive and does not replace or supplement the regulations.

The existing administrative exemption process is being amended to revise, expand and simplify the exemption procedures. FinCEN welcomes comments on how to simplify or otherwise improve the procedures still further.

Copies of this FinCEN document "New Exemption Procedures for Currency Transaction Reporting" (published in April 1996) may be obtained: via computer by a modem from the Treasury Bank Secrecy Act (BSA) Bulletin Board at 313-234-1453.

#### New Procedures

##### 1. What new exemption procedures are in effect?

The Financial Crimes Enforcement Network (FinCEN) has issued an interim rule that eliminates the requirement that banks file currency transaction reports (CTR, Internal Revenue Service Form 4789) for transactions by "exempt persons."

##### 2. What is an interim rule?

An interim rule becomes effective immediately, without a notice and comment period. One reason for its use is to grant immediate relief from an existing regulatory requirement.

### **3. Are the banks required to adopt the new exemption procedure?**

No. This interim rule **permits** but does not require banks to use the new simplified exemption procedure for certain types of customers. This rule implements Bank Secrecy Act mandatory exemption requirements, and grants significant relief to banks. FinCEN believes that the benefits of this rule will motivate banks to adopt this new procedure voluntarily.

### **4. Is there a transition period between the old exemption procedures, and the new exemption procedure, for currency transaction reporting by banks?**

No. There is no formal transition period, because banks are not required to implement these new exemption procedures. A bank may continue to operate under the previous, more labor-intensive and cumbersome procedures if it wishes. But, if a bank does so, the bank remains subject to all the requirements, and to the penalty rules governing that system. FinCEN anticipates that banks will use the new exemption procedures because they require significantly less effort and afford banks a limitation on liability.

### **5. Will this "interim" rule become permanent?**

FinCEN is seeking public comment on this rule. The comments will be analyzed and any appropriate amendments will be made. The rule will then be published as a final (or permanent) rule in the *Federal Register*. Again, comments are welcome regarding this rule and any suggestions to improve or clarify it.

## **Suspicious Transaction Reporting and Other Bank Secrecy Act Reporting**

### **6. If a customer is exempt from currency transaction reporting, is it then also exempt from other BSA requirements?**

No. This is especially important for banks to remember, because of the new suspicious transaction reporting requirements. A customer that is exempt from currency transaction reporting is, nonetheless, fully subject to the suspicious transaction reporting requirements.

If a bank knows, suspects, or has reason to suspect that a currency transaction constitutes a suspicious transaction, as defined in the suspicious transaction reporting rules that became effective April 1, 1996, a Suspicious Activity Report is required. Thus, for example, if a bank suspects that a government agency is engaged in suspicious activity, the bank must file a suspicious activity report. Similarly, if a customer is engaged in frequent, large currency transactions that lack any apparent business purpose and the bank knows of no reasonable explanation for the transactions, the bank may be required to file a Suspicious Activity Report.

## **Exempt Person**

### **7. What is an "exempt person"?**

An "exempt person" is:

- a. a bank (wherever chartered) to the extent of its United States activities;
- b. federal, state, or local government department or agency;
- c. any entity exercising governmental authority (such as the power to tax, to exercise eminent domain, or to exercise policy powers);
- d. any corporation whose common stock is listed on the New York Stock Exchange or the American Stock Exchange (but not the Emerging Company Market) or the NASDAQ National Market (but not the NASDAQ Small-Cap Issues Market); and

- e. any subsidiary of any "listed" exempt corporation if it filed a consolidated federal income tax return with the publicly traded corporation.

## **8. What documentation do I need to show that an entity is exempt?**

In general, a bank must take steps to assure itself that a customer is exempt comparable to those that a reasonable and prudent bank would take to protect itself from fraud based on misidentification of a person's status. The rule includes operating rules to make this easier. In the case of a bank of federal, state or local government, the same documentation a bank receives now authorizing the establishment of a business account with a bank or a governmental unit is generally sufficient. Such documentation might include a corporate resolution by the other bank authorizing the establishment of an account and granting signature authority over its account to named individuals. In addition, any documentation that demonstrates that a customer is a bank is sufficient. A bank is expected to exercise the same prudent standards of due diligence that it employs in the conduct of its banking activities.

The Financial Crimes Enforcement Network is aware that certain small governmental units, such as a volunteer fire department, or rural water authority may not issue detailed documentation that specifically attests to their governmental status. A bank may rely on reasonable documentation, based on the type and nature of the governmental agency involved. In addition, a bank may rely on community knowledge or knowledge based on the customer's name to make such determination.

In the case of an entity exercising governmental authority, a bank must determine and document characteristics that make such an authority governmental in nature. Such characteristics include the authority to exercise eminent domain, the authority to tax the public, and the authority to routinely exercise police powers. A clear example of governmental authority is the Port of New Orleans.

It is important to note that "government contractors" are not governmental authorities solely by virtue of the services that they provide to the government.

## **9. How does a bank determine that a corporation's common stock is listed on one of the exchanges that make the corporation eligible for exemption?**

The business section of many newspapers, and business weeklies, such as *Barron's*, *The Wall Street Journal*, or *Investor's Daily* contain listings for businesses that are listed on the stock exchanges.

## **10. How does a bank determine that a business is a subsidiary of one of the exemption-eligible corporations and that it files a consolidated tax return with the publicly traded corporation?**

Any reasonable documentation will be sufficient. Examples of such documentation might include a letter signed by a company officer, or by a company official listed as a signatory on a company account, or a copy of the affiliation schedule for the tax return filed.

## **11. How are franchises treated under these rules?**

Franchises are not exempt simply because the company that awards the franchise license is exempt. For example, McDonald's owns approximately 20% of all restaurants nationwide. Thus, for the 80% of McDonald's restaurants that are franchises, a bank must determine whether the franchise is itself a publicly traded corporation or its consolidated subsidiary. In many cases the result will be that the franchise is not exempt.

### **Designation of Exemption**

## **12. Is the designation of exemption automatic, once a bank determines that a customer is exempt?**

No. There is one additional requirement. To take advantage of this new procedure, a bank must generally make a designation of exemption within 30 days of a reportable transaction, and stop filing CTRs. A designation of exemption is made by filing a single CTR in which Part I, Section A and Part III are fully completed and box 36 is marked

"Designation of exempt person." The bank must file one such designation of exemption for each customer that it treats as an exempt person.

**13. When a bank files a designation of exemption, must it describe why a particular customer is exempt?**

No. However, internal records maintained at the bank should indicate why a particular customer is exempt (e.g., a public school is a government agency, General Electric Corporation is listed on the New York Stock Exchange, etc.). In addition, on the designation of exemption, the bank must state the occupation of the exempt person, and may state "County government" or "State police" or similar occupations that will indicate why the customer is exempt.

**14. Should a bank file a separate exemption for each account, or one for all accounts that an eligible customer has?**

A single designation of exemption should be filed for each "exempt person" that is a customer at a bank, regardless of the number of accounts held by an exempt person.

**15. What if an exempt customer does not have an account at the bank?**

An exempt customer, which does not have an account at a bank, is nonetheless exempt, and a designation of exemption may be made. Common examples are governmental agencies. It is not uncommon for the United States government, especially the armed forces, to cash large checks at banks at which it does not have an account. Such transactions are by "exempt persons."

A bank should bear in mind that large currency transactions by many types of listed corporations, in contrast, may be suspicious, if the corporation does not have an account at the bank. Such suspicious transactions may be required to be reported.

**Benefits and General Information**

**16. What is the benefit of this new exemption procedure to the bank?**

There are several benefits. First, this is far simpler than the existing system and should reduce the filing burden for banks.

Second, a bank that exempts a customer in this manner **cannot be penalized** for a failure to file a CTR unless the bank knowingly filed a false or incomplete report, or if the bank knew or had reason to believe that the customer or the transaction was not exempt or was not transacted by the exempt customer.

**17. What is the benefit for this rule to the public?**

This rule will significantly reduce the Bank Secrecy Act compliance burden and liability for banks, while maintaining the usefulness of CTRs for law enforcement, and regulatory purposes. As such, this rule advances the principles of Executive Order 12866 to create "regulations that are effective, consistent, sensible, and understandable." By making the CTR process more consistent, sensible and understandable, these rules will be more effective for both the government and for the banking industries.

**18. Will the Treasury Department exempt other types of businesses?**

The Treasury Department is committed to reducing the number of CTRs while retaining filings that are highly useful for tax, regulatory, and criminal proceedings. FinCEN has solicited public comments on whether businesses not incorporated that have equity interests publicly traded on major exchanges should be deemed "exempt persons."

FinCEN is interested in comments on whether privately held firms should be able to be exempted, under an exemption process that takes into account the lower level of public scrutiny afforded such firms. FinCEN is aware that the new procedure will provide the greatest benefit to large banks in urban areas, and may provide less benefit to smaller,

community-based banks. FinCEN remains committed to providing a similar degree of regulatory relief to community-based banks, and intends to propose a regulation that will exempt other types of businesses as well.

**19. To whom may a bank go should it have further questions?**

Any bank may contact its primary Bank Secrecy Act examination authority, or the Treasury Department's Financial Crimes Enforcement Network can be contacted regarding questions on the Bank Secrecy Act rule at (800) 949-2732 or (703) 905-3920.