

FEDERAL RESERVE BANK OF DALLAS

DALLAS, TEXAS 75222

Circular No. 80-130
July 2, 1980

FINANCIAL RECORDKEEPING AND REPORTING OF
CURRENCY AND FOREIGN TRANSACTIONS

TO ALL STATE MEMBER BANKS
AND OTHERS CONCERNED IN THE
ELEVENTH FEDERAL RESERVE DISTRICT:

Printed on the following pages is a final rule, which amends the Treasury Department's regulations governing the reporting of individual currency transactions in excess of \$10,000. Any questions concerning this matter should be directed to Mr. Robert J. Stankey, Jr., Advisor to the Deputy Assistant Secretary (Enforcement), at (202) 556-5630 or Mr. S. T. Schulze, Assistant Vice President, of the Bank Supervision and Regulations Department, Ext. 6274.

Sincerely yours,

Robert H. Boykin

First Vice President

Banks and others are encouraged to use the following incoming WATS numbers in contacting this Bank: 1-800-442-7140 (intrastate) and 1-800-527-9200 (interstate). For calls placed locally, please use 651 plus the extension referred to above.

DEPARTMENT OF THE TREASURY

Office of the Secretary

[31 CFR Part 103]

Financial Recordkeeping and Reporting of
Currency and Foreign Transactions

AGENCY: Department of the Treasury

ACTION: Final Rule

SUMMARY: This rule amends the regulations governing the reporting of individual currency transactions in excess of \$10,000 (IRS Form 4789, Currency Transaction Report). The amended regulation (1) requires a financial institution to file a report within 15 days after a transaction occurs; (2) requires the institution to retain a copy of the report for 5 years; (3) requires the institution to record more specific information concerning a customer's identity; (4) further limits a bank's authority to exempt transactions from the reporting requirement; and (5) requires a bank to make and retain a record of the authorization of such an exemption.

EFFECTIVE DATE: July 7, 1980

FOR FURTHER INFORMATION CONTACT:

Robert J. Stankey, Jr., Adviser to the
Deputy Assistant Secretary (Enforcement)
202-566-5630

SUPPLEMENTAL INFORMATION: Treasury regulations (31 CFR Part 103) issued under the authority of the Currency and Foreign Transactions Reporting Act (P.L. 91-508, Title II, October 26, 1970) require that certain transactions involving currency be reported to the Secretary of the Treasury by financial institutions. A financial institution within the United States generally must file a Currency Transaction Report, IRS Form 4789, for each deposit, withdrawal or exchange of currency or other transaction which involves more than \$10,000 in currency. Under current regulations, currency transactions with established customers in amounts which the bank may reasonably conclude do not exceed amounts commensurate with the customary conduct of the business, industry or profession of the customer concerned need not be reported provided that the financial institution makes a report listing such customers to the Secretary upon demand. Certain types of transactions with other financial institutions also need not be reported.

On September 9, 1979, there was published in the Federal Register a notice of proposed rulemaking to revise the regulations to require that (1) the reports be filed more timely; (2) more complete identification of the customer

be furnished; (3) the financial institution be required to retain a copy of the report for five years; and (4) the exemption from the reporting requirement for transactions with an established customer maintaining a deposit relationship be limited to retail type businesses in the United States and that the location and character of the business be identified in the report of exempt customers furnished to Treasury. In addition, it was proposed that the exemption from reporting currency transactions with other financial institutions and foreign banks be removed in order to improve the Treasury Department's ability to obtain overall compliance with the regulations and alert the Department to unusual transnational movements of currency. The primary purpose of these changes would be to enhance the Department's capability to monitor and assure compliance with the Currency and Foreign Transactions Reporting Act with regard to possible illegal or improperly reported flows of currency in the United States and abroad.

A total of 46 comments were received on this proposal. The more significant comments are summarized and discussed below.

DISCUSSION OF MAJOR COMMENTS:

1. Many of the comments stated that no difficulty was anticipated in complying with the revisions. Some banks, while not anticipating any particular difficulty, felt that the proposed revisions were unnecessary, time consuming and costly. The comments indicate that a few banks in large metropolitan centers have a significant number of large transactions in currency. The vast majority of banks, however, do not appear to have a great many unusual currency transactions and, consequently, they will not be greatly affected by the change in reporting date or the information to be supplied.

2. In order to reduce unnecessary and unproductive reporting of routine currency transactions, banks have been able to exempt currency transactions with certain depositors where such transactions are customary and do not exceed amounts which the bank may reasonably conclude are commensurate with the conduct of the lawful, domestic business of that customer.

The proposed revision would have limited the exemption to an established depositor who is a U. S. resident and operates a retail type of establishment within the United States. A number of comments asked that the term "retail" be defined in the regulations and suggested that the exemption provision should include other types of businesses, as well as government agencies.

The final rule provides a definition of retail type of business and allows banks to also exempt currency transactions with state, local, or Federal government agencies where such transactions are customary and commensurate with the authorized activities of the agency. It is expected that those exemptions will be limited to retail type businesses that operate from commercial premises. Exemptions also may be granted when warranted for certain transactions of an established depositor who is a United States resident and operates a sports arena,

race track, amusement park, bar, restaurant, hotel, check cashing service licensed by state or local governments, vending machine company, theater, or a firm that regularly withdraws more than \$10,000 in order to pay its employees in currency. Banks may apply to the Assistant Secretary (Enforcement and Operations) for additional authority to grant an exemption if the bank believes that specific circumstances warrant such authority. Requests should be addressed as follows:

Exemption Staff, Room 1134
Office of Enforcement and Operations
U. S. Treasury Department
Washington, D. C. 20220

3. One comment asked about the identification requirements for the customer's name and address, questioning whether the bank would be expected to verify the authenticity of the documents presented by the customer for identification. Bankers and shopkeepers normally ask for identification when a stranger presents a bank check or traveler's check to be cashed or accepted as payment. The same guidelines will apply when recording or reporting an unusual currency transaction.

4. Another comment asked whether microfilm and microfiche reproductions of currency reports will be accepted for purposes of record retention. Compliance by banks with the requirements of the regulations is checked by bank examiners employed by the Federal Reserve System, the Federal Deposit Insurance Corporation, or the Comptroller of the Currency. Savings and loan associations are checked by the Federal Home Loan Bank Board. In order for the bank examiner to determine that the regulations are being complied with, it is necessary that a copy of the report be available among the bank records. A microfilm or microfiche copy of the report is acceptable for this purpose.

5. One commenter asked whether the term other "domestic banks" used in the proposal would include savings and loan associations. It does. Section 103.11 of the regulations defines the term "bank" as including:

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"(3) A savings and loan association or a building and loan association organized under the laws of any state of of the United States;"

Definitions contained in Section 103.11 apply to each of the regulations in Part 103.

6. Another comment suggested that the proposal represents a potential invasion of a bank customer's reasonable expectation of privacy in his financial affairs. This is not so: reports are only required for unusual cash transactions involving more than \$10,000 by individuals or by businesses that have not been exempted and, as a result, relatively few bank transactions are reported. Although commercial banks alone are estimated to have processed in excess of 30 billion transactions in 1979, only about 120,000 reports were filed, less than one for every 200,000 transactions.

In establishing the reporting requirements, Congress found that the reports can be highly useful in criminal, tax, and regulatory investigations. Experience has shown that, frequently, such transactions are indications of illegal activities.

7. Another comment opposed the requirement that intercorporate dealings be reported, such as those between foreign and domestic subsidiaries of financial institutions. However, the overwhelming majority of such transfers are made in the form of bookkeeping entries and are not reportable under the regulations. Information from the financial community and the Customs Service indicates that the number of physical transfers of large amounts of currency between related banking entities is relatively small. The additional information that will be provided as a result of the amended regulations is needed for law enforcement purposes. There is increasing evidence that large amounts of currency related to illegal activities is being smuggled out of the U. S. and deposited in banks in foreign countries to evade scrutiny by U. S. authorities. The additional reports concerning these currency shipments will substantially improve the Treasury Department's ability to detect questionable movements of currency.

8. A nonbank financial institution commented on the duplication in the reporting of currency transactions between banks and nonbank financial institutions that would result under the proposed amendment. The final regulation has been changed to exempt the nonbank financial institution from reporting such transactions. Banks, however, must report them.

9. One bank commented that as initially proposed, the regulations appeared to require banks to determine the nationality of a person presenting a currency transaction before accepting the transaction. Such a procedure could have placed an undue burden on the banking industry. Consequently, the amendment has been changed to make it clear that a bank is required to follow the identification procedure required for aliens only when a bank has reason to believe that the customer is an alien. If for example, when a banker requests a taxpayer identification number, the customer states that he does not have one because he is not a resident, the banker should request an official document evidencing nationality or residence.

DRAFTING INFORMATION: The principal authors of this document are William W. Nickerson, Deputy Assistant Secretary (Enforcement) and Robert J. Stankey, Jr., Adviser to the Deputy Assistant Secretary (Enforcement). However, other personnel of the Office of Enforcement and Operations and the Office of the General Counsel participated in its development.

AUTHORITY AND ISSUANCE: Accordingly, the proposed regulations are being issued under the authority contained in the Currency and Foreign Transactions Reporting Act, 84 Stat. 1118, 31 U. S. C. 1051-1122, as follows:

Regulations

Section 103.22 of Part 103 of Title 31, Code of Federal Regulations, as revised, reads as follows:

Section 103.22 Reports of currency transactions.

(a) Each financial institution shall file a report of each deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to such financial institution, which involves a transaction in currency of more than \$10,000. Such reports shall be made on forms prescribed by the Secretary and all information called for in the forms shall be furnished.

(b) (1) Except as otherwise directed in writing by the Assistant Secretary (Enforcement and Operations), this section shall not: (i) require reports of transactions with Federal Reserve Banks or Federal Home Loan banks; (ii) require reports of transactions between domestic banks; or (iii) require reports by nonbank financial institutions of transactions with commercial banks.

(b) (2) Except as otherwise directed in writing by the Assistant Secretary (Enforcement and Operations), a bank may exempt from the reporting requirement of this section the following:

(i) deposits or withdrawals of currency from an existing account by an established depositor who is a United States resident and operates a retail type of business in the United States. For the purpose of this subsection, a retail type of business is a business primarily engaged in providing goods to ultimate consumers and for which the business is paid in substantial portion by currency, except that dealerships which provide automobiles, boats or airplanes are not included and their transactions are not exempt from the reporting requirement of this section.

(ii) deposits or withdrawals of currency from an existing account by an established depositor who is a United States resident and operates a sports arena, race track, amusement park, bar, restaurant, hotel, check cashing service licensed by state or local governments, vending machine company, or theater.

(iii) deposits, or withdrawals, exchanges of currency or other payments and transfers by local or state governments, or the United States or any of its agencies or instrumentalities.

(iv) withdrawals for payroll purposes from an existing account by an established depositor who is a United States resident and operates a firm that regularly withdraws more than \$10,000 in order to pay its employees in currency.

(c) In each instance the transactions exempted under subsection (b) must be in amounts which the bank may reasonably conclude do not exceed amounts commensurate with the customary conduct of the lawful, domestic business of that customer, or in the case of transactions with a local or state government or the United States or any of its agencies or instrumentalities, in amounts which are customary and commensurate with the authorized activities of the agency or instrumentality. This section does not permit a bank to exempt its transactions with a nonbank financial institution.

(d) A bank may apply to the Secretary for additional authority to grant an exemption to the reporting requirement, not otherwise provided for under paragraph (b), if the bank believes that circumstances warrant such an exemption. Such requests should be addressed to:

Exemption Staff, Room 1134
Office of Enforcement and Operations
U. S. Treasury Department
Washington, D. C. 20220

(e) A record of each exemption granted under paragraph (b) and the reason therefor must be made at the time it is granted and all such exemptions must be kept in a centralized list. The record shall include the names and addresses of the banks referred to in paragraph (b) (1) (ii), as well as the name, address, business, taxpayer identification number, and account number of each depositor that has engaged in currency transactions which have not been reported because of the exemption provided in paragraph (b)(2). The record concerning the group of depositors exempted under the provisions of paragraph (b)(2) should also indicate whether the exemption covers withdrawals, deposits, or both, as well as the dollar limit of the exemption. Upon the request of the Secretary, a bank shall provide a report containing the list of the bank's customers whose transactions have been exempted in accordance with the provisions of paragraph (b) and such information as the Secretary may require. The exemptions

may be reviewed by the Secretary who may require a bank to file the usual reports as prescribed in paragraph (a) with respect to any customer whose transactions have been previously exempted.

(f) Reports required under paragraph (e) must be mailed or otherwise delivered to the Secretary within 30 days after the bank receives the Secretary's request. The initial paragraph of Section 103.25 of Title 31, Code of Federal Regulations, as revised, reads as follows:

Section 103.25 Filing of Reports

(a) A report required to be filed by paragraph (a) of section 103.22 shall be filed within 15 days following the day on which the transaction occurred. The reports shall be filed with the Commissioner of Internal Revenue on forms to be prescribed by the Secretary. All information called for in such forms shall be furnished. A copy of each report shall be retained by the financial institution for a period of five years from the date of the report.

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Section 103.26 of Part 103, Code of Federal Regulations as revised, reads as follows:

Section 103.26 Identification Required

Before effecting any transaction with respect to which a report is required under paragraph (a) of section 103.22, a financial institution shall verify and record the name and address of the individual presenting a transaction, as well as record the identity, account number, and the social security or taxpayer identification number, if any, of any person or entity for whose or which account such transaction is to effected. Verification of the identity of an individual who indicates that he is an alien or is not a resident of the United States must be made by passport, alien identification card, or other official document evidencing nationality or residence. Verification of identity in any other case may be by examination of a document normally acceptable as a means of identification when cashing checks, for example, a driver's license or a credit card. In each instance, the method used in verifying the identity of the customer shall be recorded on the report.

DATED: May 28, 1980

(Signed) Richard J. Davis

Richard J. Davis
Assistant Secretary
(Enforcement & Operations)

BILLING CODE: 4810-25