

# FINCEN PROVIDES GUIDANCE ON EXEMPTIONS

Guidance has been issued by the **Financial Crimes Enforcement Network (FinCEN)** to assist financial institutions in determining whether a customer is eligible for exemption from currency transaction reporting requirements. The Guidance was precipitated by frequent questions FinCEN receives and the report issued last year by the **Government Accountability Office (GAO)**.

GAO's report concluded, among other things, that the information provided on currency transaction reports (CTRs) provides unique and reliable information that is essential to a variety of efforts, including law enforcement investigations and regulatory and counter-terrorism matters. The report also recommended several changes to the exemption requirements. FinCEN addressed those in the final rule it issued in December 2008, which went into effect January 5, 2009, and included the CTR exemption requirements Q&A.

## Final Rule

The final rule made a number of substantive changes to the previous CTR exemption system, including:

- Elimination of designation and annual review for most Phase I customers – institutions no longer must file a designation of exempt person (DOEP) form for, or conduct an annual review of, customers who are other depository institutions operating in the U.S., State or U.S. governments, or entities acting with governmental authority. The DOEP filing and annual review are still required for businesses listed on a major national stock exchange (listed businesses), non-listed businesses, and payroll customers.
- “Frequently” decreased to five reportable transactions – financial institutions may now designate an otherwise eligible non-listed business customer/member for exemption if it has conducted five or more reportable transactions in currency within a year (previously eight or more reportable transactions were required).
- Decreased waiting time for eligibility – financial institutions may designate an otherwise eligible customer for a Phase II exemption after two months (formerly 12 months) after maintaining a transaction account or the customer may be eligible for exemption in less than two months if the institution conducts a risk-based analysis of the member's transactions.
- Eliminating of Biennial renewals – financial institutions are no longer required to file a biennial renewal or record and report a change of control for an exempt Phase II customer.

The rule includes a chart for quick reference to make the process more efficient. Also, the final CTR exemption rule does not relieve institutions for their separate obligation to conduct suspicious activity monitoring and reporting for both I and II exempt customers.

## FAQs

Since the publication of the final rule in December 2008, FinCEN has received questions regarding various provisions. In this Guidance, it issued answers to assist in the understanding of the scope and application of that final rule. The questions cover Timing; Frequency; Corporate Structure and Reorganization; Ineligible Businesses; Customers No Longer Eligible for Exemption; Suspicious Activity of an Exempt Customer; Completing the Designation of Exempt Person form; Exemptible Transaction Accounts; and Revoking an Exemption. A sample of questions is provided below:

- Frequency – Question: using the risk-based approach, can an institution exempt a non-listed business customer prior to the two month mark even if the customer has conducted fewer than five transactions?

Answer: No (an explanation follows in the document).

- Corporate structure and reorganization – Question: What is the status of an exempt customer that previously was a listed public company but has reorganized as a private company?

Answer: If a Phase I customer no longer is a publicly-traded company, the customer is ineligible for a Phase I exemption. However, the institution could evaluate the customer for potential exemption as a non-listed business customer. If the bank’s assessment indicates that the private company does not derive more than 50% of its gross revenues from ineligible lines of business, has conducted five or more reportable transactions in the previous year, and otherwise meets all of the exemption criteria, the bank may exempt the company as a non-listed business. (Note: There is further explanation in the document).

- Ineligible businesses – Question: Does FinCEN consider a hospital or doctor’s office to be engaged in the practice of medicine and therefore ineligible for exemption as a non-listed business?

Answer: FinCEN interprets the term “the practice of medicine” broadly, rather than focusing on the technicalities of individual state laws governing the licensing of medical practitioners. Accordingly, any entity that derives more than 50% of its gross revenues by offering medical services is ineligible for exemption as a non-listed business. This interpretation would likely exclude most privately-owned hospitals, doctors’ offices, or other medical practices from being eligible for exemption as non-listed businesses.

- Suspicious activity of an exempt customer -- Question: Is a customer that has been the subject of a Suspicious Activity Report eligible for initial or continued exemption?

Answer: A financial institution is required to file a SAR, where appropriate, regarding the activities of any of its exempt customers. However, if an exempt person is involved in a transaction that has been reported in a SAR, the bank is not required to cease treating the person as exempt. The decision to exempt, or to retain or revoke a customer’s exemption, should be made by the bank in accordance with its risk-based anti-money laundering policies, procedures, and controls.

- Revoking the exemption – Question: If an institution ceases to treat a customer as exempt, and begins or intends to begin filing CTRs on that customer for the next reportable transaction, must the institution formally revoke the exemption by filing the DOEP form and selecting the “exemption revoked” box?

Answer: Institutions have never been required to formally revoke an exemption using the DOEP form. Generally, examiners or other users of BSA data would be able to rely on a pattern of reporting to know that a customer is no longer being treated as exempt. (Note there is further guidance in the document.)

Fin-2009-G-003 can be reviewed at [www.fincen.gov/statutes\\_regs/guidance/html/fin-2009-g003.html](http://www.fincen.gov/statutes_regs/guidance/html/fin-2009-g003.html).