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Title 31: Money and Finance: Treasury

PART 1029—RULES FOR LOAN OR FINANCE COMPANIES

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AUTHORITY: 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5314 and 5316-5332; title III, sec. 314 Pub. L

SOURCE: 77 FR 8157, Feb. 14, 2012, unless otherwise noted.

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Subpart A—Definitions

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§1029.100 Definitions.

Refer to §1010.100 of this Chapter for general definitions not noted herein.

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Subpart B—Programs

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§1029.200 General.

Loan or finance companies are subject to the program requirements set forth and cross re finance companies should also refer to subpart B of part 1010 of this chapter for program requ subpart which apply to loan or finance companies.

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§1029.210 Anti-money laundering programs for loan or finance companies.

(a) *Anti-money laundering program requirements for loan or finance companies.* Each loa develop and implement a written anti-money laundering program that is reasonably designed t company from being used to facilitate money laundering or the financing of terrorist activities. 7 by senior management. A loan or finance company shall make a copy of its anti-money launde Financial Crimes Enforcement Network or its designee upon request.

(b) *Minimum requirements.* At a minimum, the anti-money laundering program shall:

(1) Incorporate policies, procedures, and internal controls based upon the loan or finance money laundering and terrorist financing risks associated with its products and services. Policies, procedures, and internal controls developed and implemented by a loan or finance company under this section shall include, but not be limited to, the applicable requirements of subchapter II of chapter 53 of title 31, United States Code and shall include the company's agents and brokers into its anti-money laundering program, and obtaining all relevant information necessary for an effective anti-money laundering program.

(2) Designate a compliance officer who will be responsible for ensuring that:

(i) The anti-money laundering program is implemented effectively, including monitoring company's agents and brokers with their obligations under the program;

(ii) The anti-money laundering program is updated as necessary; and

(iii) Appropriate persons are educated and trained in accordance with paragraph (b)(3) of this section.

(3) Provide for on-going training of appropriate persons concerning their responsibilities under the program. A loan or finance company may satisfy this requirement with respect to its employees, agents, and brokers by providing training to such persons or verifying that such persons have received training by a competent third party with respect to the services offered by the loan or finance company.

(4) Provide for independent testing to monitor and maintain an adequate program, including the compliance of the company's agents and brokers with their obligations under the program. The testing shall be commensurate with the risks posed by the company's products and services. S

by a third party or by any officer or employee of the loan or finance company, other than the person specified in paragraph (2) of this section.

(c) *Compliance.* Compliance with this section shall be examined by FinCEN or its delegate under the Freedom of Information Act. Failure to comply with the requirements of this section may constitute a violation of the provisions of this part.

(d) *Compliance date.* A loan or finance company must develop and implement an anti-money laundering program that complies with the requirements of this section by August 13, 2012.

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Subpart C—Reports Required To Be Made by Loan or Finance Companies

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§1029.300 General.

Loan or finance companies are subject to the reporting requirements set forth and cross references in this subpart. Loan or finance companies should also refer to subpart C of part 1010 of this chapter for reporting requirements that apply to loan or finance companies.

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§§1029.310-1029.315 [Reserved]

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§1029.320 Reports by loan or finance companies of suspicious transactions.

(a) *General.* (1) Every loan or finance company shall file with FinCEN, to the extent and in section, a report of any suspicious transaction relevant to a possible violation of law or regulation; and any loan or finance company may also file with FinCEN a report of any suspicious transaction that it believes is relevant to the regulation, but whose reporting is not required by this section.

(2) A transaction requires reporting under this section if it is conducted or attempted by, at the direction of, or on behalf of a loan or finance company, it involves or aggregates funds or other assets of at least \$5,000, and the loan or finance company has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part)

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise the source of funds derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of the funds or assets) as part of a plan to violate or evade any Federal law or regulation or to avoid any transaction reporting requirements under Federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of regulation promulgated under the Bank Secrecy Act, Public Law 91-508, as amended, codified at 12 U.S.C. 5311-5314, 5316-5332;

(iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer is expected to engage, and the loan or finance company knows of no reasonable explanation for the transaction after reviewing the available facts, including the background and possible purpose of the transaction; or

(iv) Involves use of the loan or finance company to facilitate criminal activity.

(3) More than one loan or finance company may have an obligation to report the same transaction. Other financial institutions may have separate obligations to report suspicious activity with respect to other provisions of this part. In those instances, no more than one report is required from any one loan or finance company(s) and other financial institution(s) involved in the transaction, provided that the report includes the relevant facts, including the name of each financial institution involved in the transaction, the reporting institution, the date the report is filed, and each institution maintains a copy of the report filed, along with an original copy of the report filed, and each institution maintains a copy of the report filed, along with an original copy of the report filed.

(b) *Filing and notification procedures*—(1) *What to file.* A suspicious transaction shall be reported to the reporting institution by filing a Suspicious Activity Report (“SAR”), and collecting and maintaining supporting documentation as required by this section.

(2) *Where to file.* The SAR shall be filed with FinCEN in accordance with the instructions to the SAR.

(3) *When to file.* A SAR shall be filed no later than 30 calendar days after the date of the initial detection of facts that may constitute a basis for filing a SAR under this section. In the event of such initial detection, a loan or finance company may delay filing a SAR for an additional 30 calendar days if the reporting institution is a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of initial detection.

(4) *Mandatory notification to law enforcement.* In situations involving violations that require reporting to law enforcement, a loan or finance company shall notify an appropriate law enforcement authority in addition to filing timely a SAR.

(5) *Voluntary notification to FinCEN.* Any loan or finance company wishing voluntarily to report a suspicious transaction that may relate to terrorist activity may call the FinCEN's Financial Institutions Hotline at 1-866-556-7899. A loan or finance company may file a SAR if required by this section.

(c) *Retention of records.* A loan or finance company shall maintain a copy of any SAR filed or on its behalf (including joint reports), and the original (or business record equivalent) of any concerning any SAR that it files (or is filed on its behalf), for a period of five years from the date documentation shall be identified as such and maintained by the loan or finance company, and filed with the SAR. The loan or finance company shall make all supporting documentation available to the State, or local law enforcement agency, or any Federal regulatory authority that examines the loan or finance company for compliance with the Bank Secrecy Act, or any State regulatory authority administering a State law that authorizes a State authority to examine a loan or finance company to comply with the Bank Secrecy Act or otherwise authorizes the State authority to examine a loan or finance company that complies with the Bank Secrecy Act, upon request.

(d) *Confidentiality of SARs.* A SAR, and any information that would reveal the existence of a SAR, shall not be disclosed except as authorized in this paragraph (d). For purposes of this paragraph, any suspicious activity report filed with FinCEN pursuant to any regulation in this part.

(1) *Prohibition on disclosures by loan or finance companies—(i) General rule.* No loan or finance company, officer, employee, or agent of any loan or finance company, shall disclose a SAR or any information that would reveal the existence of a SAR. Any loan or finance company, and any director, officer, employee, or agent of any loan or finance company that is subpoenaed or otherwise requested to disclose a SAR or any information that would reveal the existence of a SAR, shall decline to produce the SAR or such information, citing this section and 31 U.S.C. 5318(g)(2)(A) if the loan or finance company declines any such request and the response thereto.

(ii) *Rules of construction.* Provided that no person involved in any reported suspicious transaction has been reported, paragraph (d)(1) of this section shall not be construed as prohibiting the disclosure of any such information.

(A) The disclosure by a loan or finance company, or any director, officer, employee, or agent of:

(1) A SAR, or any information that would reveal the existence of a SAR, to FinCEN or any enforcement agency, any Federal regulatory authority that examines the loan or finance company, the Bank Secrecy Act, or any State regulatory authority administering a State law that requires the loan or finance company to comply with the Bank Secrecy Act or otherwise authorizes the State authority to ensure that the loan or finance company complies with the Bank Secrecy Act; or

(2) The underlying facts, transactions, and documents upon which a SAR is based, including any information that would reveal the existence of a SAR, to another financial institution, or any director, officer, employee, or agent of a financial institution, or any director, officer, employee, or agent of a financial institution that provided the SAR.

(B) The sharing by a loan or finance company, or any director, officer, employee, or agent of a SAR, or any information that would reveal the existence of a SAR, within the loan or finance company's organizational structure for purposes consistent with Title II of the Bank Secrecy Act as determined by the Secretary.

(2) *Prohibition on disclosures by government authorities.* A Federal, state, local, territorial, or any director, officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR, except as necessary to fulfill official duties consistent with Title II of the Bank Secrecy Act. For purposes of this section, official duties shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for disclosure of non-public information or a request for use in a proceeding, including a request pursuant to 31 CFR 1.11.

(e) *Limitation on liability.* A loan or finance company, and any director, officer, employee, or agent of a loan or finance company, that makes a voluntary disclosure of any possible violation of law or regulation to a government authority, including a disclosure pursuant to this section or any other authority, including a disclosure made jointly with another person, shall be protected from liability for any such disclosure, or for failure to provide notice of such disclosure to the government authority, or both, to the full extent provided by 31 U.S.C. 5318(g)(3).

(f) *Compliance*. Loan or finance companies shall be examined by FinCEN or its delegates under the Bank Secrecy Act, for compliance with this section. Failure to satisfy the requirements of this section under the Bank Secrecy Act and of this part.

(g) *Compliance date*. This section applies to transactions initiated after an anti-money laundering section 1029.210 of this part is required to be implemented.

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§1029.330 Reports relating to currency in excess of \$10,000 received in a trade or business

Refer to §1010.330 of this chapter for rules regarding the filing of reports relating to currency received by loan or finance companies.

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Subpart D—Records Required To Be Maintained By Loan or Finance Companies

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§1029.400 General.

Loan or finance companies are subject to the recordkeeping requirements set forth and contained in this subpart. Loan or finance companies should also refer to subpart D of part 1010 of this chapter for records in that subpart which apply to loan or finance companies.

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Subpart E—Special Information Sharing Procedures To Deter Money Laundering Activity

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§1029.500 General.

Loan or finance companies are subject to the special information sharing procedures to deter terrorist activity requirements set forth and cross referenced in this subpart. Loan or finance companies are subject to the special information sharing procedures to deter money laundering activity set forth in subpart E of part 1010 of this chapter for special information sharing procedures to deter money laundering activity contained in that subpart which apply to loan or finance companies.

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§1029.520 Special information sharing procedures to deter money laundering and terrorist activity of loan or finance companies.

(a) Refer to §1010.520 of this chapter.

(b) [Reserved]

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§1029.530 [Reserved]

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§1029.540 Voluntary information sharing among financial institutions.

(a) Refer to §1010.540 of this chapter.

(b) [Reserved]

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Subpart F—Special Standards of Diligence; Prohibitions, and Special M Finance Companies

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§§1029.600-1029.670 [Reserved]

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