



# Department of the Treasury Financial Crimes Enforcement Network

## Guidance On Interpreting “Frequently” Found In The Criteria For Exempting A “Non-Listed Business” Under 31 C.F. R. §103.22(d)(2)(vi)(B)

### **Background**

Bank Secrecy Act regulations require depository institutions to file with FinCEN currency transaction reports (CTRs) on transactions in currency of more than \$10,000 (large currency transactions). See 31 C.F.R. § 103.22. However, the provisions of 31 C.F.R. §103.22(d) permit a depository institution to exempt certain categories of customers from the CTR requirement. For example, depository institutions may exempt the accounts of businesses not listed on a major stock exchange (non-listed businesses) if certain criteria are met.<sup>1</sup> One of the criteria required for a “non-listed” business to be treated as an exempt person is that the business “frequently” engages in large currency transactions with the depository institution. See 31 C.F.R. §103.22(d)(2)(vi)(B).

FinCEN receives many questions regarding the interpretation and application of the term “frequently” and provides the following guidance.

### **Guidance**

Although the term “frequently” was not defined by Congress,<sup>2</sup> FinCEN interprets “frequently” to refer to the recurring or routine need by an institution’s established business customers to deposit or withdraw large amounts of currency (or engage in any other large currency transaction) in the ordinary course of carrying out business operations.

Many customers of depository institutions routinely conduct large currency transactions in the ordinary course of their business operations. Thus, the determination that such transactions are engaged in “frequently” is not difficult to make. In situations not as clear, a depository

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<sup>1</sup> To the extent of its domestic operations and only with respect to transactions conducted through its exemptible accounts, a non-listed business may be treated as exempt provided it is not primarily engaged in ineligible business activities listed in § 103.22 (d)(6)(viii) and the following conditions are met: 1) a transaction account has been maintained at the granting bank for at least 12 months; 2) the non-listed business frequently engages in transactions in currency with the bank in excess of \$10,000, and 3) the non-listed business is incorporated or organized under the laws of the United States or a State, or is registered as and eligible to do business within the United States or a State. In order to exempt a non-listed business, the bank must file a Designation of Exempt Person form with the IRS-Detroit Computing Center.

<sup>2</sup> The use of the term “frequently” in the CTR exemption rules is derived from section 402 of the Money Laundering Suppression Act, Title IV of the Reigle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103-325, codified in relevant part at 31 U.S.C. 5313(e)(2)(B).

institution should make its decision on a customer-by-customer basis, taking into account all facts and circumstances the depository institution has obtained in order to make a good faith determination regarding the customer's eligibility for exemption. In making such a determination, a depository institution may consider obtaining and evaluating information about the nature of the customer's business operations and the cause of the recurring (or routine) need to engage in large currency transactions.

### **Recurring /Routine Need**

In general, a customer that is being considered for exemption as a non-listed business should be conducting at least 8 large currency transactions throughout the year. In essence, this means the customer conducts a large currency transaction approximately every six weeks. The fact a customer conducts fewer than 8 large currency transactions annually would generally indicate that any large currency transactions conducted do not relate to a recurring or routine need.

### **Seasonal Businesses**

A seasonal business may operate only during a portion of the year, or a business may have a recurring or routine need to engage in large currency transactions "seasonally." In such cases, the depository institution should engage in the analysis set forth above to determine whether the business has engaged in at least 8 large currency transactions during the portion of time the business operates or experiences increased cash flow. Because a non-listed business' transaction account must be opened for at least 12 months to qualify for exemption (See 31 C.F.R. §103.22(d)(2)(vi)(A)), depository institutions should have the ability to use account information to understand the routine or recurring currency needs of such a customer.

### **Example**

A bank maintains a transaction account for a small business operator, who owns a small retail outlet in a shopping mall. The business operator has a recurring or routine need to make deposits or withdrawals from its transaction account at the bank once a week, although the \$10,000 reporting threshold is not met because sales are low. The exception is the spike in business at least 8 times a year over long holiday weekends. FinCEN would consider the occurrence of 8 large currency transactions in this case to be "frequent," given reportable transactions occur in the ordinary course of the customer's business operations.

### **Limitation on Liability**

FinCEN encourages depository institutions to use the exemption regulation to the fullest extent to exempt all eligible customers under the provisions set forth at 31 C.F.R. §103.22(d). Depository institutions that, in good faith, exempt customers under 31 C.F.R. §103.22(d) will not be subject to a civil money penalty for failure to file a CTR with respect to a large currency transaction by an exempted customer. See 31 C.F.R. §103.22(d)(8).

Depository institutions are reminded of their continuing obligation under 31 C.F.R. §103.18 to monitor for, and report to FinCEN, suspicious activity with respect to transactions of all customers, including cash transactions by those that have been exempted from the CTR requirement. See 31 C.F.R. §103.22(d)(9).

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