Department of the Treasury
Financial Crimes Enforcement Network

Guidance

FIN-2012-G001
Issued: March 16, 2012
Subject: Currency Transaction Report Aggregation for Businesses with Common Ownership

The Financial Crimes Enforcement Network ("FinCEN") is issuing this guidance to clarify, for currency transaction reporting purposes, the aggregation of multiple transactions conducted by businesses with common ownership. Subsequent to a ruling on this issue,[1] FinCEN received requests from financial institutions for further guidance. In particular, requestors were interested in guidance that addressed common ownership aggregation beyond the limited set of circumstances discussed in FinCEN Ruling 2001-2. That ruling was specific to an individual who owned three incorporated businesses with separate tax identification numbers and accounts, and who made a practice of using funds from one account to pay for the expenses associated with the other businesses.[2] FinCEN is supplementing that ruling with the following additional guidance.

Did the Same Person Conduct the Transactions?

FinCEN's regulations implementing the Bank Secrecy Act ("BSA") require financial institutions to aggregate multiple currency transactions "if the financial institution has knowledge that [the multiple transactions] are by or on behalf of any person and result in either cash in or cash out totaling more than $10,000 during any one business day."[3] Accordingly, the financial institution must file a currency transaction report ("CTR") when it has knowledge that the same person[4] has conducted multiple transactions that total more than $10,000 in currency in one business day or when it has knowledge that multiple transactions that total more than $10,000 in currency in one business day are on behalf of the same person.

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[1] FinCEN Ruling 2001-2, *Currency Transaction Reporting: Aggregation* (Aug. 23, 2001).
[2] *Id*.
[3] 31 CFR § 1010.313 (2011).
[4] A person that gives or receives currency as a function of its agency relationship with a financial institution is not a transactor for the purposes of the CTR requirements. Instead, the transactor is the individual who gives the currency to or receives the currency from the financial institution's agent. An individual conducting a transaction with the agent of a financial institution is considered to be conducting a transaction directly with the financial institution. If the financial institution receives or provides currency through multiple transactions with the same individual through the financial institution's agent, the financial institution will need to consider the aggregation of the amounts of those transactions for the purpose of complying with CTR requirements. *See* FIN-1988-R005 ("Knowledge by the Bank's agent […] that the currency was received in multiple transactions, is attributable to the Bank. The Bank must assure that […] its agent […] obtains all the information and identification necessary [for the Bank] to complete [and file] the CTR").

For example, a financial institution is considered to have knowledge that the same person deposited $11,000 in cash transactions in a single business day if it is aware that the same individual made both a $5,000 cash deposit into his personal account and, later that same business day, a $6,000 cash deposit into his employer's business account. Accordingly, the financial institution is required to file a CTR. Specifically, the financial institution is expected to complete two sections identifying the persons on whose behalf the transactions were conducted. The remaining parts of the CTR should be filled out according to the form instructions.

On Whose Behalf Were the Transactions Conducted?

Although multiple businesses may share a common owner, the presumption is that separately incorporated entities are independent persons.[5] Therefore, the currency transactions of separately incorporated businesses should not automatically be aggregated as being on behalf of any one person simply because those businesses are owned by the same person. The presumption that the entities are separate, however, is rebuttable. It is ultimately up to a financial institution to determine, based on information obtained in the ordinary course of business, whether multiple businesses that share a common owner are, in fact, being operated independently depending on all the facts and circumstances. The results of this determination affect whether the businesses' currency transactions should be aggregated for purposes of complying with currency transaction reporting obligations.

If a financial institution determines that these businesses (or one or more of the businesses and the private accounts of the owner) are not operating separately or independently of one another or their common owner – *e.g.*, the businesses are staffed by the same employees and are located at the same address, the bank accounts of one business are repeatedly used to pay the expenses of another business, or the business bank accounts are repeatedly used to pay the personal expenses of the owner – the financial institution may determine that aggregating the businesses' transactions is appropriate because the transactions were made on behalf of a single person.

When determining whether to aggregate transactions as being on behalf of the same person, a financial institution must use its knowledge of relevant facts and circumstances. There are no universal rules applicable to any situation.[6] Once a financial institution determines that the businesses are independent, then it should not aggregate the separate transactions of these businesses. Alternatively, once a financial institution determines that the businesses are not independent of each other or their common owner, then the transactions of these businesses should be aggregated going forward.

For example, a bank knows that Company A and Company B have the same owner, operate out of the same address, and continually comingle funds between their separate accounts. Because of this information, the bank has determined that Company A and Company B are not independent of each other. One day, an employee of Company A deposits $6,000 into the

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[5] *See* 18 Am. Jur. 2d *Corporations* § 2 ("A corporation is a legal entity with an identity or personality separate and distinct from that of its owners or shareholders and must be thought of without reference to the members who compose it").

[6] *See e.g.* FinCEN Ruling 2001-2, *Currency Transaction Reporting: Aggregation* (Aug. 23, 2001).

account of Company A. That same business day, an employee of Company B deposits $5,000 into the account of Company B. Because the bank has determined that the businesses are not independent of each other, the bank should file a CTR listing Company A and Company B in separate sections indentifying the person(s) on whose behalf the transaction is conducted and listing a cash-in deposit of $11,000. The remaining sections of the CTR should be filled out according to the form instructions.

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Financial institutions with questions about this guidance or other matters related to compliance with the Bank Secrecy Act and its implementing regulations may contact FinCEN's regulatory helpline at (800) 949-2732.