



RE-DISSEMINATION PROTOCOLS FOR BANK SECRECY ACT INFORMATION

I. Purpose

These Re-Dissemination Protocols for Bank Secrecy Act (BSA) Information (Re-Dissemination Protocols) set forth requirements on the use and dissemination by any Agency of information provided by the Financial Crimes Enforcement Network (FinCEN), a bureau within the U.S. Department of the Treasury, pursuant to any Memorandum of Understanding (MOU) for access to information filed with FinCEN pursuant to the BSA, codified at 12 U.S.C. § 1829b, 12 U.S.C §§ 1951-1960, and 31 U.S.C. §§ 310, 5311-5314, 5316-5336, and including notes thereto, with implementing regulations at 31 C.F.R. Chapter X.

Because BSA Information generally consists of personal and/or sensitive financial data, the dissemination of such information is subject to strict control. Each Agency with access to BSA Information has an obligation to safeguard such information and to prevent the unauthorized disclosure of such information, consistent with the terms of the MOU, these Re-Dissemination Protocols, the Security Protocols, and the BSA.

FinCEN notes, in particular, that the unauthorized disclosure of Suspicious Activity Reports (SARs), a type of BSA Information, is a violation of law subject to both criminal and civil penalties.

These Re-Dissemination Protocols and the requirements set forth herein are to be read in conjunction with the MOU between FinCEN and the Agency. All defined terms in the MOU are hereby incorporated by reference. As stated in the MOU, the requirements set forth in these Re-Dissemination Protocols supersede any prior re-dissemination protocols that may have been published by FinCEN. As set forth in the MOU, FinCEN reserves the right to revise and supplement these Re-Dissemination Protocols at any time. Revised Re-Dissemination Protocols automatically become part of this MOU upon receipt by the Agency.

II. General Authorization to Re-Disseminate with MOU Holders

Subject to the following conditions, the Agency may disclose BSA Information to another Federal, State, local, tribal, or territorial government Agency with an MOU with FinCEN in support of financial institution examinations, criminal, tax, or regulatory investigations, risk assessments, or proceedings; or intelligence or counterintelligence activities, including analysis, to protect against terrorism, without first obtaining the approval of FinCEN.

Any BSA Information shared by an Agency must be accompanied by the warning statement affixed as Appendix II.

Both the sharing and the receiving Agencies are required to implement appropriate safeguards for sharing and transmitting BSA Information, consistent with the terms of the MOU,

these Re-Dissemination Protocols, the accompanying Security Protocols.

III. Recordkeeping Requirements and Obligations for Sharing BSA Information

An Agency may, under certain circumstances, share BSA Information with any agency, individual, or entity that does not have an active MOU with FinCEN. The circumstances under which such sharing is permitted, and the necessary requirements for such sharing, are set forth in Sections IV-V below.

In addition to the procedures set forth below, any such sharing of BSA Information with an entity that does *not* have an active MOU with FinCEN is subject to the following conditions, notice, and record-keeping requirements:

- (1) The disclosing Agency shall maintain a record of each disclosure of BSA Information, to include the written acknowledgment obtained from the receiving Agency at the time of disclosure reflecting the receiving Agency's understanding that the further dissemination of such information is prohibited without the prior approval of FinCEN. This written acknowledgement shall take the form of the Acknowledgement Form contained at Appendix I to these Re-Dissemination Protocols; and
- (2) The disclosing Agency shall ensure that any BSA Information shared prominently contains the warning statement set forth in Appendix II to these Re-Dissemination Protocols.

IV. Authorization to Share BSA Information with Foreign Partners

With prior written approval from FinCEN, an Agency may share BSA Information in the following situations:

A. Unclassified Sharing with Foreign Partners

FinCEN approval is required prior to re-disseminating BSA Information to foreign partners. FinCEN strongly encourages sharing or re-dissemination of BSA Information contained in an unclassified report or product to occur via Egmont Group channels when the recipient country's financial intelligence unit is a member of the Egmont Group, which may include requests for further dissemination to additional government components (e.g., federal police, sanctioning authority) of a country.

To request that FinCEN share or re-disseminate BSA Information included in an unclassified report via Egmont Group channels, contact FinCEN's Egmont Support Team at CMSEgmontSupportTeam@fincen.gov to request the current Spontaneous Disclosure template. A Spontaneous Disclosure includes the following information: (1) the FIU recipient name; (2) any additional foreign government components the Agency may wish to further share with; (3) a subject line; and (4) the BSA information you are seeking to share.

To seek authorization from FinCEN to share or re-disseminate BSA Information included in an unclassified report outside of Egmont Group channels, contact FinCEN at frc@fincen.gov. In your request to share with foreign partners outside of Egmont Group channels, you must provide the following: (1) the name of the requestor, phone number, office, and organization; (2) a justification for sharing; (3) the proposed method of sharing: hard copy, electronic (e.g., via encrypted email), verbal, etc.; (4) the foreign recipient(s), specifying the country and government authority or authorities receiving the information (e.g., Canada, Royal Canadian Mounted Police);

and (5) a justification for the need to share outside of Egmont channels.

B. Classified Sharing with Foreign Partners

To seek permission from FinCEN to share or re-disseminate BSA Information included in a classified report or product, or that is being shared for classified reasons, contact infoshare@treasury.gov or infoshare@treasury.ic.gov. All requests must include the following: (1) name of requestor, phone number, office, organization; (2) justification for sharing; (3) method of sharing: hard copy, electronic, verbal; (4) classification at which the information will be shared; (5) proposed language to be shared; and (6) the country and government authority or authorities receiving the information. Do not include classified information if sending a request to infoshare@treasury.gov.

V. Other Dissemination of BSA Information

Except as authorized elsewhere in these Re-dissemination Protocols, neither an Agency nor any of its employees may share BSA Information without first obtaining the approval of FinCEN. Any such request for approval must be made via written request to FinCEN via email at frc@fincen.gov. FinCEN requests at least five business days to process such requests, absent exigent circumstances. With respect to requests for sharing of BSA Information, the following requirements apply:

A. Requests from Other Agencies Not Otherwise Authorized

An Agency seeking to share BSA Information with an Agency that is not otherwise authorized under these Re-Dissemination Guidelines, must submit a written request clearly setting forth the following: (1) the particular BSA Information sought to be disclosed; (2) the identity of the Agency or Person to whom the information would be disclosed; and (3) the purpose for the disclosure. The written request also must provide a point of contact, with an email address and phone number, at the Agency seeking to re-disseminate the BSA information.

B. Requests from Third Parties in Connection with Litigation

An Agency that receives requests for BSA Information in litigation, through the process described in their *Touhy* regulations or other authorities, should submit the request to DataAccessManagement@fincen.gov and provide: (1) the name of the requestor, phone number, office, and organization; (2) a justification for sharing; and (3) the proposed method of sharing, such as hard copy, encrypted email, verbal, etc. In addition, the Agency should contact FinCEN's Office of Chief Counsel at (703) 905- 3590 before acting on the request. If the request seeks BSA information from a SAR filed by a bank, the agency receiving the request also should contact the filing bank's primary federal regulator.

C. Requests to Share with the Public

An Agency seeking to share BSA Information or analysis derived from BSA Information with members of the public must submit a written request that includes the following: (1) intended the recipient(s) (e.g., general public, public-private Bank conference); (2) a copy of the unclassified report, product, or language that includes BSA Information or analysis derived from BSA Information; (3) description of how the BSA Information or analysis derived from BSA Information will be used (e.g., public press release, PowerPoint with BSA statistics); and (4) requested suspense date. Note that BSA Information is exempt from disclosure under the FOIA in accordance with 5 U.S.C. § 552(b)(3) and 31 U.S.C. § 5319. As required by the MOU, an

Agency shall promptly notify FinCEN of any FOIA, Privacy Act, subpoena or similar request implicating BSA Information and coordinate any response to such a request with FinCEN FOIA office at FOIA@fincen.gov. These requirements do not apply to information that FinCEN has already made public on their website.

VI. Handling BSA Information That is Not Shared with Foreign Partners

BSA Information or analysis derived from BSA Information that is re-disseminated must be bannered as UNCLASSIFIED//NOFORN//LAW ENFORCEMENT SENSITIVE. Each paragraph of derivatively reported BSA Information, meaning BSA Information extracted from a source document (e.g., a SAR) and incorporated into a subsequent report, product, or correspondence, must be portion marked as (U//LES-NF).

The following citation styles must be used for citing BSA Information:

A. Standard BSA Forms Citation Style for Analytical Products

(U//LES-NF) TREASURY | Access Method (e.g., FinCEN Query, XXXXXX) | BSA ID Number | Filing Date of Record (two-digit day, three letter month, two-digit year) | (U//LES-NF) BSA ID XXXXXXXXXXXXXXXX | Cite portion classified UNCLASSIFIED//LES NOFORN | Overall document classified UNCLASSIFIED//LES NOFORN

B. Standard BSA Collections Data Citation Style for Analytical Products

(U//LES-NF) TREASURY | Access Method (e.g., FinCEN Query, C2BSA) | BSA records collected between Month Year and Month Year | Date Analyst Pulled the information (two-digit day, three letter month, two-digit year) | Cite portion classified UNCLASSIFIED//LES NOFORN | Overall document classified UNCLASSIFIED//LES NOFORN

VII. Reporting Obligations & Auditing

The Agency must retain a record of all disclosures of BSA Information to any agency, individual, or entity that does not have an active MOU with FinCEN. The Agency must provide a list of all such disclosures on an annual basis including the following: (1) date of disclosure; (2) receiving agency, individual, or entity; (3) description of BSA Information disclosed; (4) copy of authorization from FinCEN, where applicable, to share such BSA Information, consistent with these Re-Dissemination Protocols; and (5) a copy of the signed certification provided in Appendix II that accompanied each such disclosure.

VIII. Miscellaneous Provisions

A. Compliance

Failure to comply with these Re-Dissemination Protocols may result in the suspension of the Agency's and/or Authorized Personnel's access to the System. Additionally, criminal, and civil penalties may apply to the misuse of Federal data and resources. Such criminal and civil penalties may be pursued against Authorized Personnel or any other individual who violates applicable law.

B. Unauthorized Disclosure

No current or former government officer, employee, or contractor may disclose a SAR to any person involved in a reported transaction, or otherwise reveal any information that would reveal that the transaction has been reported, other than as necessary to fulfill their official duties.

31 U.S.C. § 5318(g)(2). Under FinCEN's regulations, the disclosure of a SAR to any person except for official purposes is unlawful and subject to criminal and civil penalties. 31 CFR § 1010.950(e). Federal law provides for civil penalties of up to \$100,000 for each violation, 31 U.S.C. § 5321, 31 CFR § 1010.820, and criminal penalties including up to five years imprisonment and fines of up to \$250,000, 31 U.S.C. § 5322, 31 CFR § 1010.840(b). Criminal penalties may increase to include up to ten years imprisonment and fines of up to \$500,000 if the violation occurs "while violating another law of the United States." 31 U.S.C. § 5322(b), 31 CFR § 1010.840(c).

Any suspected unauthorized disclosure of BSA Information will be referred to the appropriate officials for inquiry and/or investigation. **The Agency expressly agrees to report any unauthorized disclosure of BSA Information to FinCEN immediately by emailing DataAccessManagement@fincen.gov.**

C. Effective Date, Rights & Obligations

As set forth in the MOU, FinCEN reserves the right to update these Re-Dissemination Protocols as appropriate. Any revised versions of the Re-Dissemination Protocols shall become effective and binding on the Agency as of the date of transmission to the Agency.

APPENDIX I - ACKNOWLEDGMENT FORM

TO BE USED BY AGENCY FOR DISCLOSURE OF BSA INFORMATION TO OTHER AGENCIES

I understand that any Bank Secrecy Act (BSA) Information provided to me by the [insert name of disclosing agency here] (“Disclosing Agency”) is being made available to me in my capacity as an employee of [insert name of receiving Agency] (“Receiving Agency”) and for use exclusively in support of financial institution examinations, criminal, tax, or regulatory investigations, risk assessments, or proceedings; or intelligence or counterintelligence activities, including analysis, to protect against terrorism. This Acknowledgement Form is to be signed by a representative of the Receiving Agency with sufficient authority to bind the Receiving Agency with respect to the treatment and handling of BSA Information shared pursuant to this Acknowledgement Form.

I further understand that the unauthorized disclosure of SARs, including information that would reveal the existence of a SAR, can be a crime, and FinCEN refers such matters to the Treasury Department’s Office of Inspector General. Given the vital importance of safeguarding BSA Information, Receiving Agency agrees to cooperate in any inquiries from FinCEN or the Treasury Department involving potential unauthorized disclosures of BSA Information, including by providing any information that FinCEN, the Treasury Department, or relevant law enforcement authorities deem necessary to investigate a potential unauthorized disclosure of BSA Information.

I further understand that this BSA Information is being provided by the Disclosing Agency to the Receiving Agency, consistent with the terms of the MOU between the Disclosing Agency and FinCEN. By signing this Acknowledgement, the Receiving Agency agrees to be bound by the terms and conditions set forth in the MOU, as well as the Re-Dissemination and Security Protocols, including, but not limited to the following:

- The Receiving Agency may use BSA Information solely consistent with the legal authority of the Receiving Agency for the following purposes: identification, investigation, or prosecution of possible or actual violations of criminal law that fall within the investigative or prosecutorial jurisdiction of the Receiving Agency.
- The Receiving Agency must make best efforts to obtain and maintain only that BSA Information which is of value in connection with the specific matter at issue. The Receiving Agency must promptly destroy any and all data, documents, or summaries which contain BSA Information that it has obtained, stored, or generated that is not of value for the specific matter at issue.
- The Receiving Agency must maintain any copies of BSA information appropriately; BSA Information must be stored and maintained solely on a secure government system (or equivalent). The Receiving Agency may not use BSA Information to develop or contribute to any database not under the control of FinCEN that Agency personnel will be able to search as an alternative to making subsequent direct electronic queries to retrieve BSA Information from FinCEN Systems.

I agree not to use this information for other purposes, nor to disclose this information outside of my Agency without prior approval from FinCEN.

Appendix I – Acknowledgement Form for Disclosing and Receiving Agencies

Signature and Title of Receiving Official

Date

Name of Receiving Agency

Signature and Title of Disclosing Official

Date

Name of Disclosing Agency

APPENDIX II

WARNING STATEMENT TO BE AFFIXED TO BSA REPORT INFORMATION DISCLOSED TO OTHER AGENCIES

The enclosed information was collected and disseminated under provisions of the Bank Secrecy Act (BSA) and regulations implementing the BSA, codified at 12 U.S.C. § 1829b, 12 U.S.C §§ 1951-1959, and 31 U.S.C. §§ 310, 5311-5314, 5316-5336, and including notes thereto, with implementing regulations at 31 C.F.R. Chapter X. The information is sensitive in nature and is to be treated accordingly. The information may be used only for a purpose related to a criminal, tax, or regulatory investigations, risk assessments, or proceedings; or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against terrorism. See 31 U.S.C. § 5311.

This information – referred to herein as “BSA Information” cannot be further released, disseminated, disclosed, or transmitted except as specified in FinCEN’s Re-Dissemination Protocols.

FinCEN notes, in particular, that the unauthorized disclosure of Suspicious Activity Reports (SARs), a type of BSA Information, is a violation of law subject to both criminal and civil penalties.

Suspicious activity reports (SARs) filed under the BSA must be treated with particular care given that they contain unsubstantiated allegations of possible criminal activity, akin to confidential informant tips. Such reports, or the fact they have been filed, may not be disclosed to any person by any government officer, employee, or contractor except for official purposes. 31 CFR § 1020.320(e); 31 U.S.C. 5318 (g)(2)(ii).

The unauthorized disclosure of a SAR is unlawful and subject to criminal and civil penalties. Federal law provides for civil penalties of up to \$100,000 for each violation (31 U.S.C. § 5321 and 31 CFR § 1010.820), and criminal penalties that include fines of up to \$250,000 and/or imprisonment of up to 5 years (31 U.S.C. § 5322 and 31 CFR § 1010.840). Criminal penalties may increase to include fines of up to \$500,000 and/or imprisonment of up to 10 years if the violation occurs “while violating another law of the United States.” (31 U.S.C. § 5322(b)).

Any suspected unauthorized disclosure of BSA Information will be referred to the appropriate officials for inquiry and/or investigation.