

## **PROHIBITION ON CORRESPONDENT ACCOUNTS FOR FOREIGN SHELL BANKS; RECORDS CONCERNING OWNERS OF FOREIGN BANKS AND AGENTS FOR SERVICE OF LEGAL PROCESS**

**Objective:** *Assess the bank's compliance with the Bank Secrecy Act (BSA) regulatory requirements regarding the prohibition on correspondent accounts for foreign shell banks. Assess the bank's compliance with BSA regulatory requirements concerning records of owners of foreign banks and agents for service of legal process.*

### **Regulatory Requirements**

This section outlines the regulatory requirements for banks in 31 CFR Chapter X regarding the prohibition on correspondent accounts for foreign shell banks and records concerning owners of foreign banks and agents for service of legal process. Specifically, it covers:

- [31 CFR 1010.605](#) (Definitions)
- [31 CFR 1010.630](#)

### **Prohibition on Correspondent Accounts for Foreign Shell Banks**

Banks are prohibited from establishing, maintaining, administering, or managing a correspondent account in the United States for, or on behalf of, a foreign shell bank, unless the foreign shell bank is a regulated affiliate.<sup>1</sup> A foreign shell bank is defined as a foreign bank without a physical presence<sup>2</sup> in any country.<sup>3</sup>

Many shell banks have been associated with jurisdictions with weak financial supervisory and enforcement regimes and have been misused to facilitate money laundering. Congress addressed shell banks in section 313 of the USA PATRIOT Act, determining that they pose such a significant risk for money laundering that an absolute ban on correspondent accounts with such entities is justified.<sup>4</sup> The intent of the prohibition is to prevent shell banks from gaining direct or indirect access to the U.S. financial system.

Banks must take reasonable steps to ensure that any correspondent account established, maintained, administered, or managed in the United States for a foreign bank is not being used

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<sup>1</sup> [31 CFR 1010.630\(a\)\(1\)](#); *see also* [31 CFR 1010.605\(n\)](#). A “regulated affiliate” is a foreign shell bank that is an affiliate of a depository institution, credit union, or foreign bank that maintains a physical presence in the United States or a foreign country, as applicable; and is subject to supervision by a banking authority in the country regulating such affiliated depository institution, credit union, or foreign bank.

<sup>2</sup> *See* [31 CFR 1010.605\(l\)](#) for definition of physical presence.

<sup>3</sup> [31 CFR 1010.605\(g\)](#).

<sup>4</sup> FinCEN, Final rule “[Correspondent Accounts for Foreign Shell Banks; Recordkeeping and Termination of Correspondent Accounts for Foreign Banks.](#)” 67 Fed. Reg. 60562, 60564 (Sept. 26, 2002).

by that foreign bank to indirectly provide banking services to a foreign shell bank, such as with nested correspondent accounts.<sup>5</sup>

## Records of Owners of Foreign Banks and Agents for Service of Process

Banks that maintain correspondent accounts in the United States for foreign banks must maintain records in the United States identifying the owners<sup>6</sup> of each such foreign bank whose shares are not publicly traded.<sup>7</sup> Banks must also record the name and street address of a person who resides in the United States and who is authorized and has agreed to be an agent to accept service of legal process for records regarding such an account.

## Safe Harbor

Banks are “deemed to be in compliance” with the prohibition on correspondent accounts for foreign shell banks and the requirements to maintain records of owners of foreign banks and agents to accept service of legal process if the bank obtains a certification or recertification from the foreign bank.<sup>8</sup> The certification or recertification must be provided at least once every three years, on or before the three-year anniversary of the initial or previous certification. A bank may satisfy the safe harbor provision by obtaining a copy of a foreign bank’s certification or recertification either directly from the foreign bank or indirectly, such as from a central database or from another financial institution, providing that the form and content of the certification are sufficient and reliable.<sup>9</sup> The U.S. Department of the Treasury, working with the financial industry and federal banking and law enforcement agencies, developed a certification process to assist banks in complying with these recordkeeping provisions. This process includes certification and recertification forms.<sup>10</sup> While banks are not required to use these forms, the forms are designed to provide a means of complying with the requirements.

## Interim Verification

Banks are responsible for reviewing certifications for reasonableness and accuracy. If at any time a bank knows, suspects, or has reason to suspect that any information contained in a

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<sup>5</sup> Nested correspondent banking refers to the use of a correspondent relationship by one or more financial institutions through their relationships with the direct customer of the correspondent bank. In the foreign correspondent banking relationship, the nested foreign financial institutions conduct transactions and obtain access to other financial services without being direct customers of the U.S. correspondent bank. For more information, see the subsection on Nested (Downstream) Correspondent Banking in the [Due Diligence Programs for Correspondent Accounts for Foreign Financial Institutions](#) section of this Manual.

<sup>6</sup> For purposes of this requirement, “owner” means any person who, directly or indirectly, owns, controls, or has the power to vote 25 percent or more of any class of voting securities or other voting interests of a foreign bank, or controls in any manner the election of a majority of the foreign bank’s directors (or individuals exercising similar functions). [31 CFR 1010.605\(j\)](#). Section 6308 of the AML Act of 2020 amended [31 USC 5318\(k\)\(3\)\(B\)\(i\)](#) to state that the term “owner” includes the owners of record and the beneficial owners of the foreign bank.

<sup>7</sup> [31 CFR 1010.630\(a\)\(2\)\(ii\)](#). A bank need not maintain records of the owners of any foreign bank that is required to file a form FR Y-7 (*Annual Report of Foreign Banking Organizations*) with the Federal Reserve Board.

<sup>8</sup> [31 CFR 1010.630\(b\)](#).

<sup>9</sup> FinCEN (February 3, 2006), FIN-2006-G003 “[Frequently Asked Questions, Foreign Bank Recertifications under 31 CFR 103.177.](#)”

<sup>10</sup> [Certification Regarding Correspondent Accounts for Foreign Banks](#) and [Recertification Regarding Correspondent Accounts for Foreign Banks](#) (OMB Control Number 1506-0043).

certification (or recertification) provided by a foreign bank, or any other information the bank relied on is no longer correct, the bank must request that the foreign bank verify or correct such information or take other appropriate measures to determine the accuracy of the information or to obtain correct information.<sup>11</sup>

## **Closure of Correspondent Accounts When Unable to Obtain Certification Information**

The regulation contains specific provisions as to when banks must close correspondent accounts. If the bank is unable to obtain the required certification (or recertification) or is unable to obtain documentation of the required information within 30 calendar days after the date the account is established, and at least once every three years thereafter, the bank shall close all correspondent accounts with that foreign bank. The closure must be within a commercially reasonable time, and the bank must not permit the foreign bank to establish any new positions or execute any transaction through the account, other than transactions necessary to close the account.<sup>12</sup>

When conducting an interim verification, if the bank has not received the requested information within 90 calendar days, the bank shall close all correspondent accounts with that foreign bank. The closure must be within a commercially reasonable time, and the bank must not permit that foreign bank to establish any new positions or execute any transaction through the account, other than those transactions necessary to close the account.<sup>13</sup>

A bank may not reestablish any account closed or establish any other correspondent account for that foreign bank until it obtains the required certification or recertification information, as appropriate.<sup>14</sup>

## **Recordkeeping Requirements**

A bank must retain the original of any documents provided by a foreign bank, and the original or copy of any document otherwise relied on for the purposes of this regulation, for at least five years after the date that a bank no longer maintains any correspondent account for that foreign bank.<sup>15</sup>

## **Examiner Assessment of Compliance with the Prohibition on Correspondent Accounts for Foreign Shell Banks and Requirements Concerning Records of Owners of Foreign Banks and Agents for Service of Legal Process**

Examiners should assess the adequacy of the bank's policies, procedures, and processes related to the prohibition on correspondent accounts for foreign shell banks and requirements concerning records of owners of foreign banks and agents to accept service of legal process. Specifically, examiners should determine whether these internal controls are designed to mitigate and manage money laundering, terrorist financing, and other illicit financial activity risks and to comply with requirements related to the prohibition on correspondent accounts for foreign shell banks and

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<sup>11</sup> [31 CFR 1010.630\(c\).](#)

<sup>12</sup> [31 CFR 1010.630\(d\)\(2\).](#)

<sup>13</sup> [31 CFR 1010.630\(d\)\(3\).](#)

<sup>14</sup> [31 CFR 1010.630\(d\)\(4\).](#)

<sup>15</sup> [31 CFR 1010.630\(e\).](#)

requirements concerning records of owners of foreign banks and agents to accept service of legal process. Examiners may review information, such as independent testing or audit reports, to aid in their assessment of the bank's compliance with the prohibition on correspondent accounts for foreign shell banks and requirements concerning records of owners of foreign banks and agents to accept service of legal process. Refer to the [\*Assessing the BSA/AML Compliance Program - BSA/AML Internal Controls\*](#) section of this Manual for more information.

## **PROHIBITION ON CORRESPONDENT ACCOUNTS FOR FOREIGN SHELL BANKS; RECORDS CONCERNING OWNERS OF FOREIGN BANKS AND AGENTS FOR SERVICE OF LEGAL PROCESS EXAMINATION AND TESTING PROCEDURES**

**Objective:** *Assess the bank’s compliance with the Bank Secrecy Act (BSA) regulatory requirements regarding prohibition on correspondent accounts for foreign shell banks. Assess the bank’s compliance with BSA regulatory requirements concerning records of owners of foreign banks and agents for service of legal process.*

1. Review the bank’s policies, procedures, and processes related to the prohibition on correspondent accounts for foreign shell banks and requirements concerning records of owners of foreign banks and agents to accept service of legal process. Verify that the bank’s policies, procedures, and processes, at a minimum:
  - Prohibit the bank from establishing, maintaining, administering, or managing a correspondent account in the United States for, or on behalf of, a foreign shell bank.<sup>16</sup> This includes reasonable steps to ensure that any correspondent account in the United States is not being used to indirectly provide banking services to a foreign shell bank.
  - Maintain records in the United States identifying the owners of each foreign bank whose shares are not publicly traded and the name and street address of a person who resides in the United States and is authorized, and has agreed to be, an agent to accept service of legal process.
  - Provide for obtaining, when the account is established and at least once every three years, a certification or recertification from the foreign bank with current information required on the bank, the owners, and the process agents.
  - Provide for reviews of reports of owners and agents (certifications or recertifications) for reasonableness and accuracy, including steps to request that the foreign bank verify or correct information, should the bank know, suspect, or have reason to suspect that any information is no longer correct.
  - Provide for closures of correspondent accounts within a commercially reasonable time when the bank is unable to obtain a certification or recertification within 30 calendar days after the date the account is established, and at least once every three years thereafter.
  - Provide for closures of correspondent accounts within a commercially reasonable time when the bank has not obtained verification of the information or corrected information within 90 calendar days after the date of undertaking the verification.

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<sup>16</sup> [31 CFR 1010.630\(a\)\(1\)](#); see also [31 CFR 1010.605\(n\)](#). A “regulated affiliate” is a foreign shell bank that is an affiliate of a depository institution, credit union, or foreign bank that maintains a physical presence in the United States or a foreign country, as applicable; and is subject to supervision by a banking authority in the country regulating such affiliated depository institution, credit union, or foreign bank.

- Prohibit the bank from reestablishing any account closed or establishing any other correspondent account for such foreign bank until it obtains the required information.
  - Provide for retention of the original or copy of any document relied upon for at least five years after the date that the bank no longer maintains any foreign correspondent account for such foreign bank.
2. On the basis of a risk assessment, prior examination reports, and a review of the bank's audit findings, if appropriate, select a sample of foreign correspondent bank accounts. From the sample selected, determine whether the bank:
- Maintains documentation to support that it does not establish, maintain, administer, or manage correspondent accounts for, or indirectly provide services to, foreign shell banks.
  - Maintains records identifying the owners of each foreign bank whose shares are not publicly traded and includes the name and street address of a person who resides in the United States and who is authorized, and has agreed to be, an agent to accept service of legal process.
  - Obtains an initial certification and a recertification at least once every three years from each foreign bank.
  - Maintains an interim verification program that reviews certifications and recertifications for reasonableness and accuracy and details the steps taken to verify and, if applicable, correct information.
  - Closes correspondent accounts within a commercially reasonable time when unable to obtain certifications within 30 calendar days after the date the account was established, and recertifications at least once every three years thereafter.
  - Closes correspondent accounts within a commercially reasonable time when unable to obtain verification of the information or corrected information within 90 calendar days after the date of undertaking the verification.
  - Maintains documentation that the bank has not reestablished any account closed or established any other correspondent account for a foreign bank, until it obtains the required certification or recertification information, as appropriate.
  - Retains the original or copy of any document relied upon for purposes of this regulation for at least five years after the date that the bank no longer maintains any foreign correspondent account for such foreign bank.
3. On the basis of examination and testing procedures completed, form a conclusion about the adequacy of policies, procedures, and processes the bank has developed to meet Bank Secrecy Act (BSA) regulatory requirements associated with the prohibition on correspondent accounts for foreign shell banks and requirements concerning records of owners of foreign banks and agents for service of legal process.