

(d) Release of records as incident to perfection of security interest, proving a claim in bankruptcy, collecting a debt, or processing an application with regard to a Government loan, loan guarantee, etc.

(1) Nothing in this chapter shall preclude a financial institution, as an incident to perfecting a security interest, proving a claim in bankruptcy, or otherwise collecting on a debt owing either to the financial institution itself or in its role as a fiduciary, from providing copies of any financial record to any court or Government authority.

(2) Nothing in this chapter shall preclude a financial institution, as an incident to processing an application for assistance to a customer in the form of a Government loan, loan guaranty, or loan insurance agreement, or as an incident to processing a default on, or administering, a Government guaranteed or insured loan, from initiating contact with an appropriate Government authority for the purpose of providing any financial record necessary to permit such authority to carry out its responsibilities under a loan, loan guaranty, or loan insurance agreement.

(Pub. L. 95-630, title XI, §1103, Nov. 10, 1978, 92 Stat. 3698; Pub. L. 99-570, title I, §1353(a), Oct. 27, 1986, 100 Stat. 3207-21; Pub. L. 100-690, title VI, §6186(a), Nov. 18, 1988, 102 Stat. 4357.)

AMENDMENTS

1988—Subsec. (c). Pub. L. 100-690 inserted “, corporation,” after “individual”.

1986—Subsec. (c). Pub. L. 99-570 inserted provisions that the disclosure of only the name or other identifying information concerning any individual or account involved in and the nature of any suspected illegal activity is permitted notwithstanding any constitution, law, or regulation of any State or political subdivision thereof to the contrary, and any financial institutions, officers, agents, or employees thereof making such disclosure shall not be liable to the customer under any State constitution or any Federal, State, or local law or regulation for such disclosure or failure to notify the customer thereof.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3402, 3411, 3413, 3414, 3415 of this title; title 42 section 1383.

§ 3404. Customer authorizations

(a) Statement furnished by customer to financial institution and Government authority; contents

A customer may authorize disclosure under section 3402(1) of this title if he furnishes to the financial institution and to the Government authority seeking to obtain such disclosure a signed and dated statement which—

- (1) authorizes such disclosure for a period not in excess of three months;
- (2) states that the customer may revoke such authorization at any time before the financial records are disclosed;
- (3) identifies the financial records which are authorized to be disclosed;
- (4) specifies the purposes for which, and the Government authority to which, such records may be disclosed; and
- (5) states the customer's rights under this chapter.

(b) Authorization as condition of doing business prohibited

No such authorization shall be required as a condition of doing business with any financial institution.

(c) Right of customer to access to financial institution's record of disclosures

The customer has the right, unless the Government authority obtains a court order as provided in section 3409 of this title, to obtain a copy of the record which the financial institution shall keep of all instances in which the customer's record is disclosed to a Government authority pursuant to this section, including the identity of the Government authority to which such disclosure is made.

(Pub. L. 95-630, title XI, §1104, Nov. 10, 1978, 92 Stat. 3698; Pub. L. 96-3, Mar. 7, 1979, 93 Stat. 5.)

AMENDMENTS

1979—Subsec. (d). Pub. L. 96-3 struck out subsec. (d) which had directed that all financial institutions promptly notify all of their customers of their rights under this chapter, that the Board of Governors of the Federal Reserve System prepare a statement of customers' rights under this chapter, and that the supplying of such a statement to their customers by the financial institutions be deemed compliance with the notification requirement.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3402, 3409 of this title; title 42 section 1383.

§ 3405. Administrative subpoena and summons

A Government authority may obtain financial records under section 3402(2) of this title pursuant to an administrative subpoena or summons otherwise authorized by law only if—

(1) there is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry;

(2) a copy of the subpoena or summons has been served upon the customer or mailed to his last known address on or before the date on which the subpoena or summons was served on the financial institution together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry:

“Records or information concerning your transactions held by the financial institution named in the attached subpoena or summons are being sought by this (agency or department) in accordance with the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.] for the following purpose: If you desire that such records or information not be made available, you must:

“1. Fill out the accompanying motion paper and sworn statement or write one of your own, stating that you are the customer whose records are being requested by the Government and either giving the reasons you believe that the records are not relevant to the legitimate law enforcement inquiry stated in this notice or any other legal basis for objecting to the release of the records.

“2. File the motion and statement by mailing or delivering them to the clerk of

any one of the following United States district courts:

“3. Serve the Government authority requesting the records by mailing or delivering a copy of your motion and statement to

“4. Be prepared to come to court and present your position in further detail.

“5. You do not need to have a lawyer, although you may wish to employ one to represent you and protect your rights.

If you do not follow the above procedures, upon the expiration of ten days from the date of service or fourteen days from the date of mailing of this notice, the records or information requested therein will be made available. These records may be transferred to other Government authorities for legitimate law enforcement inquiries, in which event you will be notified after the transfer.”; and

(3) ten days have expired from the date of service of the notice or fourteen days have expired from the date of mailing the notice to the customer and within such time period the customer has not filed a sworn statement and motion to quash in an appropriate court, or the customer challenge provisions of section 3410 of this title have been complied with.

(Pub. L. 95-630, title XI, §1105, Nov. 10, 1978, 92 Stat. 3699.)

REFERENCES IN TEXT

The Right to Financial Privacy Act of 1978, referred to in par. (2), is title XI of Pub. L. 95-630, Nov. 10, 1978, 92 Stat. 3697, which is classified generally to this chapter (§3401 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 3401 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3402, 3409, 3411 of this title; title 15 section 78u.

§ 3406. Search warrants

(a) Applicability of Federal Rules of Criminal Procedure

A Government authority may obtain financial records under section 3402(3) of this title only if it obtains a search warrant pursuant to the Federal Rules of Criminal Procedure.

(b) Mailing of copy and notice to customer

No later than ninety days after the Government authority serves the search warrant, it shall mail to the customer's last known address a copy of the search warrant together with the following notice:

“Records or information concerning your transactions held by the financial institution named in the attached search warrant were obtained by this (agency or department) on (date) for the following purpose: . You may have rights under the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.].”.

(c) Court-ordered delays in mailing

Upon application of the Government authority, a court may grant a delay in the mailing of the notice required in subsection (b) of this section, which delay shall not exceed one hundred

and eighty days following the service of the warrant, if the court makes the findings required in section 3409(a) of this title. If the court so finds, it shall enter an ex parte order granting the requested delay and an order prohibiting the financial institution from disclosing that records have been obtained or that a search warrant for such records has been executed. Additional delays of up to ninety days may be granted by the court upon application, but only in accordance with this subsection. Upon expiration of the period of delay of notification of the customer, the following notice shall be mailed to the customer along with a copy of the search warrant:

“Records or information concerning your transactions held by the financial institution named in the attached search warrant were obtained by this (agency or department) on (date). Notification was delayed beyond the statutory ninety-day delay period pursuant to a determination by the court that such notice would seriously jeopardize an investigation concerning . You may have rights under the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.].”.

(Pub. L. 95-630, title XI, §1106, Nov. 10, 1978, 92 Stat. 3700.)

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsec. (a), are set out in the Appendix to Title 18, Crimes and Criminal Procedure.

The Right to Financial Privacy Act of 1978, referred to in subsecs. (b) and (c), is title XI of Pub. L. 95-630, Nov. 10, 1978, 92 Stat. 3697, which is classified generally to this chapter (§3401 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 3401 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3402, 3409 of this title.

§ 3407. Judicial subpoena

A Government authority may obtain financial records under section 3402(4) of this title pursuant to judicial subpoena only if—

(1) such subpoena is authorized by law and there is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry;

(2) a copy of the subpoena has been served upon the customer or mailed to his last known address on or before the date on which the subpoena was served on the financial institution together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry:

“Records or information concerning your transactions which are held by the financial institution named in the attached subpoena are being sought by this (agency or department or authority) in accordance with the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.] for the following purpose: If you desire that such records or information not be made available, you must:

“1. Fill out the accompanying motion paper and sworn statement or write one of your own, stating that you are the customer