

**AGENDA
FINANCIAL SERVICES COMMISSION
OFFICE OF FINANCIAL REGULATION**

<https://www.flofr.com/sitePages/OFRNews.htm>

December 3, 2019

MEMBERS

Governor Ron DeSantis
Attorney General Ashley Moody
Chief Financial Officer Jimmy Patronis
Commissioner Nicole "Nikki" Fried

**Contact: Alexander "Alex" Anderson
Director of Legislative Affairs (OFR)
(850) 410-9601**

9:00 A.M.
LL-03, The Capitol
Tallahassee, Florida

ITEM	SUBJECT	RECOMMENDATION
1.	The OFR respectfully requests approval to file for final adoption amendments to rules 69V-560.702, 69V-560.703, and 69V-560.704, Florida Administrative Code (F.A.C.) relating to the regulation of money services businesses. (ATTACHMENT 1)	FOR APPROVAL

ATTACHMENT 1

**FINANCIAL SERVICES COMMISSION
OFFICE OF FINANCIAL REGULATION
AGENDA ITEM #1: REQUEST APPROVAL FOR FINAL ADOPTION**

Action Requested

The Office of Financial Regulation (“OFR”) respectfully requests approval to file for final adoption amendments to rules 69V-560.702, 69V-560.703, and 69V-560.704, Florida Administrative Code (F.A.C.) relating to the regulation of money services businesses.

A copy of incorporated materials is provided herein.

Rule 69V-560.702, F.A.C.:

A. Summary and Justification of Rules

The rule will update federal citations, incorporate federal regulations, and update law implemented.

B. Procedural History

On July 12, 2019, a Notice of Rule Development was published in the Florida Administrative Register (FAR) to advise the public of the development of changes to the rule chapter, and to provide that, if requested in writing, a rule development workshop would be held. No written requests for a workshop were received by the Office.

On July 25, 2019, the Financial Services Commission (Commission) approved the rule for proposed rulemaking. On July 26, 2019, the Notice of Proposed Rulemaking was published in the FAR. No requests for a hearing were received by the Office.

The Office received comments from the Joint Administrative Procedures Committee (JAPC) regarding the rule’s language and the need for the incorporation of federal materials. In response, the Office revised the rule and incorporated federal regulations.

On September 26, 2019, the Office held a public hearing on the rule; however, no comments were made regarding the rule. On September 30, 2019, the Office filed its response to JAPC’s comments and filed a Notice of Change in the FAR. After filing the Notice of Change, the Office received comments from JAPC regarding the need for additional changes to the rule and incorporated materials. In response, the Office revised the rule and incorporated materials. On November 8, 2019, the Office filed a Notice of Change in the FAR and filed its response with JAPC. To date, no comments have been received in response to the Notice of Change.

Rule 69V-560.703, F.A.C.:

A. Summary and Justification of Rules

The rule will update federal citations, establish record keeping requirements for money transmissions less than \$3,000, establish record keeping requirements for money transmissions in the amount of \$3,000 or more, update statutory citations, incorporate federal regulations, update rulemaking authority, and update law implemented.

B. Procedural History

On July 12, 2019, a Notice of Rule Development was published in the FAR to advise the public of the development of changes to the rule chapter, and to provide that, if requested in writing, a rule development workshop would be held. No written requests for a workshop were received by the Office.

On July 25, 2019, the Commission approved the rule for proposed rulemaking. On July 26, 2019, the Notice of Proposed Rulemaking was published in the FAR. No requests for a hearing were received by the Office.

The Office received comments from JAPC regarding the rule's language and the need for the incorporation of federal material. In response, the Office revised the rule and incorporated the federal regulations.

On September 26, 2019, the Office held a public hearing on the rule; however, no comments were made regarding the rule. On September 30, 2019, the Office filed its response to JAPC's comments and filed a Notice of Change in the FAR. After filing the Notice of Change, the Office received comments from JAPC regarding the need for additional changes to the rule and incorporated materials. In response, the Office revised the rule and incorporated materials. On November 8, 2019, the Office filed a Notice of Change in the FAR and filed its response with JAPC. To date, no comments have been received in response to the Notice of Change.

Rule 69V-560.704, F.A.C.:

A. Summary and Justification of Rules

The rule will delete the definition of "corporate payment instrument," clarify the term "its own commercial account," prohibit a licensee from granting another person access to its commercial account, delete provisions requiring a licensee to endorse all payment instruments at the time of acceptance, require a licensee to maintain a copy of a workers' compensation policy declaration page in certain instances, define term "individuals authorized," require a licensee to maintain a written corporate customer profile, delete obsolete provisions related to the electronic log journal, update statutory citations, delete obsolete provisions related to the check cashing database, incorporate federal regulations, and update law implemented.

B. Procedural History

On July 12, 2019, a Notice of Rule Development was published in the FAR to advise the public of the development of changes to the rule chapter, and to provide that, if requested in writing, a rule development workshop would be held. No written requests for a workshop were received by the Office.

On July 25, 2019, the Commission approved the rule for proposed rulemaking. On July 26, 2019, the Notice of Proposed Rulemaking was published in the FAR. No requests for a hearing were received by the Office.

The Office received public comments on the rule. In response, the Office amended the rule. In addition, the Office received comments from JAPC regarding the rule’s language and the need for the incorporation of federal materials. In response, the Office revised the rule and incorporated the federal regulations.

On September 26, 2019, the Office held a public hearing on the rule. Public comments were received regarding the rule; however, no changes were made. On September 30, 2019, the Office filed its response to JAPC’s comments and filed a Notice of Change in the FAR. After filing the Notice of Change, the Office received comments from JAPC regarding the need for additional changes to the rule and incorporated materials. In response, the Office revised the rule and incorporated materials. On November 8, 2019, the Office filed a Notice of Change in the FAR and filed its response with JAPC. To date, no comments have been received in response to the Notice of Change.

Proposed Text of Rules	Page
69V-560.702 Payment Instrument Sellers	
69V-560.703 Money Transmitters	
69V-560.704 Records to Be Maintained by Check Cashers	

69V-560.702 Payment Instrument Sellers.

(1) No change.

(a) through (c) No change.

(2) For all transactions that exceed \$3,000, the payment instrument seller shall also obtain and record the information required by 31 C.F.R. ss. 1010.415 in accordance with section 560.1235(1), F.S., 103.29 (a)(2), effective March 1, 2011 as it existed on September 4, 2008. For purposes of this section multiple payment instruments purchased in one or more transactions on a single day shall be aggregated.

(3) No change.

(4) Every payment instrument seller shall develop and implement written policies and procedures to monitor compliance with applicable state and federal law by its authorized vendors. The policies and procedures must should include, but are not limited to compliance with the following applicable statutes and regulations:

(a) through (b) No change.

(c) Office of Foreign Asset Control regulations: 31 C.F.R. Part 500; 31 C.F.R. s. 594.201 effective July 1, 2018, and available at <http://www.flrules.org>; 31 C.F.R. s. 594.204 effective July 1, 2018, and available at <http://www.flrules.org>; 31 C.F.R. s. 501.603 effective July 1, 2018, and available at <http://www.flrules.org>; and 31 C.F.R. s. 501.604, effective March 1, 2011 as these regulations existed on September 4, 2008 July 1, 2018, and available at <http://www.flrules.org>.

(d) Gramm-Leach-Bliley Act regarding protection of personal information: 15 U.S.C. ss. 6801 effective July 21, 2010, and available at <http://www.flrules.org>; 6802 effective July 21, 2010, and available at <http://www.flrules.org>, and 6803 effective December 4, 2015 and available at <http://www.flrules.org>

<http://www.flrules.org> (Thomson Reuter/West 2008) (current through P.L. 110-316) (excluding P.L. 110-234, 110-246, and 110-315).

(e) No change.

(5) No change.

(6) Subpoenas, warrants, and other requests from regulatory, law enforcement, or prosecutorial agencies and records relating to training as required by 31 C.F.R. s. 1022.210, effective July 1, 2018 ~~July 29, 2011~~ 103.125, as it existed on September 4, 2008, and available at <http://www.flrules.org>, shall be maintained so that they are retrievable as required by section 560.1105(1), F.S.

(7) No change.

(8) All federal laws and regulations referenced in subsections (4) and (6) of this rule are hereby incorporated by reference and available on the Office's website at www.flofr.com and by mail from the Office of Financial Regulation, 200 East Gaines Street, Tallahassee, Florida 32399-0376.

Rulemaking Authority 560.105, 560.2085 FS. Law Implemented 560.1105(~~H~~), 560.1235, 560.2085, 560.211 FS. History—New 9-24-97, Formerly 3C-560.702, Amended 1-13-09,_____.

69V-560.703 Money Transmitters.

(1) A money transmitter shall maintain records of the following information for all inbound and outbound transmissions, which must be obtained for each money transmission less than \$3,000, regardless of the amount:

(a) The name ~~and address~~ of the sender;

(b) No change.

(c) No change.

~~(d) The name and address of the beneficiary or recipient;~~

~~(d)~~ (e) Any instructions or messages relating to the transmission;

~~(f) The method of payment (e.g., currency, check, credit card, etc.);~~

~~(e)~~ (g) Transaction date;

~~(h) Time of the transaction;~~

~~(f)~~ (i) Transaction amount in U.S. Dollars;

~~(j) Fees charged;~~

~~(g)~~ (j) Authorized vendor name; and,

~~(h)~~ (k) Authorized vendor/foreign affiliate code/identifier as assigned by the licensee.

(2) For each all money transmission in the amount of transactions that exceed \$3,000 or more, compliance with the record keeping requirements contained within 31 C.F.R. Part 1010, Subpart D, effective July 1, 2018, and available at <http://www.flrules.org>, will satisfy the record keeping requirements of chapter 560, F.S. For purposes of compliance with 31 C.F.R. 1010, Subpart D, a money transmitter is also subject to the additional record keeping requirements for “other than established customers”. ~~the money transmitter shall, in addition to the items in subsection (1), obtain and record:~~

~~(a) Social security number, passport number, or alien registration of the sender;~~

- (b) Name and account number of recipient's financial institution, if applicable; and,
- (e) Sender's photo identification number, type, and state/country of issuance.

(3) No change.

(4) Every money transmitter shall develop and implement written policies and procedures to monitor compliance with applicable state and federal law by its authorized vendors. These policies and procedures ~~must should~~ include, ~~but are not limited to~~ compliance with the following applicable statutes and regulations:

(a) through (b) No change.

(c) Office of Foreign Asset Control regulations: ~~31 C.F.R. Part 500~~; 31 C.F.R. s. 594.201, effective July 1, 2018, and available at <http://www.flrules.org>; 31 C.F.R. s. 594.204, effective July 1, 2018, and available at <http://www.flrules.org>; 31 C.F.R. s. 501.603, effective July 1, 2018, and available at <http://www.flrules.org>; and 31 C.F.R. s. 501.604, effective July 1, 2018, and available at <http://www.flrules.org> ~~March 1, 2011 as these regulations existed on September 4, 2008.~~

(d) Gramm-Leach-Bliley Act regarding protection of personal information: 15 U.S.C. ss. 6801, effective July 21, 2010, and available at <http://www.flrules.org>, 6802, effective July 21, 2010, and available at <http://www.flrules.org>, and 6803, effective December 4, 2015, and available at <http://www.flrules.org> (Thomson Reuter/West 2008) (current through P.L. 110-316) (excluding P.L. 110-234, 110-246, and 110-315).

(e) Sections 817.568 and 501.171 ~~817.568~~, F.S., regarding fraudulent use of personal information and breaches of information security.

(5) No change.

(6) Subpoenas, warrants and other requests from regulatory, law enforcement, and prosecutorial agencies, and records related to training as required by 31 C.F.R. s. 1022.210, effective July 1, 2018 ~~July 29, 2011~~ and available at <http://www.flrules.org> ~~103.125, as it existed on September 4, 2008,~~ and shall be maintained so that they are retrievable as required by section 560.1105(1), F.S.

(7) No change.

(8) All federal laws and regulations referenced in this rule are hereby incorporated by reference and available on the Office's website at www.flofr.com and by mail from the Office of Financial Regulation, 200 East Gaines Street, Tallahassee, Florida 32399- 0376.

Rulemaking Authority 560.105, 560.1105, 560.2085, 560.211 FS. Law Implemented 560.1105(4), 560.1235, 560.2085, 560.211 FS. History—New 9-24-97, Formerly 3C-560.703, Amended 1-13-09, _____.

69V-560.704 Records to Be Maintained by Check Cashers.

(1) For purposes of this rule the term:

(a) ~~“Corporate payment instrument,” as referenced in section 560.310(2)(a), F.S., means a payment instrument on which the payee named on the face of the payment instrument is not a natural person.~~

~~(a)~~(b) “Dormant customer” shall include any customer who has not transacted business with the licensee within the past one hundred eighty (180) days.

(b)(e)The phrase “its own commercial account” as referenced in section 560.309(3), F.S., means a depository account in a federally insured financial institution listing the licensee as the an exclusive owner of the account. The authorized signatories must have a controlling interest as described in section 560.127, F.S. A licensee may not grant, through power of attorney, written agreement, or any other means, another person access to its own commercial account to withdraw, withhold, or deposit money.

(2) Every check casher shall maintain legible records of all payment instruments cashed. The records shall include

the following information with respect to each payment instrument accepted by the licensee:

(a) A copy of all payment instruments accepted and endorsed by the licensee to include the face and reverse (front and back) of the payment instrument. Copies shall be made after each payment instrument has been endorsed with the legal name of the licensee. ~~Endorsements on all payment instruments accepted by the check casher shall be made at the time of acceptance.~~

(b) through (c) No change.

(3) No change.

(a) through (c) No change.

(4) In addition to the records required in subsections (2) and (3), for payment instruments exceeding \$1,000.00, the check casher shall:

(a) through (c) No change.

(d) Create and maintain a customer file for each entity listed as the payee on corporate payment instruments ~~and third-party payment instruments~~ accepted by the licensee. Each customer file must include, at a minimum, the following information:

1. through 4. No change.

5. If the entity has an active workers’ compensation policy, the licensee must also maintain a copy of the policy declaration page or other document provided by the insurer indicating the amount of coverage.

6. Documentation of individuals authorized to negotiate payment instruments on the corporation or fictitious entity’s behalf including corporate resolutions ~~or powers of attorney~~. Payment instruments for insurance claims where there are multiple payees shall be exempt from this provision provided that the maker of the check is an insurance company and the licensee has obtained and retained documentation as to the identity of the natural person listed as a payee on such payment instrument. For purposes of this rule, the term “individuals authorized” is limited to an officer of the corporate payee named on the instrument’s face.

7. A written corporate customer profile which includes: the full legal name of each beneficial owner, as defined in 31 C.F.R. s. 1010.230(d), **effective July 1, 2018, is hereby incorporated by reference and available at <http://www.flrules.org>**, of the corporate customer; an explanation of the customer’s business model; type(s) of services offered; projected annual volume of check cashing; and **annual daily** check cashing limits as they relate to the corporate customer’s workers’ compensation policy coverage limits.

(e) No change.

~~(5)(a) In addition to the records required in subsections (2) and (3), for payment instruments \$1,000.00 or more, the check casher shall create and maintain an electronic log of payment instruments accepted which includes, at a minimum, the following information:~~

- ~~1. Transaction date;~~
- ~~2. Payor name;~~
- ~~3. Payee name;~~
- ~~4. Conductor name, if other than the payee;~~
- ~~5. Amount of payment instrument;~~
- ~~6. Amount of currency provided;~~
- ~~7. Type of payment instrument;~~
 - ~~a. Personal check,;~~
 - ~~b. Payroll check;~~
 - ~~e. Government check;~~
 - ~~d. Corporate check;~~
 - ~~e. Third party check; or~~
 - ~~f. Other payment instrument;~~
- ~~8. Fee charged for the cashing of the payment instrument;~~
- ~~9. Branch/Location where instrument was accepted;~~
- ~~10. Identification type presented by conductor; and,~~
- ~~11. Identification number presented by conductor.~~

~~(b) Electronic logs shall be maintained in an electronic format that is readily retrievable and capable of being exported to most widely available software applications including Microsoft EXCEL.~~

~~(6) Check Cashing Database: A Commencing on September 3, 2015, but no later than October 1, 2015, every check casher must in accordance with section 560.310(2)(d), F.S., submit the following information into the check cashing database prior to the check casher providing currency (or payment instrument if a Part II licensee):~~

- ~~(a) 1. Transaction date;-~~
- ~~(b) 2. Payor name as displayed on the payment instrument;-~~
- ~~(c) 3. Payee name as displayed on the payment instrument;-~~
- ~~(d) 4. Conductor name, if different from the payee name;-~~
- ~~(e) 5. Amount of the payment instrument;-~~
- ~~(f) 6. Amount of currency provided;-~~
- ~~(g) 7. Type of payment instrument;-~~
- ~~(h) 8. Amount of the fee charged for cashing of the payment instrument;-~~
- ~~(i) 9. Branch or location where the payment instrument was accepted;-~~
- ~~(j) 10. The type of identification and identification number presented by the payee or conductor;-~~
- ~~(k) 11. Payee's workers' compensation insurance policy number or exemption certificate number, if a corporate payment instrument and an active policy exists;-~~
- ~~(l) 12. Payee Corporate Document Number as issued by the Secretary of State, if a corporate payment instrument;- and~~

(m)13. Payee Federal Employer Identification Number, if a corporate payment instrument.

~~(6) Upon commencement of a check-casher entering check-cashing transaction into the database pursuant to subsection (6), a check-casher will no longer be required to record check-cashing transaction on an electronic log as required pursuant to paragraphs (5)(a) and (b). The check-casher must continue to retain the electronic log in its records for all transactions recorded prior to utilizing the check-cashing database.~~

Rulemaking Authority 560.105, 560.310 FS. Law Implemented 560.1105, 560.310 FS. History—New 9-24-97, Amended 11-4-01, Formerly 3C-560.704, Amended 1-13-09, 10-12-15,

_____.

JAPC changes to the rule appear in pink.

Public comment changes to the rule appear in green.

Agency changes to the rule appear in purple.



Senator Linda Stewart, Chair
Representative Erin Grall, Vice Chair
Senator Janet Cruz
Senator Ed Hooper
Senator Keith Perry
Senator Tom A. Wright
Representative Vance Arthur Aloupis, Jr.
Representative James "J.W." Grant
Representative Brett Thomas Hage
Representative Cindy Polo
Representative Holly Raschein
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THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

August 5, 2019

Ms. Sheila Harley
Assistant General Counsel
Office of Financial Regulation
101 East Gaines Street
Tallahassee, Florida 32399-0379

**RE: Department of Financial Services, Office of Financial Regulation
Rules 69V-560.1000, .1012, .1013, .102, .103, .107, .201, .302, .504, .602,
.606, .608, .609, .702, .703, .704, .7041, .7042, .7043, .707, .902, .903, .904,
.905, .907, .908, .909, .910, .911, .912 and .913**

Dear Ms. Harley:

I have reviewed the above-referenced rules and offer the following comments for your consideration and response:

69V-560.1000: Law Implemented
Please review and advise whether section 560.113, Florida Statutes, should be cited as a law implemented by this rule.

69V-560.1000(1): Incorporated Material—OFR-560-09, Disciplinary Guidelines for Money Services Businesses

Page 7, Violation #42: It appears that since a suspension imposed under this citation will be in effect the duration of the pendency of the criminal matter it is incorrect to indicate in the columns that a suspension of an A, B, or C term will be imposed. Please review and advise whether a revision is necessary for clarity and comprehension.

69V-560.1000(2)(a): This paragraph indicates that, depending on the severity and repetition of specific violations, the Office may impose a fine, suspension, or revocation, or any combination thereof. Please advise whether this authority is executed under the guidelines as incorporated in subsection

(1) of this rule. Additionally, are the severity and repetition factors evaluated consistent with the aggravating and repeat occurrence standards as set forth in subsection (3) of this rule? If not, by what definitions and standards does the Office utilize for this determination? *See* § 120.52(8)(d), Fla. Stat. (2018).

69V-560.102:

Rulemaking Authority

Please review whether section 215.405, Florida Statutes, is appropriately cited as providing rulemaking authority for the content of this rule as it appears that the rule states that the cost of fingerprinting is borne by the applicant and not the Office.

Law Implemented

Please review whether sections 215.405 and 560.118, Florida Statutes, are appropriately cited as laws implemented by the content of this rule.

69V-560.102(3):

An extension to the 45-day requirement for requested information with a showing of good cause is proposed in this subsection. It is unclear by what standards the Office will determine whether good cause has been shown for this extension or what elements must be set forth by an applicant for a showing of good cause. Pursuant to section 120.52(8)(d), Florida Statutes, a rule that is vague, fails to establish adequate standards for agency decisions, or vests unbridled discretion in the agency is an invalid exercise of delegated legislative authority. Please review and advise.

69V-560.103(5):

Due to amendments effective July 1, 2019, to this statute, it appears that the citation should be to section 560.404(24), Florida Statutes.

69V-560.103(7):

Please ensure this subsection is indented prior to filing for adoption for consistent formatting.

69V-560.107:

Law Implemented

Please review whether section 560.208, Florida Statutes, is properly cited as a law implemented by the content of this rule.

69V-560.107(2):

Amendments to this subsection require the submission of termination information “promptly,” but the rule does not set forth by what standards the Office determines promptness. *See* § 120.52(8)(d), Fla. Stat. (2018). Please review and advise.

69V-560.201:

Rulemaking Authority

Please review whether section 215.405, Florida Statutes, is appropriately cited as providing rulemaking authority for the content of this rule as it appears that the cost of fingerprinting is borne by the applicant and not the Office.

Law Implemented

Please review whether section 215.405, Florida Statutes, is appropriately cited as a law implemented by the content of this rule.

69V-560.201(5): As this subsection pertains to applications triggered by the acquisition of a controlling interest, please review whether the citation should be to section 560.126(3)(a), Florida Statutes, and not to subsection (2) of that statute. Also, please clarify or correct what subsection (1) is being referenced. It is unclear if this referred to the prior version of this rule or the statute.

69V-560.201(6): As this subsection pertains to applications triggered by the acquisition of a controlling interest, please review whether the citation should be to section 560.126(3)(a), Florida Statutes, and not to subsection (2) of that statute.

69V-560.302: Law Implemented

Please review whether section 560.403, Florida Statutes, is properly cited as a law implemented by the content of this rule.

69V-560.504: Rulemaking Authority

Please review whether section 560.1091, Florida Statutes, is properly cited as providing rulemaking authority for the content of this rule as it appears that this rule does not include contracted examiners.

Law Implemented

Please review whether section 560.1091, Florida Statutes, is properly cited as a law implemented by the content of this rule as it appears that this rule does not include contracted examiners.

69V-560.606: Law Implemented

Please review whether section 560.209, Florida Statutes, should be cited as a law implemented by the content of this rule.

69V-560.606(4): Section 560.209(2), Florida Statutes, requires these licensees to submit annual financial audit reports to the Office. Proposed amendments set forth that the Office may require the submission of “interim financial audit reports” for the purposes of substantiating the licensee’s net worth. Please advise as to the Office’s authority to require a financial audit report more than annually.

69V-560.609(1)-(3): Sections 560.1235(1) and 560.309(5), Florida Statutes, specifically require licensees to comply with the requirements in 31 C.F.R. §1022.320. It is unclear why the Office is incorporating by reference a specific version of this federal regulation when these requirements are set forth statutorily

and tied to the current version of that regulation. *See* § 120.52(8)(c), Fla. Stat. (2018). Please review and advise.

69V-560.702(2): Please see the comment above for rule 69V-560.609(1)-(3) as it relates to the reference to 31 C.F.R. §1010.415 in this subsection.

69V-560.702(4): This subsection states that “[t]he policies and procedures should include, but are not limited to compliance with the following...” The use of “should” appears to render this provision discretionary for compliance. Is this the Office’s intention? Assuming this is a requirement, the use of “but are not limited to” implies that the Office may impose additional unlisted requirements for compliance. Pursuant to section 120.52(8)(d), Florida Statutes, a proposed rule is an invalid exercise of delegated legislative authority if the rule is vague, fails to establish standards for agency decisions, or vests unbridled discretion in the agency. Please review and revise as necessary.

69V-560.702(4)(c)-(d): Please review advise whether the Office’s use of the referenced federal material constitutes a purpose for which incorporation by reference is required by chapter 120, Florida Statutes. Additionally, it appears that the reference to 31 C.F.R. Part 500 should be removed as this part is only reserved and contains no content.

69V-560.702(6): Please see the comment above for rule 69V-560.702(4)(c)-(d).

69V-560.702(8): This subsection purports to incorporate by reference all federal laws and regulations referenced in the entirety of this rule. Depending on the Office’s response to the comments above regarding this rule, a revision may be necessary to this subsection. Should the Office seek to incorporate updated material, a copy of each item should be provided to the Committee. The official version of the federal statute or regulation should be utilized, as well as the official version date of the material. Please review and advise.

69V-560.703: Law Implemented
Please review whether section 560.2085, Florida Statutes, should be cited as a law implemented by the content of this rule.

69V-560.703(2): Material referenced in this subsection appears to be utilized in a manner requiring incorporation by reference. Any material incorporated by reference should be specifically identified as such and the reference must contain the effective date of the incorporated material as required by rule 1-1.013(2)(a). Additionally, a copy of each item should be provided to the Committee. As this material is a federal regulation, please ensure that

the office version of this material is incorporated and provided. It appears that the most recent update of the cited regulation was July 1, 2018.

69V-560.703(4): Please see the comment above related to rule 69V-560.702(4).

69V-560.703(4)(c)-(d): Please see the comment above for rule 69V-560.702(4)(c)-(d).

69V-560.703(6): Please see the comment above for rule 69V-560.702(4)(c)-(d).

69V-560.703(8): Please see the comment above related to rule 69V-560.702(8).

69V-560.704: Law Implemented

It appears that section 560.209, Florida Statutes, should be cited as a law implemented by the content of this rule.

69V-560.704(4)(d)7.: Material that meets the definition of a rule in section 120.52(16), Florida Statutes, should be specifically incorporated by reference in rule. *See*. § 120.54(1)(i), Fla. Stat. (2018), rule 1-1.013, F.A.C. As referenced, it appears that the cited federal regulation meets this definition. Please review and advise. If incorporated by reference, a reference to the effective date of this regulation is required and a copy must be provided to the Committee. As this material is a federal regulation, please ensure that the office version of this material is incorporated and provided. It appears that the most recent update of the cited regulation was July 1, 2018.

69V-560.707(1)(d)-(I): The notice of proposed rule indicates that subparagraphs (1)(d)1.-2. have no changes and also that paragraph (1)(d) is being revised to be (1)(e). There do not appear to be any paragraphs being added that would cause the shift from (1)(d) to (1)(e), and this shift affects each of the paragraphs that follow. Also, it is unclear what is being referred to by the “no change” indication for the subparagraphs (1)(d)1.-2. Please review the notice and publish a corrective notice to set forth the amendments to this rule.

69V-560.707(1)(i): The cross-reference in this paragraph may require updating in light of the resolution of the above comment for this rule.

69V-560.902(7): Please be aware that the first letter of this subsection was inadvertently deleted in the published notice.

69V-560.902(8): It appears that the citation should be corrected to rule 69V-560.903(1), Florida Administrative Code.

- 69V-560.902(10):** The use of “includes but is not limited to” implies that the Office may consider additional undefined elements for compliance. Pursuant to section 120.52(8)(d), Florida Statutes, a proposed rule is an invalid exercise of delegated legislative authority if the rule is vague, fails to establish standards for agency decisions, or vests unbridled discretion in the agency. Please review and revise as necessary.
- 69V-560.903(1)(f):** This paragraph indicates that the database will automatically close the transaction after 14 days if the provider has updated the transaction status to reflect the deposit and no further action has been taken to indicate that the check was returned. It is unclear whether this language is consistent with the newly established deferred presentment transaction that is repayable in installments as there will exist checks that are deposited while the transaction is still open and not fully fulfilled during the pendency of that transaction. Please review and advise.
- 69V-560.903(1)(f)1.:** The reference to subparagraph 69V-560.903(1)(f) should be to paragraph.
- 69V-560.903(2)(a)3.:** The reference to subparagraph 69V-560.903(1)(f) should be to paragraph.
- 69V-560.904(1)(a)6.:** Please correct the percentage amount of the transaction fee example.
- 69V-560.904(1)(b)6.:** Please correct the percentage amount of the transaction fee example. Please note that the percentage amount is for these types of transactions with installments varies from those without.
- 69V-560.904(2)(a)-(b):** The semicolons at the ends of these paragraphs should be periods.
- 69V-560.904(5):** In the second sentence of the example notice the word “to” should be inserted between payment and be. Additionally, a period or semicolon is needed between transaction and therefore, and a comma is needed after therefore.
- 69V-560.905(2):** The published notices indicate that paragraph (1)(a) has no changes and that subsection (2) reads, “A \$50 transaction fee (\$500 X 10%); and;”. The existing rule contains paragraphs (1)(a)-(c), with the existing (1)(b) being what the Office labeled as subsection (2) in the notice. The notice lists a paragraph (2)(a); however, this is actually (1)(c) in the existing rule. As a result of this, what is labeled as the new subsection (3) should actually be subsection (2), with the subsequent subsections adjusted accordingly. Please ensure the subdivisions are correctly set forth based on the existing rule language prior to adoption.
- 69V-560.905(3)(d):** Pursuant to the above comment it appears this should be paragraph (2)(d). Please advise as to why “Total of Payments” is capitalized in this

paragraph. Additionally, the language indicates that the provider must refund overcharges within “twenty (10) calendar days.” Please revise for consistency.

- 69V-560.907(1)(a):** The reference to section 560.307(2), Florida Statutes, requires revision as that statute no longer exists. Additionally, please review the citation to section 560.208(2), Florida Statutes, as it appears that it should be section 560.208(1).
- 69V-560.907(2)(a):** Is the form referenced in this paragraph form OFR-560-02, which bears the same name? If so, please revise the form number for consistency.
- 69V-560.908(2)(c):** Please be aware that the closing parentheses around this paragraph designation was inadvertently deleted in the published notice.
- 69V-560.908(4)(a)2.:** Please review whether the reference should be to section 560.404(22), Florida Statutes, as it appears the subsection contains the grace period request provision.
- 69V-560.908(4)(a)4.:** Please ensure that the coding to strike the word “The” from the beginning of this subparagraph is appropriately indicated.
- 69V-560.908(4)(b)2.:** The reference should be to section 560.404(23), Florida Statutes, as the cited provision contains notice requirements.
- 69V-560.908(4)(b)3.:** Please ensure that the coding to strike the word “The” from the beginning of this subparagraph is appropriately indicated.
- 69V-560.908(4)(b)4.:** Please ensure that the coding to strike the word “The” from the beginning of this subparagraph is appropriately indicated.
- 69V-560.908(6):** Please capitalize the “v” in the rule citation in this subsection.
- 69V-560.908(9)(a):** The reference to paragraph should be to subsection.
- 69V-560.909(2):** The reference to subparagraph should be to subsection.
- 69V-560.908(2)(c):** It is unclear with the proposed amendments to this paragraph from what point the 24-hour time period referenced is measured. Please revise to clarify within 24-hours from when the provider must upload the information.
- 69V-560.911(4):** It is unclear under what authority the Office may set forth that the database vendor may request any information from an ineligible drawer that it deems necessary. Presuming such authority exists, this language appears

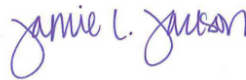
to delegate to the third party vendor the ability to require *any* information, related or not, to the transaction. Please review and advise as to the Office's authority for this provision.

69V-560.913(1): Section 560.404(24)(d), Florida Statutes, requires the notification to occur within 15 business days after ceasing operations. This subsection should be amended in accordance with the statutory language as it currently states that the notification must occur within 15 days. *See* §120.52(8)(c), Fla. Stat. (2018).

69V-560.913(2): The reference to paragraph should be to subsection.

If you have questions, please do not hesitate to contact me. Otherwise, I look forward to your written response.

Sincerely,



Jamie L. Jackson
Chief Attorney

JLJ:TL WORD/JACKSON/69V_560.1000LS080519_166669_166699
JLJ:TL WORD/JACKSON/ERR 69V_560.1000LS080519_5608_5629

Notice of Change/Withdrawal

DEPARTMENT OF FINANCIAL SERVICES

Finance

RULE NOS.:RULE TITLES:

69V-560.702 Payment Instrument Sellers

69V-560.703 Money Transmitters

69V-560.704 Records to Be Maintained by Check Cashers

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 45 No. 145, July 26, 2019 issue of the Florida Administrative Register.

These changes are made in response to comments made by the Joint Administrative Procedures Committee.

69V-560.702 Payment Instrument Sellers.

(1) No change.

(2) No change.

(3) No change.

(4) Every payment instrument seller shall develop and implement written policies and procedures to monitor compliance with applicable state and federal law by its authorized vendors. The policies and procedures must include compliance with the following applicable statutes and regulations:

(a) through (b) No change.

(c) Office of Foreign Asset Control regulations: 31 C.F.R. s. 594.201, ~~Form OFR 560-10~~, effective July 1, 2018, and available at <http://www.flrules.org>; 31 C.F.R. s. 594.204, ~~Form OFR 560-11~~, effective July 1, 2018, and available at <http://www.flrules.org>; 31 C.F.R. s. 501.603, ~~Form OFR 560-12~~, effective July 1, 2018, and available at <http://www.flrules.org>; and 31 C.F.R. s. 501.604, ~~Form OFR 560-13~~, effective July 1, 2018, and available at <http://www.flrules.org>.

(d) Gramm-Leach-Bliley Act regarding protection of personal information: 15 U.S.C. ss. 6801 ~~Form OFR 560-14~~, effective July 21, 2010, and available at <http://www.flrules.org>; 6802 ~~Form OFR 560-15~~, effective July 21, 2010, and available at <http://www.flrules.org>, and 6803 ~~Form OFR 560-16~~, effective December 4, 2015, and available at <http://www.flrules.org>.

(e) No change.

(5) No change.

(6) Subpoenas, warrants, and other requests from regulatory, law enforcement, or prosecutorial agencies and records relating to training as required by 31 C.F.R. s. 1022.210, ~~Form OFR 560-17~~, effective July 1, 2018, and available at <http://www.flrules.org>, shall be maintained so that they are retrievable as required by section 560.1105(1), F.S.

(7) No change.

(8) All ~~forms~~ federal laws and regulations referenced in subsections (4) and (6) of this rule are hereby incorporated by reference and available on the Office's website at www.flofr.com and by mail from the Office of Financial Regulation, 200 East Gaines Street, Tallahassee, Florida 32399-0376.

Rulemaking Authority 560.105, 560.2085 FS. Law Implemented 560.1105, 560.1235, 560.2085, 560.211 FS. History—New 9-24-97, Formerly 3C-560.702, Amended 1-13-09,_____.

69V-560.703 Money Transmitters.

(1) No change.

(2) For each money transmission in the amount of \$3,000 or more, compliance with the record keeping requirements contained within 31 C.F.R. Part 1010, Subpart D, ~~Form OFR 560-18~~, effective July 1, 2018, and available at <http://www.flrules.org>, will satisfy the record keeping requirements of chapter 560, F.S. For purposes of compliance with 31 C.F.R. 1010, Subpart D, a money transmitter is also subject to the additional record keeping requirements for "other than established customers".

(a) through (c) No change.

(3) No change.

(4) Every money transmitter shall develop and implement written policies and procedures to monitor compliance with applicable state and federal law by its authorized vendors. These policies and procedures must include compliance with the following applicable statutes and regulations:

(a) through (b) No change.

(c) Office of Foreign Asset Control regulations: 31 C.F.R. s. 594.201 ~~Form OFR 560-10~~, effective July 1, 2018, and available at <http://www.flrules.org>; 31 C.F.R. s. 594.204 ~~Form OFR 560-11~~, effective July 1, 2018, and available at <http://www.flrules.org>; 31 C.F.R. s. 501.603 ~~Form OFR 560-12~~, effective July 1, 2018, and available at <http://www.flrules.org>; and 31 C.F.R. s. 501.604, ~~Form OFR 560-13~~, effective July 1, 2018, and available at <http://www.flrules.org>.

(d) Gramm-Leach-Bliley Act regarding protection of personal information: 15 U.S.C. ss. 6801, ~~Form OFR 560-14~~, effective July 21, 2010, and available at <http://www.flrules.org>, 6802, ~~Form OFR 560-15~~, effective July 21, 2010, and available at <http://www.flrules.org>, and 6803, ~~Form OFR 560-16~~, effective December 4, 2015, and available at <http://www.flrules.org>.

(e) No change.

(5) No change.

(6) Subpoenas, warrants and other requests from regulatory, law enforcement, and prosecutorial agencies, and records related to training as required by 31 C.F.R. s. 1022.210, ~~Form OFR 560-17~~, effective July 1, 2018, and available at <http://www.flrules.org> and shall be maintained so that they are retrievable as required by section 560.1105(1), F.S.

(7) No change.

(8) All federal laws and regulations referenced in this rule are hereby incorporated by reference and available on the Office's website at www.flofr.com and by mail from the Office of Financial Regulation, 200 East Gaines Street, Tallahassee, Florida 32399- 0376.

Rulemaking Authority 560.105, 560.1105, 560.2085, 560.211 FS. Law Implemented 560.1105, 560.1235, 560.2085, 560.211 FS. History--New 9-24-97, Formerly 3C-560.703, Amended 1-13-09, _____.

69V-560.704 Records to Be Maintained by Check Cashers.

(1) No change.

(2) No change.

(3) No change.

(4) In addition to the records required in subsections (2) and (3), for payment instruments exceeding \$1,000.00, the check casher shall:

(a) through (c) No change.

(d) Create and maintain a customer file for each entity listed as the payee on corporate payment instruments accepted by the licensee. Each customer file must include, at a minimum, the following information:

1. through 6. No change.

7. A written corporate customer profile which includes: the full legal name of each beneficial owner, as defined in 31 C.F.R. s. 1010.230(d), ~~Form OFR 560-19~~, effective July 1, 2018, is hereby incorporated by reference and available at <http://www.flrules.org>, of the corporate customer; an explanation of the customer's business model; type(s) of services offered; projected annual volume of check cashing; and annual check cashing limits as they relate to the corporate customer's workers' compensation policy coverage limits.

(e) No change.

(5) No change.

Rulemaking Authority 560.105, 560.310 FS. Law Implemented 560.1105, 560.310 FS. History--New 9-24-97, Amended 11-4-01, Formerly 3C-560.704, Amended 1-13-09, 10-12-15, _____.

The following changes have been made to incorporated versions of federal materials:

In response to the Joint Administrative Procedures Committee's comments, the Office revised the following federal materials to remove form incorporation language:

31 C.F.R. s. 594.201

31 C.F.R. s. 594.204

31 C.F.R. s. 501.603

31 C.F.R. s. 501.604

15 U.S.C. s. 6801

15 U.S.C. s. 6802

15 U.S.C. s. 6803

31 C.F.R. s. 1022.210

31 C.F.R. Part 1010, Subpart D

31 C.F.R. s. 1010.230(d)

FLORIDA OFFICE OF
FINANCIAL  REGULATION

www.flofr.com

September 30, 2019

Via Hand Delivery

Jamie Jackson, Senior Attorney
Joint Administrative Procedures Committee
Room 680, Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399-1400

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2019 SEP 30 PM 1:37
OFFICE OF FINANCIAL REGULATION
PROCEEDINGS DIVISION

Re: Office of Financial Regulation's Proposed Rules -Chapter 69V-560
560.1000, 560.1012, 560.1013, 560.102, 560.103, 560.107, 560.201, 560.302, 560.504,
560.602, 560.606, 560.608, 560.609, 560.702, 560.703, 560.704, 560.7041, 560.7042, 560.707,
560.902, 560.903, 560.904, 560.905, 560.907, 560.908, 560.909, 560.910, 560.911, 560.912, and
560.913.

Dear Ms. Jackson:

Attached, please find the Office's responses to your letter dated August 5, 2019 regarding the above-mentioned rules.

If you have further questions or require additional information, please don't hesitate to contact me at Sheila.harley@flofr.com or 850/410-9716.

Thank you,



Sheila Harley
Assistant General Counsel
Florida Office of Financial Regulation
200 East Gaines Street, Fletcher 550
Tallahassee, FL 32399-0376
(850) 410-9887
(850) 410-9914 (fax)
Sheila.harley@flofr.com

JAPC COMMENTS: 69V-560.1000: Law Implemented

Please review and advise whether section 560.113, Florida Statutes, should be cited as a law implemented by this rule.

OFR Reponse: Yes, section 560.113, Florida Statutes, should be cited as a law implemented by this rule. The Office corrected the omission by filing a Notice of Change. See attached Notice of Change.

JAPC COMMENTS: 69V-560.1000(1): Incorporated Material- OFR-560-09. Disciplinary Guidelines for Money Services Businesses

Page 7, Violation #42: It appears that since a suspension imposed under this citation will be in effect the duration of the pendency of the criminal matter it is incorrect to indicate in the columns that a suspension of an A, B, or C term will be imposed. Please review and advise whether a revision is necessary for clarity and comprehension.

OFR Response: The Office removed the language included in the Note. The revised form is attached.

JAPC COMMENTS: 69V-560.1000(2)(a):

This paragraph indicates that, depending on the severity and repetition of specific violations, the Office may impose a fine, suspension, or revocation, or any combination thereof. Please advise whether this authority is executed under the guidelines as incorporated in subsection (1) of this rule. Additionally, are the severity and repetition factors evaluated consistent with the aggravating and repeat occurrence standards as set forth in subsection (3) of this rule? If not, by what definitions and standards does the Office utilize for this determination? See § 120.52(8)(d), Fla. Stat. (2018).

OFR Response: The Office published a Notice of Change revising this section and believes the revision addresses JAPC's concerns. See attached Notice of Change.

JAPC COMMENTS: 69V-560.102: Rulemaking Authority

Please review whether section 215.405, Florida Statutes, is appropriately cited as providing rulemaking authority for the content of this rule as it appears that the rule states that the cost of fingerprinting is borne by the applicant and not the Office.

OFR Response: Section 215.405 was not appropriately cited and has been removed. The Office has filed a Notice of Change correcting this provision. See attached Notice of Change.

Law Implemented

Please review whether sections 215.405 and 560.118, Florida Statutes, are appropriately cited as laws implemented by the content of this rule.

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COMMISSION

OFR Response: Sections 215.405 and 560.118, F.S., were not appropriately cited and have been removed. The Office has filed a Notice of Change correcting this provision. See attached Notice of Change.

JAPC COMMENTS: 69V-560.102(3):

An extension to the 45-day requirement for requested information with a showing of good cause is proposed in this subsection. It is unclear by what standards the Office will determine whether good cause has been shown for this extension or what elements must be set forth by an applicant for a showing of good cause. Pursuant to section 120.52(8)(d), Florida Statutes, a rule that is vague, fails to establish adequate standards for agency decisions, or vests unbridled discretion in the agency is an invalid exercise of delegated legislative authority. Please review and advise.

OFR Response: The Office has filed a Notice of Change correcting this provision. See attached Notice of Change.

JAPC COMMENTS: 69V-560.103(5):

Due to amendments effective July 1, 2019, to this statute, it appears that the citation should be to section 560.404(24), Florida Statutes.

OFR Response: The Office has corrected the citation. The Office will file the correction with the Department of State by letter prior to adoption.

JAPC COMMENTS: 69V-560.103(7):

Please ensure this subsection is indented prior to filing for adoption for consistent formatting.

OFR Response: The Office has corrected the formatting issue. The Office will file the correction with the Department of State by letter prior to adoption.

JAPC COMMENTS: 69V-560.107:

Law Implemented

Please review whether section 560.208, Florida Statutes, is properly cited as a law implemented by the content of this rule.

OFR Response: Yes, section 560.208, F.S., is properly cited. Section 560.208, F.S., provides licensees the authority to conduct business through branches or authorized vendors.

JAPC COMMENTS: 69V-560.107(2):

Amendments to this subsection require the submission of termination information "promptly," but the rule does not set forth by what standards the Office determines promptness. See § 120.52(8)(d), Fla. Stat. (2018). Please review and advise.

OFR Response: The Office published a Notice of Change revising this section and believes the revision addresses JAPC's concerns. See attached Notice of Change.

JAPC COMMENTS: 69V-560.201:

Rulemaking Authority

Please review whether section 215.405, Florida Statutes, is appropriately cited as providing rulemaking authority for the content of this rule as it appears that the cost of fingerprinting is borne by the applicant and not the Office.

OFR Response: The Office removed the citation to section 215.405, F.S. The Office has filed a Notice of Change correcting the provision. See attached Notice of Change.

Law Implemented

Please review whether section 215.405, Florida Statutes, is appropriately cited as a law implemented by the content of this rule.

OFR Response: The Office removed the citation to section 215.405, F.S. The Office has filed a Notice of Change correcting the provision See attached Notice of Change.

Public Comment: The Office received a public comment regarding 69V-560.201(3). In reponse, the Office changed the provision. The Office has filed a Notice of Change reflecting the amendment. See attached Notice of Change.

JAPC COMMENTS: 69V-560.201(5):

As this subsection pertains to applications triggered by the acquisition of a controlling interest, please review whether the citation should be to section 560.126(3)(a), Florida Statutes, and not to subsection (2) of that statute. Also, please clarify or correct what subsection (1) is being referenced. It is unclear if this referred to the prior version of this rule or the statute.

OFR Response: The Office has updated the citation and corrected the referenced citation. The Office has filed a Notice of Change correcting this provision. See attached Notice of Change.

JAPC COMMENTS: 69V-560.201(6):

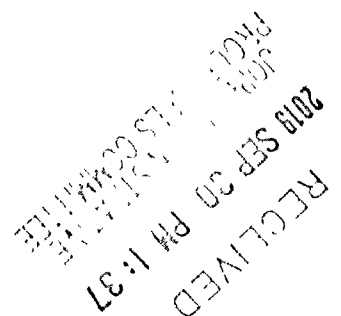
As this subsection pertains to applications triggered by the acquisition of a controlling interest, please review whether the citation should be to section 560.126(3)(a), Florida Statutes, and not to subsection (2) of that statute.

OFR Response: The Office has updated the citation. The Office has filed a Notice of Change correcting this provision. See attached Notice of Change.

JAPC COMMENTS: 69V-560.302:

Law Implemented

Please review whether section 560.403, Florida Statutes, is properly cited as a law implemented by the content of this rule.



OFR Response: Yes, section 560.403, F.S., is properly cited as a law implemented. Section 560.403, F.S., sets forth the requirement for the filing of a declaration of intent which must be filed at renewal pursuant to s. 560.142, F.S.

JAPC COMMENTS: 69V-560.504

Rulemaking Authority

Please review whether section 560.1091, Florida Statutes, is properly cited as providing rulemaking authority for the content of this rule as it appears that this rule does not include contracted examiners.

OFR Response: The Office removed the citation to section 560.1091, F.S. The Office will file the correction with the Department of State by letter prior to adoption.

Law Implemented

Please review whether section 560.1091, Florida Statutes, is properly cited as a law implemented by the content of this rule as it appears that this rule does not include contracted examiners.

OFR Response: The Office removed the citation to section 560.1091, F.S. The Office will file the correction with the Department of State by letter prior to adoption.

JAPC COMMENTS: 69V-560.606

Law Implemented

Please review whether section 560.209, Florida Statutes, should be cited as a law implemented by the content of this rule.

OFR Reponse: Yes, section 560.209, Florida Statutes, should be cited as a law implemented by this rule. The Office corrected the omission by filing a Notice of Change. See attached Notice of Change.

JAPC COMMENTS: 69V-560.606(4)

Section 560.209(2), Florida Statutes, requires these licensees to submit annual financial audit reports to the Office. Proposed amendments set forth that the Office may require the submission of "interim financial audit reports" for the purposes of substantiating the licensee's net worth. Please advise as to the Office's authority to require a financial audit report more than annually.

OFR Response: The Office published a Notice of Change revising this section and believes the revision addresses JAPC's concerns. See attached Notice of Change.

JAPC COMMENTS: 69V-560.609(1)-(3)

Sections 560.1235(1) and 560.309(5), Florida Statutes, specifically require licensees to comply with the requirements in 31 C.F.R. §1022.320. It is unclear why the Office is incorporating by reference a specific version of this federal regulation when these requirements are set forth statutorily and tied to the

current version of that regulation. See § 120.52(8)(c), Fla. Stat. (2018). Please review and advise.

OFR Response: The Office published a Notice of Change revising this section and believes the revisions address JAPC's concerns. See attached Notice of Change.

JAPC COMMENTS: 69V-560.702(2)

Please see the comment above for rule 69V-560.609(1)-(3) as it relates to the reference to 31 C.F.R. §1010.415 in this subsection.

OFR Response: The Office published a Notice of Change revising this section and believes the revision addresses JAPC's concerns. See attached Notice of Change.

JAPC COMMENTS: 69V-560.702(4)

This subsection states that "[t]he policies and procedures should include, but are not limited to compliance with the following...." The use of "should" appears to render this provision discretionary for compliance. Is this the Office's intention? Assuming this is a requirement, the use of "but are not limited to" implies that the Office may impose additional unlisted requirements for compliance. Pursuant to section 120.52(8)(d), Florida Statutes, a proposed rule is an invalid exercise of delegated legislative authority if the rule is vague, fails to establish standards for agency decisions, or vests unbridled discretion in the agency. Please review and revise as necessary.

OFR Response: The Office published a Notice of Change revising this section and believes the revision addresses JAPC's concerns. See attached Notice of Change.

JAPC COMMENTS: 69V-560.702(4)(c)-(d):

Please review advise whether the Office's use of the referenced federal material constitutes a purpose for which incorporation by reference is required by chapter 120, Florida Statutes. Additionally, it appears that the reference to 31 C.F.R. Part 500 should be removed as this part is only reserved and contains no content.

OFR Response: Yes, the material should be incorporated by reference. Incorporated materials are attached. The Office has filed a Notice of Change correcting the provisions. See attached Notice of Change.

JAPC COMMENTS: 69V-560.702(6)

Please see the comment above for rule 69V-560.702(4)(c)-(d).

OFR Response: Yes, the material should be incorporated by reference. Incorporated material is attached. The Office has filed a Notice of Change correcting the provision. See attached Notice of Change.

JAPC COMMENTS: 69V-560.702(8)

This subsection purports to incorporate by reference all federal laws and regulations referenced in the entirety of this rule. Depending on the Office's response to the comments above regarding this rule, a revision may be necessary to this subsection. Should the Office

seek to incorporate updated material, a copy of each item should be provided to the Committee. The official version of the federal statute or regulation should be utilized, as well as the official version date of the material. Please review and advise.

OFR Response: OFR has revised this section to incorporate forms only and attached copies of the referenced material. The Office has filed a Notice of Change reflecting the revised language.

JAPC COMMENTS: 69V-560.703

Law Implemented

Please review whether section 560.2085, Florida Statutes, should be cited as a law implemented by the content of this rule.

OFR Response: Yes, section 560.2085, Florida Statutes, should be cited as a law implemented by this rule. The Office corrected the omission by filing a Notice of Change. See attached Notice of Change.

JAPC COMMENTS: 69V-560.703(2)

Material referenced in this subsection appears to be utilized in a manner requiring incorporation by reference. Any material incorporated by reference should be specifically identified as such and the reference must contain the effective date of the incorporated material as required by rule I-1.013(2)(a). Additionally, a copy of each item should be provided to the Committee. As this material is a federal regulation, please ensure that the office version of this material is incorporated and provided. It appears that the most recent update of the cited regulation was July 1, 2018.

OFR Response: OFR has revised this section to incorporate the material by reference and attached a copy of the referenced material. The Office has filed a Notice of Change reflecting the corrected language.

JAPC COMMENTS: 69V-560.703(4)

Please see the comment above related to rule 69V-560.702(4).

OFR Response: The Office published a Notice of Change revising this section and believes the revision addresses JAPC's concerns. See attached Notice of Change.

JAPC COMMENTS: 69V-560.703(4)(c)-(d)

Please see the comment above for rule 69V-560.702(4)(c)-(d).

OFR Response: Yes, the material should be incorporated by reference. OFR has revised the provisions to incorporate the material by reference and attached copies of the referenced materials. The Office has filed a Notice of Change reflecting the corrected language.

JAPC COMMENTS: 69V-560.703(6)

Please see the comment above for rule 69V-560.702(4)(c)-(d).

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U.S. DEPARTMENT OF JUSTICE

OFR Response: Yes, the material should be incorporated by reference. OFR has revised the provision to incorporate the material by reference and attached a copy of the referenced material. The Office has filed a Notice of Change reflecting the corrected language.

JAPC COMMENTS: 69V-560.703(8)

Please see the comment above related to rule 69V-560.702(8).

OFR Response: OFR has revised this section to incorporate forms only and attached copies of the referenced material. The Office has filed a Notice of Change reflecting the revised language.

JAPC COMMENTS: 69V-560.704

Law Implemented

It appears that section 560.209, Florida Statutes, should be cited as a law implemented by the content of this rule.

OFR Response: Section 560.209, F.S. applies to money transmitters. This rule applies to check cashers only. Therefore, this provision should not be cited as law implemented.

JAPC COMMENTS: 69V-560.704(4)(d)7.

Material that meets the definition of a rule in section 120.52(16), Florida Statutes, should be specifically incorporated by reference in rule. See. § 120.54(1)(i), Fla. Stat. (2018), rule 1-1.013, F.A.C. As referenced, it appears that the cited federal regulation meets this definition. Please review and advise. If incorporated by reference, a reference to the effective date of this regulation is required and a copy must be provided to the Committee. As this material is a federal regulation, please ensure that the office version of this material is incorporated and provided. It appears that the most recent update of the cited regulation was July 1, 2018.

OFR Response: Yes, the material should be incorporated by reference. OFR has revised the provision to incorporate the material by reference and attached a copy of the referenced material. The Office has filed a Notice of Change reflecting the corrected language.

Public Comment: The Office received a public comment regarding this rule. In response, the Office amended the provision. The Office has filed a Notice of Change reflecting the amendment. See attached Notice of Change.

Technical Correction: 69V-560.704(5). Numbers 1-12 were changed to (a)-(m), semicolons were added at the end of each listed sentence, and inserted "and" at the end of 69V-560.704(5)(l).

JAPC COMMENTS: 69V-560.707(1)(d)-(l):

The notice of proposed rule indicates that subparagraphs (l)(d)1.-2. have no changes and also that paragraph (1)(d) is being revised to be (l)(e). There do not appear to be any paragraphs being added that would cause the shift from (1)(d) to (1)(e), and this shift affects each of the paragraphs that follow. Also, it is unclear what is being referred to by the "no change" indication for the subparagraphs (l)(d)1.-2. Please

review the notice and publish a corrective notice to set forth the amendments to this rule.

OFR Response: The Office has filed a Notice of Change correcting the provisions. See attached Notice of Change.

Public Comment: The Office received a public comment regarding 69V-560.707(1)(a). In response, the Office amended the provision. The Office has filed a Notice of Change reflecting the amendment. See attached Notice of Change.

JAPC COMMENTS: 69V-560.707(1)(i)

The cross-reference in this paragraph may require updating in light of the resolution of the above comment for this rule.

OFR Response: The cross-reference does not need updating.

JAPC COMMENTS: 69V-560.902(7)

Please be aware that the first letter of this subsection was inadvertently deleted in the published notice.

OFR Response: The Office corrected the omission by filing a Notice of Change. See attached Notice of Change.

JAPC COMMENTS: 69V-560.902(8)

It appears that the citation should be corrected to rule 69V-560.903(1), Florida Administrative Code.

OFR Response: Correct. The Office corrected the omission by filing a Notice of Change. See attached Notice of Change.

JAPC COMMENTS: 69V-560.902(10)

The use of "includes but is not limited to" implies that the Office may consider additional undefined elements for compliance. Pursuant to section 120.52(8)(d), Florida Statutes, a proposed rule is an invalid exercise of delegated legislative authority if the rule is vague, fails to establish standards for agency decisions, or vests unbridled discretion in the agency. Please review and revise as necessary.

OFR Response: The Office published a Notice of Change revising this section and believes the revision addresses JAPC's concerns. See attached Notice of Change.

JAPC COMMENTS: 560.903(1)(f)

This paragraph indicates that the database will automatically close the transaction after 14 days if the provider has updated the transaction status to reflect the deposit and no further action has been taken to indicate that the check was returned. It is unclear whether this language is consistent with the newly established deferred presentment transaction that is repayable in installments as there will exist checks that

are deposited while the transaction is still open and not fully fulfilled during the pendency of that transaction. Please review and advise.

OFR Response: The Office has amended the provision and filed a Notice of Change correcting the provision. See attached Notice of Change.

JAPC COMMENTS: 69V-560.903(1)(f)l.: The reference to subparagraph 69V-560.903(1)(f) should be to paragraph.

OFR Response: The Office has amended the provision and filed a Notice of Change correcting the provision. See attached Notice of Change.

JAPC COMMENTS: 69V-560.903(2)(a)3.: The reference to subparagraph 69V-560.903(1)(f) should be to paragraph.

OFR Response: JAPC mistakenly cited to 69V-560.903(2)(a)3 The Office will answer this comment as to the correct reference of 69V-560.909(1)(f)3. The Office amended this provision and filed a Notice of Change correcting the provision. See attached Notice of Change.

JAPC COMMENTS: 69V-560.904(1)(a)6.: Please correct the percentage amount of the transaction fee example.

OFR Response: The Office has amended the provision and filed a Notice of Change correcting the provision. See attached Notice of Change.

JAPC COMMENTS: 69V-560.904(1)(b)6.: Please correct the percentage amount of the transaction fee example. Please note that the percentage amount is for these types of transactions with installments varies from those without.

OFR Response: The Office has amended the provision and filed a Notice of Change correcting the provision. See attached Notice of Change.

JAPC COMMENTS: 69V-560.904(2)(a)-(b): The semicolons at the ends of these paragraphs should be periods.

OFR Response: The Office has amended the provision and filed a Notice of Change correcting the provision. See attached Notice of Change.

JAPC COMMENTS: 69V-560.904(5)

In the second sentence of the example notice the word "to" should be inserted between payment and be. Additionally, a period or semicolon is needed between transaction and therefore, and a comma is needed after therefore.

OFR Response: The Office has amended the provision and filed a Notice of Change correcting the provision. See attached Notice of Change.

Correction: Additionally, the word deferments was spelled incorrectly. The Office corrected the spelling and filed a Notice of Change correcting the provision. See attached Notice of Change.

JAPC COMMENTS: 69V-560.905(2)

The published notices indicate that paragraph (l)(a) has no changes and that subsection (2) reads, "A \$50 transaction fee (\$500 X 10%); and;". The existing rule contains paragraphs (l)(a)-(c), with the existing (l)(b) being what the Office labeled as subsection (2) in the notice. The notice lists a paragraph (2)(a); however, this is actually (l)(c) in the existing rule. As a result of this, what is labeled as the new subsection (3) should actually be subsection (2), with the subsequent subsections adjusted accordingly. Please ensure the subdivisions are correctly set forth based on the existing rule language prior to adoption.

OFR Response: The Office has filed a Notice of Change correcting the provisions. See attached Notice of Change.

JAPC COMMENTS: 69V-560.905(3)(d): Pursuant to the above comment it appears this should be paragraph (2)(d). Please advise as to why "Total of Payments" is capitalized in this paragraph. Additionally, the language indicates that the provider must refund overcharges within "twenty (10) calendar days." Please revise for consistency.

OFR Response: The provision has been changed based on public comments. Additionally, the Office has corrected the calendar days reference. The Office has filed a Notice of Change correcting the provisions. See attached Notice of Change.

Public Comment: The Office received public comments regarding 69V-560.905. In response, the Office amended the provision 69V-560.905(2)(b)-(d) and 69V-560.904(3). The Office has filed a Notice of Change reflecting the amendments. See attached Notice of Change.

JAPC COMMENTS: 69V-560.907(1)(a): The reference to section 560.307(2), Florida Statutes, requires revision as that statute no longer exists. Additionally, please review the citation to section 560.208(2), Florida Statutes, as it appears that it should be section 560.208(1).

OFR Response: Correct. The Office has filed a Notice of Change correcting the provisions. See attached Notice of Change.

JAPC COMMENTS: 69V-560.907(2)(a):

Is the form referenced in this paragraph form OFR-560-02, which bears the same name? If so, please revise the form number for consistency.

OFR Response: JAPC mistakenly referenced 69V-560.907(2)(a). The Office will answer this comment as to the correct reference of 69V-560.907(2)(b). Yes, the form referenced is form

OFR-560-02. The Office has filed a Notice of Change correcting the provision. See attached Notice of Change.

JAPC COMMENTS: 69V-560.908(2)(c): Please be aware that the closing parentheses around this paragraph designation was inadvertently deleted in the published notice.

OFR Response: Corrected. The Office will file the correction with the Department of State by letter prior to adoption.

JAPC COMMENTS: 69V-560.908(4)(a)2.: Please review whether the reference should be to section 560.404(22), Florida Statutes, as it appears the subsection contains the grace period request provision.

OFR Response: Corrected. The Office will file the correction with the Department of State by letter prior to adoption.

JAPC COMMENTS: 69V-560.908(4)(a)4.: Please ensure that the coding to strike the word "The" from the beginning of this subparagraph is appropriately indicated.

OFR Response: Corrected. The Office will file the correction with the Department of State by letter prior to adoption.

JAPC COMMENTS: 69V-560.908(4)(b)2.: The reference should be to section 560.404(23), Florida Statutes, as the cited provision contains notice requirements.

OFR Response: Corrected. The Office will file the correction with the Department of State by letter prior to adoption.

JAPC COMMENTS: 69V-560.908(4)(b)3.: Please ensure that the coding to strike the word "The" from the beginning of this subparagraph is appropriately indicated.

OFR Response: Corrected. The Office will file the correction with the Department of State by letter prior to adoption.

JAPC COMMENTS: 69V-560.908(4)(b)4.: Please ensure that the coding to strike the word "The" from the beginning of this subparagraph is appropriately indicated.

OFR Response: Corrected. The Office will file the correction with the Department of State by letter prior to adoption.

JAPC COMMENTS: 69V-560.908(6): Please capitalize the "v" in the rule citation in this subsection.

OFR Response: Corrected. The Office will file the correction with the Department of State by letter prior to adoption.

JAPC COMMENTS: 69V-560.908(9)(a): The reference to paragraph should be to subsection.

OFR Response: Corrected. The Office will file the correction with the Department of State by letter prior to adoption.

JAPC COMMENTS: 69V-560.909(2): The reference to subparagraph should be to subsection.

The Office has filed a Notice of Change correcting the provisions. See attached Notice of Change.

JAPC COMMENTS: 69V-560.908(2)(c): It is unclear with the proposed amendments to this paragraph from what point the 24-hour time period referenced is measured. Please revise to clarify within 24-hours from when the provider must upload the information.

OFR Response: JAPC's comments mistakenly cited to 69V-560.908(2)(c). The Office will answer this comment as to the correct reference of 69V-560.909(2)(c). The Office has filed a Notice of Change correcting the provisions. See attached Notice of Change.

JAPC COMMENTS: 69V-560.911(4): It is unclear under what authority the Office may set forth that the database vendor may request any information from an ineligible drawer that it deems necessary. Presuming such authority exists, this language appears to delegate to the third party vendor the ability to require any information, related or not, to the transaction. Please review and advise as to the Office's authority for this provision.

OFR Response: The Office published a Notice of Change revising this section and believes the revision addresses JAPC's concerns. See attached Notice of Change.

JAPC COMMENTS: 69V-560.913(1): Section 560.404(24)(d), Florida Statutes, requires the notification to occur within 15 business days after ceasing operations. This subsection should be amended in accordance with the statutory language as it currently states that the notification must occur within 15 days. See §120.52(8)(c), Fla. Stat. (2018).

OFR Response: This subsection has been amended. The Office has filed a Notice of Change correcting the provision. See attached Notice of Change.

JAPC COMMENTS: 69V-560.913(2): The reference to paragraph should be to subsection.

OFR Response: This subsection has been amended. The Office has filed a Notice of Change correcting the provision. See attached Notice of Change.

OFR TECHNICAL CHANGES:

In 69V-560.602(1), “ www.flofr.com ” should have been underlined. The Office will file the correction with the Department of State by letter prior to adoption.

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Notice of Change/Withdrawal

DEPARTMENT OF FINANCIAL SERVICES

Finance

RULE NOS.:	RULE TITLES:
69V-560.1000	Disciplinary Guidelines
69V-560.102	Application or Appointment Procedures and Requirements
69V-560.107	Registration of Locations and Appointment of Authorized Vendors
69V-560.201	Requirements
69V-560.606	Annual Filing of Financial Audit Reports by Part II Licensees
69V-560.609	Suspicious Activity Report Filings
69V-560.702	Payment Instrument Sellers
69V-560.703	Money Transmitters
69V-560.704	Records to Be Maintained by Check Cashers
69V-560.707	Records to be Maintained by Deferred Presentment Providers
69V-560.902	Definitions
69V-560.903	Deferred Presentment Transactions
69V-560.904	Transaction Agreement Disclosures and Requirements
69V-560.905	Transaction Fees
69V-560.907	Database Access
69V-560.909	Database Availability
69V-560.911	Database Dispute Resolution for Customers
69V-560.913	Termination of Deferred Presentment Activity; Database Maintenance

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 45 No. 145, July 26, 2019 issue of the Florida Administrative Register.

These changes are made in response to comments made by the Joint Administrative Procedures Committee, comments received from the public, and comments at public hearing.

69V-560.1000 Disciplinary Guidelines.

(1) No change..

(2) Consistent with the disciplinary guidelines contained in the Office of Financial Regulation, Division of Consumer Finance, Form OFR-560-09, Disciplinary Guidelines for Money Services Businesses, the Office may issue: a written agreement which includes an administrative fine, but not adopted by final order; orders to revoke or suspend a license; orders to impose an administrative fine; orders of prohibition; orders of removal; orders denying applications; notices of non-compliance; and/or bring an action for injunction. Also, consistent with the disciplinary guidelines, to determine penalties, the Office may consider the combined effect of violations.

~~(a) Depending on the severity and repetition of specific violations, the Office may impose an administrative fine, suspension of a license, or revocation of a license or any combination thereof;~~

~~(a)(b)~~ For first citations identified in the disciplinary guidelines as minor violations, the Office shall issue a notice of non-compliance except when the Office identifies aggravating circumstances that would warrant a more severe penalty.

~~(b)(c)~~ For second citations identified in the disciplinary guidelines as minor violations, the Office may issue a written agreement which is not adopted by final order imposing an administrative fine. Written agreements may be used only when the violations are limited to minor violations.

(3) through (6) No change..

Rulemaking Authority 560.105, 560.1141 FS. Law Implemented 560.109, 560.1092, 560.1105, 560.111, 560.113, 560.114, 560.1141, 560.118, 560.123, 560.1235, 560.125, 560.126, 560.128, 560.208, 560.2085, 560.209, 560.210, 560.211, 560.213, 560.303, 560.309, 560.310, 560.403, 560.404, 560.405, 560.406 FS. History—New 6-7-09, Amended _____.

69V-560.102 Application or Appointment Procedures and Requirements.

(1) through (2) No change..

(3) Request for Additional Information. Any request for additional information will be made by the Office within thirty (30) days after receipt of the application. The additional information must be received by the Office within forty-five (45) days from the date of the request. ~~For good cause shown, The Office will~~ may grant a request for an additional forty-five (45) days to submit the additional information. The Office will not grant a request after the original forty-five (45) day deadline has passed. Failure to timely provide all additional information shall result in the application being deemed abandoned, which will result in the application being removed from further consideration by the Office and closed.

(4) through (5) No change..

Rulemaking Authority ~~215.405~~, 560.105, 560.118, 560.209, 560.403 FS. Law Implemented ~~215.405, 560.118~~, 560.1401, 560.141, 560.143, 560.1235, 560.204, 560.205, 560.209, 560.303, 560.403, 943.053 FS. History--New 9-24-97, Amended 11-4-01, 12-11-03, Formerly 3C-560.102, Amended 7-15-07, 6-17-08, 12-25-08, 1-13-09, 1-2-14, Amended_____.

69V-560.107 Application for Branch Office and Appointment of Authorized Vendors.

(1) No change.

(2) Every licensee shall be responsible for ~~promptly~~ filing a completed Form OFR-560-02 to terminate a branch office or authorized vendor.

Pursuant to section 560.2085, F.S., a licensee must file Form-560-02 and the applicable fee within sixty (60) days of the authorized vendor commencing operations. This requirement also applies to authorized vendors who are terminated within the sixty (60) days. Form OFR-560-02 is incorporated by reference in rule 69V-560.1012, F.A.C.

69V-560.201 Amendments, Change of Name, Change of Entity and Change in Control or Ownership.

(1) through (2) No change.

(3) Each person licensed under chapter 560, F.S., that proposes to change any personnel listed in question 5G of Form OFR-560-01 that does not result in a change of controlling interest in the licensee, shall file an amendment ~~not later than thirty (30) days prior to~~ on or before the effective date of the change or within two (2) business days after the date the licensee first received notice of the change. Persons not currently on file with the Office that have not complied with section 560.141(1)(c), F.S., must comply with the fingerprinting requirements contained therein.

(4) No change.

(5) A licensee required to file a new application as a result of an acquisition of a controlling interest pursuant to section 560.126~~(3)(a)(2)~~, F.S., must also file new location forms (Form OFR-560-02) and applicable fees up to a maximum of \$20,000 for all existing locations on file with the Office at the time of filing the new application in subsection ~~(4) of this rule~~ ~~(4)~~ and a Declaration of Intent to Engage in Deferred Presentment Transactions (Form OFR-560-03) and applicable fee if currently engaged in deferred presentment transactions.

(6) The Office shall waive the requirement for a licensee to file a new application pursuant to section 560.126~~(3)(a)(2)~~, F.S.:

(a) through (b) No change..

(7) Forms OFR-560-01, ~~and~~ OFR-560-02, and OFR-560-03 are incorporated by reference in rule 69V-560.1012, F.A.C.

Rulemaking Authority ~~215.405~~, 560.105, 560.126 FS. Law Implemented ~~215.405~~, 560.126, 560.127, 560.143, 560.204, 560.303 FS. History--New 9-24-97, Amended 11-4-01, 12-11-03, Formerly 3C-560.201, Amended 7-15-07, 1-13-09,_____.

69V-560.606 Annual Filing of Financial Audit Reports by Part II Licensees.

(1) through (3) No change..

(4) For purposes of adding new locations or authorized vendors, a Part II licensee may rely upon its annual financial audit reports that were received by the Office in a timely manner as required in subsections (1) and (2) of this rule. ~~The Office reserves the right to require additional documentation up to and including the submission of interim financial audit reports to substantiate the licensee's net worth.~~

(5) No change.

Rulemaking Authority 560.105, 560.118 FS. Law Implemented 560.118, 560.209 FS. History--New 11-4-01, Formerly 3C-560.606, Amended 7-15-07, 1-13-09,_____.

69V-560.609 Suspicious Activity Report Filings.

(1) Pursuant to section 560.1235(1), F.S., licensees and authorized vendors must comply with all state and federal laws and rules relating to the detection and prevention of money laundering, including, as applicable, 31 C.F.R. s. 1022.320, ~~effective November 4, 2016~~, relating to reports by money services businesses of suspicious transactions. For purposes of section 560.1235(1), F.S., the federal law requirement to report suspicious transactions applies to the following money services businesses: payment instrument sellers that sell money orders or traveler's checks, money transmitters, and foreign currency exchangers. These entities are required to report suspicious transactions to FinCEN using FinCEN Form 111, Suspicious Activity Report by Money Service Business, and failure to do so is a violation of section 560.1235, F.S.

(2) Under federal law, check cashers may, but are not required to, file reports of suspicious transactions; however, pursuant to section 560.309(5), F.S., check cashers are required to report suspicious activity to the office or an appropriate regulator based on the criteria set forth in 31 C.F.R. s. 1022.320, ~~effective 11/4/2016~~. The Commission designates FinCEN as the appropriate regulator to receive such reports, which shall be submitted to FinCEN on FinCEN Form 111, Suspicious Activity Report by Money Service Business. Suspicious Activity Reports filed with FinCEN shall be deemed to have also been filed with the Office. Failure of a check casher to report suspicious activity to FinCEN is a violation of section 560.309(5), F.S.

(3) FinCEN Form 111, Suspicious Activity Report by Money Service Business is incorporated by reference in rule 69V-560.1012, F.A.C. ~~Federal regulation 31 C.F.R. s. 1022.320, effective November 4, 2016 is hereby incorporated by reference and available at www.ecfr.gov.~~

(4) No change.

69V-560.702 Payment Instrument Sellers.

(1) No change.

(2) For all transactions that exceed \$3,000, the payment instrument seller shall also obtain and record the information required by 31 C.F.R. ss. 1010.415 in accordance with section 560.1235(1), F.S., (a)(2), effective March 1, 2014. For purposes of this section multiple payment instruments purchased in one or more transactions on a single day shall be aggregated.

(3) No change.

(4) Every payment instrument seller shall develop and implement written policies and procedures to monitor compliance with applicable state and federal law by its authorized vendors. The policies and procedures must ~~should~~ include, ~~but are not limited to~~ compliance with the following applicable statutes and regulations:

(a) through (b) No change.s

(c) Office of Foreign Asset Control regulations: ~~31 C.F.R. Part 500~~; 31 C.F.R. s. 594.201, Form OFR-560-10, effective July 1, 2018, and available at <http://www.flrules.org>; 31 C.F.R. s. 594.204, Form OFR-560-11, effective July 1, 2018, and available at <http://www.flrules.org>; 31 C.F.R. s. 501.603, Form OFR-560-12, effective July 1, 2018, and available at <http://www.flrules.org>; and 31 C.F.R. s. 501.604, Form OFR-560-13, effective July 1, 2018, March 1, 2014 and available at <http://www.flrules.org>.

(d) Gramm-Leach-Bliley Act regarding protection of personal information: 15 U.S.C. ss. 6801 Form OFR-560-14, effective July 21, 2010, and available at <http://www.flrules.org>; 6802 Form OFR-560-15, effective July 21, 2010, and available at <http://www.flrules.org>, and 6803 Form OFR-560-16, effective December 4, 2015, and available at <http://www.flrules.org>.

(e) No change..

(5) No change.

(6) Subpoenas, warrants, and other requests from regulatory, law enforcement, or prosecutorial agencies and records relating to training as required by 31 C.F.R. s. 1022.210, Form OFR-560-17, effective July 1, 2018, and available at <http://www.flrules.org>, shall be maintained so that they are retrievable as required by section 560.1105(1), F.S.

(7) No change.

(8) All ~~forms federal laws and regulations~~ referenced in this rule are hereby incorporated by reference and available on the Office's website at www.flofr.com and by mail from the Office of Financial Regulation, 200 East Gaines Street, Tallahassee, Florida 32399-0376.

69V-560.703 Money Transmitters.

(1) No change.

(2) For each money transmission in the amount of \$3,000 or more, compliance with the record keeping requirements contained within 31 C.F.R. Part 1010, Subpart D, Form OFR-560-18, effective July 1, 2018, and available at <http://www.flrules.org>, will satisfy the record keeping requirements of chapter 560, F.S. For purposes of compliance with 31 C.F.R. 1010, Subpart D, a money transmitter is also subject to the additional record keeping requirements for "other than established customers".

(a) through (c) No change.

(3) No change.

(4) Every money transmitter shall develop and implement written policies and procedures to monitor compliance with applicable state and federal law by its authorized vendors. These policies and procedures must ~~should~~ include, ~~but are not limited to~~ compliance with the following applicable statutes and regulations:

(a) through (b) No change.

(c) Office of Foreign Asset Control regulations: ~~31 C.F.R. Part 500~~; 31 C.F.R. s. 594.201 Form OFR-560-10, effective July 1, 2018, and available at <http://www.flrules.org>; 31 C.F.R. s. 594.204 Form OFR-560-11, effective July 1, 2018, and available at <http://www.flrules.org>; 31 C.F.R. s. 501.603 Form OFR-560-12, effective July 1, 2018, and available at <http://www.flrules.org>; and 31 C.F.R. s. 501.604, Form OFR-560-13, effective July 1, 2018, and available at <http://www.flrules.org> ~~March 1, 2011~~.

(d) Gramm-Leach-Bliley Act regarding protection of personal information: 15 U.S.C. ss. 6801, Form OFR-560-14, effective July 21, 2010, and available at <http://www.flrules.org>, 6802, Form OFR-560-15, effective July 21, 2010, and available at <http://www.flrules.org>, and 6803, Form OFR-560-16, effective December 4, 2015, and available at <http://www.flrules.org>.

(e) No change.

(5) No change.

(6) Subpoenas, warrants and other requests from regulatory, law enforcement, and prosecutorial agencies, and records related to training as required by 31 C.F.R. s. 1022.210, Form OFR-560-17, effective July 1, 2018 ~~July 29, 2011~~, and available at <http://www.flrules.org>, and shall be maintained so that they are retrievable as required by section 560.1105(1), F.S.

(7) No change.

(8) All ~~forms federal laws and regulations~~ referenced in this rule are hereby incorporated by reference and available on the Office's website at www.flofr.com and by mail from the Office of Financial Regulation, 200 East Gaines Street, Tallahassee, Florida 32399-0376.

Rulemaking Authority 560.105, 560.1105, 560.2085, 560.211 FS. Law Implemented 560.1105, 560.1235, 560.2085, 560.211 FS. History—New 9-24-97, Formerly 3C-560.703, Amended 1-13-09, _____.

69V-560.704 Records to Be Maintained by Check Cashers.

(1) through (3) No change.

(4)(a) through (c) No change.

(d) Create and maintain a customer file for each entity listed as the payee on corporate payment instruments accepted by the licensee. Each customer file must include, at a minimum, the following information:

1. through 6. No change.

7. A written corporate customer profile which includes: the full legal name of each beneficial owner, as defined in 31 C.F.R. s. 1010.230(d), Form OFR-560-19, effective July 1, 2018, is hereby incorporated by reference and available at <http://www.flrules.org>, of the corporate customer; an explanation of the customer's business model; type(s) of services offered; projected annual volume of check cashing; and annual ~~daily~~ check cashing limits as they relate to the corporate customer's workers' compensation policy coverage limits.

(e) No change.

(5) Check Cashing Database: A check casher must in accordance with section 560.310(2)(d), F.S., submit the following information into the check cashing database prior to the check casher providing currency (or payment instrument if a Part II licensee):

~~(a) 1-~~ Transaction date;-

~~(b) 2~~ Payor name as displayed on the payment instrument;-

~~(c) 3-~~ Payee name as displayed on the payment instrument;-

~~(d) 4-~~ Conductor name, if different from the payee name;-

~~(e) 5-~~ Amount of the payment instrument;-

~~(f) 6-~~ Amount of currency provided;-

~~(g) 7-~~ Type of payment instrument;-

~~(h) 8-~~ Amount of the fee charged for cashing of the payment instrument;-

~~(i) 9-~~ Branch or location where the payment instrument was accepted;-

~~(j) 10-~~ The type of identification and identification number presented by the payee or conductor;-

~~(k) 11-~~ Payee's workers' compensation insurance policy number or exemption certificate number, if a corporate payment instrument and an active policy exists;-

~~(l) 12-~~ Payee Corporate Document Number as issued by the Secretary of State, if a corporate payment instrument;- and

~~(m) 13-~~ Payee Federal Employer Identification Number, if a corporate payment instrument.

69V-560.707 Records to be Maintained by Deferred Presentment Providers.

(1) Every deferred presentment provider shall maintain the following records at a location which has been designated to the Office:

(a) A copy of each personal check, ~~or ACH authorization~~ including any authorization to transfer or withdraw funds from an account signed by the drawer, accepted for each deferred presentment transaction.

(b) No change.

(c) 1. through 3. No change.

(d) If applicable for a deferred presentment installment transaction, a copy of each document relating to any deferral request received from any drawer including:

1. A signed and dated notice from the drawer that the drawer is unable to cover the check or to repay the provider on or before the installment due date, and that the drawer agrees to and is aware of the new due date for the deferred installment payment.

2. All correspondence received from or sent to the drawer or the consumer regarding the deferred installment payment.

(e) through (l) No change.

(2) No change.

69V-560.902 Definitions.

(1) through (6) No change.

(7) The term "pending transaction" or "pending" means a transaction that is in the process of clearing the banking system, in the 60-day grace period pursuant to section 560.404(22)(a), F.S., or returned to the provider pursuant to section 560.406, F.S.

(8) The term "closed transaction" or "close" or "terminated" means a transaction terminated as provided in section 560.903(4), F.S. rule 69V-560.903(1), Florida Administrative Code.

(9) No change.

(10) The term "check" means includes but is not limited to any authorization to transfer or withdraw funds from an account signed by the drawer, including any authorization by a drawer to execute an Automated Clearing House debit transaction.

69V-560.903 Deferred Presentment Transactions.

(1) A deferred presentment transaction shall be considered terminated at such time as all checks that are the basis of the deferred presentment agreement have been:

(a) through (e) No change.

(f) Deposited by the provider or processed for collection through the ACH system and the provider has not received notice within fourteen (14) days that the check representing the final payment has been returned for insufficient funds, stop payment or closed account. The deferred presentment database will automatically close the transaction after fourteen (14) days if the provider has updated the transaction status to reflect the deposit and no action has been taken by the provider to update the deferred presentment database to reflect that the check has been returned as discussed above.

1. Notwithstanding the automatic termination provision of paragraph ~~subparagraph~~ 69V-560.903(1)(f), F.A.C., providers shall immediately close all transactions in the deferred presentment database when a transaction is terminated as required by subsection 69V-560.908(6), F.A.C.

2. No change.

3. Each deferred presentment provider shall develop and implement written policies and procedures relating to the reconciliation of returned items where termination of the existing transaction is accomplished pursuant to paragraph ~~subparagraph~~ 69V-560.903(1)(f), F.A.C., which clearly supports the timely and accurate update of transactional information on the deferred presentment database.

(2) No change.

69V-560.904 Deferred Presentment Transaction Agreement Disclosures and Requirements.

(1) Each deferred presentment transaction agreement must contain the following:

(a) For deferred presentment transactions not repayable in installments

1. through 5. No change.

6. A listing of all fees charged to the drawer categorized by fee type (i.e., ~~1%~~ transaction fee and verification fee);

7. through 16. No change.

(b) For deferred presentment transactions repayable in installments:

1. through 5. No change.

6. A listing of all fees charged to the drawer categorized by fee type (i.e., ~~1%~~ transaction fee and verification fee);

7. through 16. No change.

(2)(a) If the deferred presentment provider (Part II licensees only) intends to provide the drawer with a payment instrument in lieu of currency, the agreement shall also contain the drawer's acknowledgment that he or she has consented to accept the provider's payment instrument in lieu of currency. Such acknowledgment shall clearly state that it is the drawer's choice to obtain such payment instrument, and that the provider may not require a drawer to accept a payment instrument in lieu of currency. For purposes of this section, the drawer may accept disbursement of the proceeds via ACH credit to the drawer's account. This acknowledgment shall be separately initialed by the drawer.;

(b) If the provider intends to electronically debit the drawer's account to collect the funds, the agreement shall also contain the drawer's authorization to the provider permitting the electronic debit of the drawer's account. This authorization shall be provided in a separate section of the transaction agreement, in not less than 8 point type, and must be initialed by the drawer. Providers must still adhere to all provisions of part IV of chapter 560, F.S., regarding the drawer's payment options under such part.;

(3) through (4) No change.

(5) Upon being given timely notice by a drawer in person or in writing that he or she will not be able to pay the scheduled payment amount for a deferred presentment installment transaction owed to the deferred presentment provider in accordance with the agreement, every provider shall verbally advise the drawer of the availability to defer only one scheduled payment as authorized in section 560.404(23), F.S. A provider shall provide the drawer with the following notice upon deferment of a scheduled payment in at least 14-point type in substantially the following form:

NOTICE

Your scheduled payment which was due on [Date] has been deferred to [Date]. If the deferred presentment provider is holding a check for this scheduled payment, the provider may deposit your check if you do not redeem the check by the new deferred date. Be advised Florida law allows only one scheduled payment to be deferred for each deferred presentment installment transaction; therefore, you are not entitled to additional deferments ~~deferments~~ for this transaction.

69V-560.905 Deferred Presentment Transaction Fees.

(1) The transaction fee for a deferred presentment transaction not repayable in installments shall be limited to ten percent (10%) of the amount of currency or payment instrument provided to the drawer. A deferred presentment provider may also charge a verification fee in accordance with rule 69V-560.801, F.A.C. An example of the computation of the maximum fees allowed by the code in a transaction where the drawer is seeking an advance of \$500 would be as follows:

(a) No change..

~~(b)(2)~~ A \$50 transaction fee (\$500 X 10%); and,

~~(c)(a)~~ Up to \$5 for the direct costs associated with verification of the drawer's identity and/or employment. In this example, the provider would provide currency or a payment instrument (Part II licensees) in the amount of \$500 to the drawer, and the drawer would provide a personal check in the amount of between \$550-\$555 depending upon the exact amount of the direct costs of verification, if any, assessed by the provider with respect to this drawer. Unless a drawer has met the requirements for an automatic grace period, the drawer would be required to either redeem his or her personal check in cash (face amount of the check) or the provider would on the due date or a reasonable time thereafter present such personal check to the financial institution for payment.

~~(2)(3)~~ The transaction fee for a deferred presentment installment transaction shall be disclosed ~~computed~~ at the time of origination. The transaction fee shall be ~~and~~ limited to eight percent (8.00%) of the outstanding transaction balance on a biweekly basis using a simple interest calculation. A drawer's untimely payment of a scheduled amount shall not increase the drawer's outstanding transaction balance. Deferred presentment installment fees may not be charged in amounts exceeding those amounts disclosed as finance charges on the deferred presentment installment transaction agreement pursuant to Section 560.404(13), F.S. When calculating extra days for a first installment period that is longer than the remaining installment periods, the transaction fee is limited to a daily simple interest rate of zero point five seven one four two percent (0.57142%) of the outstanding transaction balance per extra day. A deferred presentment provider may also charge a verification fee in accordance with rule 69V-560.801, F.A.C.

(a) No change.

(b) Unless a drawer has met the requirements for a deferral as specified in s. 560.404(23), F.S., or redeemed his or her personal check in cash (face amount of the check), the provider shall on the due date or a reasonable time thereafter present such personal check to the financial institution for payment ~~on the first business day after the due date~~ shown for that particular payment on the deferred presentment installment transaction agreement.

~~(c) A provider may return unearned fees in the event a deferred presentment installment transaction is paid in full prior to the last scheduled payment due date. Overpayments and early payments towards an outstanding transaction balance will reduce the finance charges from those disclosed on the deferred presentment installment agreement. Following early termination of a deferred presentment installment agreement for which any payments were redeemed in cash, the drawer shall be entitled to a refund computed at the daily simple interest rate (0.57142%) for any charges paid in excess of those accrued.~~

(d) In no event shall the provider retain an amount that exceeds (i) the principal amount of the loan ~~Total of Payments disclosed to the drawer on the deferred presentment installment agreement pursuant to Section 560.404(13), F.S.~~ plus (ii) properly accrued transaction fees, and (iii) the amount of any fees accrued pursuant to Section 560.406, F.S. The provider must return refund any overcharge within ten twenty (10) calendar days of the date the final payment is redeemed in cash or the check being held that represents the final payment has cleared the provider's financial institution.

~~(3)(4)~~ Under no circumstances may the deferred presentment provider collect transaction fees from a drawer at the inception of a transaction. A provider shall not collect verification fees from the drawer at the inception of a deferred presentment transaction. All fees with respect to a deferred presentment transaction shall be collected at such

time as the drawer redeems his or her personal checks or the provider presents the drawer's personal checks for payment. For a deferred presentment installment transaction, a provider may collect verification fees from the drawer not to exceed \$5. The verification fee for a deferred presentment installment transaction may be collected the first time the drawer redeems a personal check or the first time the provider presents one of the drawer's personal checks. The verification fees incurred on a deferred presentment installment transaction shall be reflected in the provider's payment schedule and the drawer's check(s).

~~(4)(5)~~ A deferred presentment provider shall not charge, impose, or add any other fees upon a drawer. Examples of such unauthorized fees include, but are not limited to, such items as initial application fees, drawer setup fees, etc.

~~(5)(6)~~ Under no circumstances shall a provider require that a drawer purchase any other products or services as a condition of the deferred presentment transaction.

69V-560.907 Deferred Presentment Database Access.

(1) No change.

(a) A provider shall designate to the deferred presentment database vendor a security administrator to assign employee user identification numbers and passwords to employees authorized by the provider to register transactions on the deferred presentment database, to maintain provider information on the website and deferred presentment database, and to ensure the accuracy of deferred presentment database transaction information, including that the user identification and password for the employee are associated with the appropriate location from which the transaction is conducted, ~~except for a new location as provided in section 560.307(2) or 560.208(2), F.S.~~ Only the security administrator identification and password will be administered by the deferred presentment database vendor. The provider's security administrator will be responsible for all other employee user identification numbers and passwords within the provider's organization;

1. through 2. No change.

(b) through (c) No change.

(2)(a) No change.

(b) It will be the responsibility of each provider's designated security administrator to assign user identification numbers and passwords to those employees at new branch office locations who may register deferred presentment transactions on the deferred presentment database after Form OFR-560-02 ~~OFR-MT 2-04~~ (Location Notification Form) as to such branch office location has been provided to the Office of Financial Regulation.

(3) through (5) No change.

69V-560.909 Deferred Presentment Database Availability.

(1) No change.

(2) In the event the deferred presentment database is unavailable, providers shall adhere to the following procedures to determine eligibility before initiating a new deferred presentment transaction (except as provided in subsection subparagraph (3) below):

(a) through (b) No change.

(c) Within 24 hours of obtaining the temporary transaction authorization number from the database vendor, the provider shall accurately enter the remaining transactional data into the deferred presentment database.

(3) through (4) No change.

69V-560.911 Deferred Presentment Database Dispute Resolution for Customers.

(1) through (3) No change.

~~(4) The deferred presentment database vendor shall request any additional information from the person and the provider, regarding any negative eligibility determination, that the deferred presentment database vendor deems necessary.~~

69V-560.913 Termination of Deferred Presentment Activity and Transaction Maintenance.

(1) Within fifteen (15) business days after ceasing operations or no longer holding a license under part II or part III of chapter 560, F.S., a deferred presentment provider must provide notification to the Office of such action. The notice must be in writing, signed by the deferred presentment provider, and include the following:

(a) through (d) No change.

(2) The notification required in subsection ~~paragraph~~ (1) above must be mailed to Office of Financial Regulation, Attention: Deferred Presentment Database Contract Manager, 200 East Gaines Street, Tallahassee, Florida 32399-0376, or transmitted by facsimile to (850) 410-9914.

(3) through (5) No change.

The following change has been made to an incorporated form:

- Office of Financial Regulation, Division of Consumer Finance, Form OFR-560-09, Disciplinary Guidelines for Money Services Businesses:
 - In response to a JAPC comment, the Office revised Violation #42 to clarify the applicable disciplinary action.

BILL GALVANO
President



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Representative Clovis Watson, Jr.

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THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

October 2, 2019

Ms. Sheila Harley
Assistant General Counsel
Office of Financial Regulation
101 East Gaines Street
Tallahassee, Florida 32399-0379

**RE: Department of Financial Services, Office of Financial Regulation
Rules 69V-560.1000, .1012, .1013, .102, .103, .107, .201, .302, .504, .602, .606,
.608, .609, .702, .703, .704, .7041, .7042, .7043, .707, .902, .903, .904, .905, .907,
.908, .909, .910, .911, .912 and .913**

Dear Ms. Harley:

I have reviewed the Notice of Change published September 30, 2019, regarding the above-referenced rules and offer the following comments for your consideration and response

69V-560.702(4)(c)-(d): Section 120.55(1)(a)4., Florida Statutes, and rule 1-1.013(2)(a), Florida Administrative Code, reserve the requirement of a form number for forms and their instructions. Please revise this section to remove the assignment of form numbers from the incorporated federal regulations or United States Code provisions. Additionally, the form numbers should be removed from the copies of the materials to be filed at adoption.

69V-560.702(6): Please see the comment above for rule 69V-560.702(4)(c)-(d).

69V-560.702(8): As the referenced incorporated material do not constitute forms, please revise the reference to forms in this subsection.

69V-560.703(2): Please see the comment above for rule 69V-560.702(4)(c)-(d).

69V-560.703(4)(c)-(d): Please see the comment above for rule 69V-560.702(4)(c)-(d).

69V-560.703(6): Please see the comment above for rule 69V-560.702(4)(c)-(d).

69V-560.703(8): As the referenced incorporated material do not constitute forms, please revise the reference to forms in this subsection.

69V-560.704(4)(d)7.: Please see the comment above for rule 69V-560.702(4)(c)-(d).

If you have questions, please do not hesitate to contact me. Otherwise, I look forward to your written response.

Sincerely,



Jamie L. Jackson
Chief Attorney

JLJ:TL WORD/JACKSON/69V_560.1000LS100219_166669_166699

FLORIDA OFFICE OF
FINANCIAL REGULATION

www.flofr.com

November 8, 2019

Via Hand Delivery

Jamie Jackson, Senior Attorney
Joint Administrative Procedures Committee
Room 680, Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399-1400

Re: Office of Financial Regulation's Rules -Chapter 69V-560
560.702, .703, .704

Dear Ms. Jackson:

Attached, please find the Office's responses to your letter dated October 2, 2019 regarding the above-mentioned rules.

If you have further questions or require additional information, please don't hesitate to contact me at Sheila.harley@flofr.com or 850/410-9716.

Thank you,



Sheila Harley
Assistant General Counsel
Florida Office of Financial Regulation
200 East Gaines Street, Fletcher 550
Tallahassee, FL 32399-0376
(850) 410-9887
(850) 410-9914 (fax)
Sheila.harley@flofr.com

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JAPC COMMENT: 69V-560.702(4)(c)-(d): Section 120.55(1)(a)4., Florida Statutes, and rule 1-1.013(2)(a), Florida Administrative Code, reserves the requirement of a form number for forms and their instructions. Please revise this section to remove the assignment of form numbers from the incorporated federal regulations or United States Code provisions. Additionally, the form numbers should be removed from the copies of the materials to be filed at adoption.

OFR Response: The Office published a Notice of Change revising these sections and believes the revisions address JAPC's concerns. See attached Notice of Change and revised incorporated material.

JAPC COMMENT: 69V-560.702(6): Please see the comment above for rule 69V-560.702(4)(c)-(d):

OFR Response: The Office published a Notice of Change revising this section and believes the revision addresses JAPC's concerns. See attached Notice of Change and revised incorporated material.

JAPC COMMENT: 69V-560.702(8): As the referenced incorporated material do not constitute forms, please revise the reference to forms in this subsection.

OFR Response: The Office published a Notice of Change revising this section and believes the revision addresses JAPC's concerns. See attached Notice of Change.

JAPC COMMENT: 69V-560.703(2): Please see the comment above for rule 69V-560.702(4)(c)-(d):

OFR Response: The Office published a Notice of Change revising this section and believes the revision addresses JAPC's concerns. See attached Notice of Change and revised incorporated material.

JAPC COMMENT: 69V-560.703(4)(c)-(d): Please see the comment above for rule 69V-560.702(4)(c)-(d):

OFR Response: The Office published a Notice of Change revising these sections and believes the revisions address JAPC's concerns. See attached Notice of Change and revised incorporated material.

JAPC COMMENT: 69V-560.703(6): Please see the comment above for rule 69V-560.702(4)(c)-(d):

OFR Response. The Office published a Notice of Change revising this section and believes the revision addresses JAPC's concerns. See attached Notice of Change and revised incorporated material.

JAPC COMMENT: 69V-560.703(8): As the referenced incorporated material do not constitute forms, please revise the reference to forms in this subsection.

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OFR Response: The Office published a Notice of Change revising this section and believes the revision addresses JAPC's concerns. See attached Notice of Change.

JAPC COMMENT: 69V-560.704(4)(d)7: Please see the comment above for rule 69V-560.702(4)(c)-(d):

OFR Response: The Office published a Notice of Change revising this section and believes the revision addresses JAPC's concerns. See attached Notice of Change and revised incorporated material.

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§ 1021.620

31 CFR Ch. X (7-1-18 Edition)

1022.420 Additional records to be maintained by providers and sellers of prepaid access.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

1022.500 General.

1022.520 Special information sharing procedures to deter money laundering and terrorist activity for money services businesses.

1022.530 [Reserved]

1022.540 Voluntary information sharing among financial institutions.

Subpart F—Special Standards of Diligence; Prohibitions, and Special Measures for Money Services Businesses

1022.600 General.

1022.610–1022.670 [Reserved]

AUTHORITY: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307; sec. 701, Pub. L. 114–74, 129 Stat. 599.

SOURCE: 75 FR 65812, Oct. 26, 2010, unless otherwise noted.

PART 1022—RULES FOR MONEY SERVICES BUSINESSES

Subpart A—Definitions

Sec.

1022.100 Definitions.

Subpart B—Programs

1022.200 General.

1022.210 Anti-money laundering programs for money services businesses.

Subpart C—Reports Required To Be Made By Money Services Businesses

1022.300 General.

1022.310 Reports of transactions in currency.

1022.311 Filing obligations.

1022.312 Identification required.

1022.313 Aggregation.

1022.314 Structured transactions.

1022.315 Exemptions.

1022.320 Reports by money services businesses of suspicious transactions.

1022.380 Registration of money services businesses.

Subpart D—Records Required To Be Maintained By Money Services Businesses

1022.400 General.

1022.410 Additional records to be made and retained by dealers in foreign exchange.

Subpart A—Definitions

§ 1022.100 Definitions.

Refer to §1010.100 of this chapter for general definitions not noted herein.

Subpart B—Programs

§ 1022.210 Anti-money laundering programs for money services businesses.

(a) Each money services business, as defined by §1010.100(ff) of this chapter, shall develop, implement, and maintain an effective anti-money laundering program. An effective anti-money laundering program is one that is reasonably designed to prevent the money services business from being used to facilitate money laundering

and the financing of terrorist activities.

(b) The program shall be commensurate with the risks posed by the location and size of, and the nature and volume of the financial services provided by, the money services business.

(c) The program shall be in writing, and a money services business shall make copies of the anti-money laundering program available for inspection to the Department of the Treasury upon request.

(d) At a minimum, the program shall:

(1) Incorporate policies, procedures, and internal controls reasonably designed to assure compliance with this chapter.

(i) Policies, procedures, and internal controls developed and implemented under this section shall include provisions for complying with the requirements of this chapter including, to the extent applicable to the money services business, requirements for:

(A) Verifying customer identification, including as set forth in paragraph (d)(1)(iv) of this section;

(B) Filing Reports;

(C) Creating and retaining records;

(D) Responding to law enforcement requests.

(ii) Money services businesses that have automated data processing systems should integrate their compliance procedures with such systems.

(iii) A person that is a money services business solely because it is an agent for another money services business as set forth in §1022.380(a)(3), and the money services business for which it serves as agent, may by agreement allocate between them responsibility for development of policies, procedures, and internal controls required by this paragraph (d)(1). Each money services business shall remain solely responsible for implementation of the requirements set forth in this section, and nothing in this paragraph (d)(1) relieves any money services business from its obligation to establish and maintain an effective anti-money laundering program.

(iv) A money services business that is a provider or seller of prepaid access must establish procedures to verify the identity of a person who obtains prepaid access under a prepaid program

and obtain identifying information concerning such a person, including name, date of birth, address, and identification number. Sellers of prepaid access must also establish procedures to verify the identity of a person who obtains prepaid access to funds that exceed \$10,000 during any one day and obtain identifying information concerning such a person, including name, date of birth, address, and identification number. Providers of prepaid access must retain access to such identifying information for five years after the last use of the prepaid access device or vehicle; such information obtained by sellers of prepaid access must be retained for five years from the date of the sale of the prepaid access device or vehicle.

(2) Designate a person to assure day to day compliance with the program and this chapter. The responsibilities of such person shall include assuring that:

(i) The money services business properly files reports, and creates and retains records, in accordance with applicable requirements of this chapter;

(ii) The compliance program is updated as necessary to reflect current requirements of this chapter, and related guidance issued by the Department of the Treasury; and

(iii) The money services business provides appropriate training and education in accordance with paragraph (d)(3) of this section.

(3) Provide education and/or training of appropriate personnel concerning their responsibilities under the program, including training in the detection of suspicious transactions to the extent that the money services business is required to report such transactions under this chapter.

(4) Provide for independent review to monitor and maintain an adequate program. The scope and frequency of the review shall be commensurate with the risk of the financial services provided by the money services business. Such review may be conducted by an officer or employee of the money services business so long as the reviewer is not the person designated in paragraph (d)(2) of this section.

(e) *Compliance date.* A money services business must develop and implement

§ 1022.300

31 CFR Ch. X (7-1-18 Edition)

an anti-money laundering program that complies with the requirements of this section on or before the later of July 24, 2002, and the end of the 90-day period beginning on the day following the date the business is established.

[75 FR 65812, Oct. 26, 2010, as amended at 76 FR 43597, July 21, 2011; 76 FR 45419, July 29, 2011]

a new account is opened, unless the customer is otherwise excluded pursuant to paragraph (e) of this section or the account is exempted pursuant to paragraph (h) of this section. A covered financial institution may accomplish this either by obtaining a certification in the form of appendix A of this section from the individual opening the account on behalf of the legal entity customer, or by obtaining from the individual the information required by the form by another means, provided the individual certifies, to the best of the individual's knowledge, the accuracy of the information; and

(2) Verify the identity of each beneficial owner identified to the covered financial institution, according to risk-based procedures to the extent reasonable and practicable. At a minimum, these procedures must contain the elements required for verifying the identity of customers that are individuals under § 1020.220(a)(2) of this chapter (for banks); § 1023.220(a)(2) of this chapter (for brokers or dealers in securities); § 1024.220(a)(2) of this chapter (for mutual funds); or § 1026.220(a)(2) of this chapter (for futures commission merchants or introducing brokers in commodities); provided, that in the case of documentary verification, the financial institution may use photocopies or other reproductions of the documents listed in paragraph (a)(2)(ii)(A)(1) of § 1020.220 of this chapter (for banks); § 1023.220 of this chapter (for brokers or dealers in securities); § 1024.220 of this chapter (for mutual funds); or § 1026.220 of this chapter (for futures commission merchants or introducing brokers in commodities). A covered financial institution may rely on the information supplied by the legal entity customer regarding the identity of its beneficial owner or owners, provided that it has no knowledge of facts that would reasonably call into question the reliability of such information.

(c) *Account*. For purposes of this section, *account* has the meaning set forth in § 1020.100(a) of this chapter (for banks); § 1023.100(a) of this chapter (for brokers or dealers in securities); § 1024.100(a) of this chapter (for mutual funds); and § 1026.100(a) of this chapter (for futures commission merchants or introducing brokers in commodities).

§ 1010.230 Beneficial ownership requirements for legal entity customers.

(a) *In general*. Covered financial institutions are required to establish and maintain written procedures that are reasonably designed to identify and verify beneficial owners of legal entity customers and to include such procedures in their anti-money laundering compliance program required under 31 U.S.C. 5318(h) and its implementing regulations.

(b) *Identification and verification*. With respect to legal entity customers, the covered financial institution's customer due diligence procedures shall enable the institution to:

(1) Identify the beneficial owner(s) of each legal entity customer at the time

(d) *Beneficial owner.* For purposes of this section, *beneficial owner* means each of the following:

(1) Each individual, if any, who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25 percent or more of the equity interests of a legal entity customer; and

(2) A single individual with significant responsibility to control, manage, or direct a legal entity customer, including:

(i) An executive officer or senior manager (e.g., a Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, or Treasurer); or

(ii) Any other individual who regularly performs similar functions.

(3) If a trust owns directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, 25 percent or more of the equity interests of a legal entity customer, the beneficial owner for purposes of paragraph (d)(1) of this section shall mean the trustee. If an entity listed in paragraph (e)(2) of this section owns directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, 25 percent or more of the equity interests of a legal entity customer, no individual need be identified for purposes of paragraph (d)(1) of this section with respect to that entity's interests.

NOTE TO PARAGRAPH (d): The number of individuals that satisfy the definition of "beneficial owner," and therefore must be identified and verified pursuant to this section, may vary. Under paragraph (d)(1) of this section, depending on the factual circumstances, up to four individuals may need to be identified. Under paragraph (d)(2) of this section, only one individual must be identified. It is possible that in some circumstances the same person or persons might be identified pursuant to paragraphs (d)(1) and (2) of this section. A covered financial institution may also identify additional individuals as part of its customer due diligence if it deems appropriate on the basis of risk.

(e) *Legal entity customer.* For the purposes of this section:

(1) *Legal entity customer* means a corporation, limited liability company, or other entity that is created by the fil-

ing of a public document with a Secretary of State or similar office, a general partnership, and any similar entity formed under the laws of a foreign jurisdiction that opens an account.

(2) *Legal entity customer* does not include:

(i) A financial institution regulated by a Federal functional regulator or a bank regulated by a State bank regulator;

(ii) A person described in §1020.315(b)(2) through (5) of this chapter;

(iii) An issuer of a class of securities registered under section 12 of the Securities Exchange Act of 1934 or that is required to file reports under section 15(d) of that Act;

(iv) An investment company, as defined in section 3 of the Investment Company Act of 1940, that is registered with the Securities and Exchange Commission under that Act;

(v) An investment adviser, as defined in section 202(a)(11) of the Investment Advisers Act of 1940, that is registered with the Securities and Exchange Commission under that Act;

(vi) An exchange or clearing agency, as defined in section 3 of the Securities Exchange Act of 1934, that is registered under section 6 or 17A of that Act;

(vii) Any other entity registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934;

(viii) A registered entity, commodity pool operator, commodity trading advisor, retail foreign exchange dealer, swap dealer, or major swap participant, each as defined in section 1a of the Commodity Exchange Act, that is registered with the Commodity Futures Trading Commission;

(ix) A public accounting firm registered under section 102 of the Sarbanes-Oxley Act;

(x) A bank holding company, as defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) or savings and loan holding company, as defined in section 10(n) of the Home Owners' Loan Act (12 U.S.C. 1467a(n));

(xi) A pooled investment vehicle that is operated or advised by a financial institution excluded under paragraph (e)(2) of this section;

(xii) An insurance company that is regulated by a State;

(xiii) A financial market utility designated by the Financial Stability Oversight Council under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010;

(xiv) A foreign financial institution established in a jurisdiction where the regulator of such institution maintains beneficial ownership information regarding such institution;

(xv) A non-U.S. governmental department, agency or political subdivision that engages only in governmental rather than commercial activities; and

(xvi) Any legal entity only to the extent that it opens a private banking account subject to § 1010.620 of this chapter.

(3) The following legal entity customers are subject only to the control prong of the beneficial ownership requirement:

(i) A pooled investment vehicle that is operated or advised by a financial institution not excluded under paragraph (e)(2) of this section; and

(ii) Any legal entity that is established as a nonprofit corporation or similar entity and has filed its organizational documents with the appropriate State authority as necessary.

(f) *Covered financial institution.* For the purposes of this section, *covered financial institution* has the meaning set forth in § 1010.605(e)(1) of this chapter.

(g) *New account.* For the purposes of this section, *new account* means each account opened at a covered financial institution by a legal entity customer on or after the applicability date.

(h) *Exemptions.* (1) Covered financial institutions are exempt from the requirements to identify and verify the identity of the beneficial owner(s) set forth in paragraphs (a) and (b)(1) and (2) of this section only to the extent the financial institution opens an account for a legal entity customer that is:

(i) At the point-of-sale to provide credit products, including commercial private label credit cards, solely for the purchase of retail goods and/or services at these retailers, up to a limit of \$50,000;

(ii) To finance the purchase of postage and for which payments are remit-

ted directly by the financial institution to the provider of the postage products;

(iii) To finance insurance premiums and for which payments are remitted directly by the financial institution to the insurance provider or broker;

(iv) To finance the purchase or leasing of equipment and for which payments are remitted directly by the financial institution to the vendor or lessor of this equipment.

(2) *Limitations on Exemptions.* (i) The exemptions identified in paragraphs (h)(1)(ii) through (iv) of this section do not apply to transaction accounts through which a legal entity customer can make payments to, or receive payments from, third parties.

(ii) If there is the possibility of a cash refund on the account activity identified in paragraphs (h)(1)(ii) through (iv) of this section, then beneficial ownership of the legal entity customer must be identified and verified by the financial institution as required by this section, either at the time of initial remittance, or at the time such refund occurs.

(i) *Recordkeeping.* A covered financial institution must establish procedures for making and maintaining a record of all information obtained under the procedures implementing paragraph (b) of this section.

(1) *Required records.* At a minimum the record must include:

(i) For identification, any identifying information obtained by the covered financial institution pursuant to paragraph (b) of this section, including without limitation the certification (if obtained); and

(ii) For verification, a description of any document relied on (noting the type, any identification number, place of issuance and, if any, date of issuance and expiration), of any non-documentary methods and the results of any measures undertaken, and of the resolution of each substantive discrepancy.

(2) *Retention of records.* A covered financial institution must retain the records made under paragraph (1)(1)(i) of this section for five years after the date the account is closed, and the records made under paragraph (1)(1)(ii) of this section for five years after the record is made.

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(j) *Reliance on another financial institution.* A covered financial institution may rely on the performance by another financial institution (including an affiliate) of the requirements of this section with respect to any legal entity customer of the covered financial institution that is opening, or has opened, an account or has established a similar business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions, provided that:

(1) Such reliance is reasonable under the circumstances;

(2) The other financial institution is subject to a rule implementing 31 U.S.C. 5318(h) and is regulated by a Federal functional regulator; and

(3) The other financial institution enters into a contract requiring it to certify annually to the covered financial institution that it has implemented its anti-money laundering program, and that it will perform (or its agent will perform) the specified requirements of the covered financial institution's procedures to comply with the requirements of this section.

APPENDIX A to § 1010.230-- CERTIFICATION REGARDING BENEFICIAL OWNERS OF LEGAL ENTITY CUSTOMERS

I. GENERAL INSTRUCTIONS

What is this form?

To help the government fight financial crime, Federal regulation requires certain financial institutions to obtain, verify, and record information about the beneficial owners of legal entity customers. Legal entities can be abused to disguise involvement in terrorist financing, money laundering, tax evasion, corruption, fraud, and other financial crimes. Requiring the disclosure of key individuals who own or control a legal entity (i.e., the beneficial owners) helps law enforcement investigate and prosecute these crimes.

Who has to complete this form?

This form must be completed by the person opening a new account on behalf of a legal entity with any of the following U.S. financial institutions: (i) a bank or credit union; (ii) a broker or dealer in securities; (iii) a mutual fund; (iv) a futures commission merchant; or (v) an introducing broker in commodities.

For the purposes of this form, a **legal entity** includes a corporation, limited liability company, or other entity that is created by a filing of a public document with a Secretary of State or similar office, a general partnership, and any similar business entity formed in the United States or a foreign country. **Legal entity** does not include sole proprietorships, unincorporated associations, or natural persons opening accounts on their own behalf.

What information do I have to provide?

This form requires you to provide the name, address, date of birth and Social Security number (or passport number or other similar information, in the case of Non-U.S. Persons) for the following individuals (i.e., the **beneficial owners**):

- (i) Each individual, if any, who owns, directly or indirectly, 25 percent or more of the equity interests of the legal entity customer (e.g., each natural person that owns 25 percent or more of the shares of a corporation); **and**
- (ii) An individual with significant responsibility for managing the legal entity customer (e.g., a Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, or Treasurer).

The number of individuals that satisfy this definition of “beneficial owner” may vary. Under section (i), depending on the factual circumstances, up to four individuals (but as few as zero) may need to be identified. Regardless of the number of individuals identified under section (i), you must provide the identifying information of one individual under section (ii). It is possible that in some circumstances the same individual might be identified under both sections (e.g., the President of Acme, Inc. who also holds a 30% equity interest). Thus, a completed form will contain the identifying information of at least one individual (under section (ii)), and up to five individuals (i.e., one individual under section (ii) and four 25 percent equity holders under section (i)).

The financial institution may also ask to see a copy of a driver’s license or other identifying document for each beneficial owner listed on this form.

II. CERTIFICATION OF BENEFICIAL OWNER(S)

Persons opening an account on behalf of a legal entity must provide the following information:

a. Name and Title of Natural Person Opening Account:

b. Name, Type, and Address of Legal Entity for Which the Account is Being Opened:

c. The following information for *each* individual, if any, who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25 percent or more of the equity interests of the legal entity listed above:

Name	Date of Birth	Address (Residential or Business Street Address)	For U.S. Persons: Social Security Number	For Non-U.S. Persons: Social Security Number, Passport Number and Country of Issuance, or other similar identification number ¹

(If no individual meets this definition, please write "Not Applicable.")

d. The following information for *one* individual with significant responsibility for managing the legal entity listed above, such as:

- An executive officer or senior manager (e.g., Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, Treasurer); or
- Any other individual who regularly performs similar functions.

(If appropriate, an individual listed under section (c) above may also be listed in this section (d)).

¹ In lieu of a passport number, Non-U.S. Persons may also provide a Social Security Number, an alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

Name	Date of Birth	Address (Residential or Business Street Address)	For U.S. Persons: Social Security Number	For Non-U.S. Persons: Social Security Number, Passport Number and Country of Issuance, or other similar identification number ¹

1. In lieu of a passport number, Non-U.S. Persons may also provide a Social Security Number, an alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

Legal Entity Identifier: _____ (Optional)

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[81 FR 29451, May 11, 2016, as amended at 82
FR 45183, Sept. 28, 2017]

Subpart D—Records Required To Be Maintained

§ 1010.400 General.

Each financial institution (as defined in 31 U.S.C. 5312(a)(2) or (c)(1)) should refer to its chapter X part for any additional recordkeeping requirements. Unless otherwise indicated, the recordkeeping requirements contained in this subpart D apply to all financial institutions.

§ 1010.401 Determination by the Secretary.

The Secretary hereby determines that the records required to be kept by this chapter have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

§ 1010.405 [Reserved]

§ 1010.410 Records to be made and retained by financial institutions.

Each financial institution shall retain either the original or a copy or reproduction of each of the following:

(a) A record of each extension of credit in an amount in excess of \$10,000, except an extension of credit secured by an interest in real property, which record shall contain the name and address of the person to whom the extension

of credit is made, the amount thereof, the nature or purpose thereof, and the date thereof;

(b) A record of each advice, request, or instruction received or given regarding any transaction resulting (or intended to result and later canceled if such a record is normally made) in the transfer of currency or other monetary instruments, funds, checks, investment securities, or credit, of more than \$10,000 to or from any person, account, or place outside the United States.

(c) A record of each advice, request, or instruction given to another financial institution or other person located within or without the United States, regarding a transaction intended to result in the transfer of funds, or of currency, other monetary instruments, checks, investment securities, or credit, of more than \$10,000 to a person, account or place outside the United States.

(d) A record of such information for such period of time as the Secretary may require in an order issued under § 1010.370(a), not to exceed five years.

(e) *Nonbank financial institutions.* Each agent, agency, branch, or office located within the United States of a financial institution other than a bank is subject to the requirements of this paragraph (e) with respect to a transmittal of funds in the amount of \$3,000 or more:

(1) *Recordkeeping requirements.* (i) For each transmittal order that it accepts as a transmitter's financial institution, a financial institution shall obtain and retain either the original or a microfilm, other copy, or electronic record of the following information relating to the transmittal order:

(A) The name and address of the transmitter;

(B) The amount of the transmittal order;

(C) The execution date of the transmittal order;

(D) Any payment instructions received from the transmitter with the transmittal order;

(E) The identity of the recipient's financial institution;

(F) As many of the following items as are received with the transmittal order:¹

(1) The name and address of the recipient;

(2) The account number of the recipient; and

(3) Any other specific identifier of the recipient; and

(G) Any form relating to the transmittal of funds that is completed or signed by the person placing the transmittal order.

(i) For each transmittal order that it accepts as an intermediary financial institution, a financial institution shall retain either the original or a microfilm, other copy, or electronic record of the transmittal order.

(ii) For each transmittal order that it accepts as a recipient's financial institution, a financial institution shall retain either the original or a microfilm, other copy, or electronic record of the transmittal order.

(2) *Transmitters other than established customers.* In the case of a transmittal order from a transmitter that is not an established customer, in addition to obtaining and retaining the information required in paragraph (e)(1)(i) of this section:

(i) If the transmittal order is made in person, prior to acceptance the transmitter's financial institution shall verify the identity of the person placing the transmittal order. If it accepts the transmittal order, the transmitter's financial institution shall obtain and retain a record of the name and address, the type of identification reviewed, and the number of the identification document (*e.g.*, driver's license), as well as a record of the person's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack

¹For transmittals of funds effected through the Federal Reserve's Fedwire funds transfer system by a domestic broker or dealers in securities, only one of the items is required to be retained, if received with the transmittal order, until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire message format.

thereof. If the transmitter's financial institution has knowledge that the person placing the transmittal order is not the transmitter, the transmitter's financial institution shall obtain and retain a record of the transmitter's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person placing the order, or a notation in the record of the lack thereof.

(ii) If the transmittal order accepted by the transmitter's financial institution is not made in person, the transmitter's financial institution shall obtain and retain a record of the name and address of the person placing the transmittal order, as well as the person's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof, and a copy or record of the method of payment (*e.g.*, check or credit card transaction) for the transmittal of funds. If the transmitter's financial institution has knowledge that the person placing the transmittal order is not the transmitter, the transmitter's financial institution shall obtain and retain a record of the transmitter's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person placing the order, or a notation in the record of the lack thereof.

(3) *Recipients other than established customers.* For each transmittal order that it accepts as a recipient's financial institution for a recipient that is not an established customer, in addition to obtaining and retaining the information required in paragraph (e)(1)(iii) of this section:

(i) If the proceeds are delivered in person to the recipient or its representative or agent, the recipient's financial institution shall verify the identity of the person receiving the proceeds and shall obtain and retain a record of the name and address, the type of identification reviewed, and the number of

the identification document (*e.g.*, driver's license), as well as a record of the person's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof. If the recipient's financial institution has knowledge that the person receiving the proceeds is not the recipient, the recipient's financial institution shall obtain and retain a record of the recipient's name and address, as well as the recipient's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person receiving the proceeds, or a notation in the record of the lack thereof.

(ii) If the proceeds are delivered other than in person, the recipient's financial institution shall retain a copy of the check or other instrument used to effect payment, or the information contained thereon, as well as the name and address of the person to which it was sent.

(4) *Retrievability.* The information that a transmitter's financial institution must retain under paragraphs (e)(1)(i) and (e)(2) of this section shall be retrievable by the transmitter's financial institution by reference to the name of the transmitter. If the transmitter is an established customer of the transmitter's financial institution and has an account used for transmittals of funds, then the information also shall be retrievable by account number. The information that a recipient's financial institution must retain under paragraphs (e)(1)(iii) and (e)(3) of this section shall be retrievable by the recipient's financial institution by reference to the name of the recipient. If the recipient is an established customer of the recipient's financial institution and has an account used for transmittals of funds, then the information also shall be retrievable by account number. This information need not be retained in any particular manner, so long as the financial institution is able to retrieve the information required by this paragraph, either by accessing transmittal of funds records di-

rectly or through reference to some other record maintained by the financial institution.

(5) *Verification.* Where verification is required under paragraphs (e)(2) and (e)(3) of this section, a financial institution shall verify a person's identity by examination of a document (other than a customer signature card), preferably one that contains the person's name, address, and photograph, that is normally acceptable by financial institutions as a means of identification when cashing checks for persons other than established customers. Verification of the identity of an individual who indicates that he or she is an alien or is not a resident of the United States may be made by passport, alien identification card, or other official document evidencing nationality or residence (*e.g.*, a foreign driver's license with indication of home address).

(6) *Exceptions.* The following transmittals of funds are not subject to the requirements of this section:

(i) Transmittals of funds where the transmitter and the recipient are any of the following:

(A) A bank;

(B) A wholly-owned domestic subsidiary of a bank chartered in the United States;

(C) A broker or dealer in securities;

(D) A wholly-owned domestic subsidiary of a broker or dealer in securities;

(E) A futures commission merchant or an introducing broker in commodities;

(F) A wholly-owned domestic subsidiary of a futures commission merchant or an introducing broker in commodities;

(G) The United States;

(H) A state or local government; or

(I) A Federal, State or local government agency or instrumentality; or

(J) A mutual fund; and

(ii) Transmittals of funds where both the transmitter and the recipient are the same person and the transmitter's financial institution and the recipient's financial institution are the same broker or dealer in securities.

(f) Any transmitter's financial institution or intermediary financial institution located within the United

States shall include in any transmittal order for a transmittal of funds in the amount of \$3,000 or more, information as required in this paragraph (f):

(1) A transmittor's financial institution shall include in a transmittal order, at the time it is sent to a receiving financial institution, the following information:

(i) The name and, if the payment is ordered from an account, the account number of the transmittor;

(ii) The address of the transmittor, except for a transmittal order through Fedwire until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire format;

(iii) The amount of the transmittal order;

(iv) The execution date of the transmittal order;

(v) The identity of the recipient's financial institution;

(vi) As many of the following items as are received with the transmittal order:²

(A) The name and address of the recipient;

(B) The account number of the recipient;

(C) Any other specific identifier of the recipient; and

(vii) Either the name and address or numerical identifier of the transmittor's financial institution.

(2) A receiving financial institution that acts as an intermediary financial institution, if it accepts a transmittal order, shall include in a corresponding transmittal order at the time it is sent to the next receiving financial institution, the following information, if received from the sender:

(i) The name and the account number of the transmittor;

(ii) The address of the transmittor, except for a transmittal order through Fedwire until such time as the bank

that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire format;

(iii) The amount of the transmittal order;

(iv) The execution date of the transmittal order;

(v) The identity of the recipient's financial institution;

(vi) As many of the following items as are received with the transmittal order:³

(A) The name and address of the recipient;

(B) The account number of the recipient;

(C) Any other specific identifier of the recipient; and

(vii) Either the name and address or numerical identifier of the transmittor's financial institution.

(3) *Safe harbor for transmittals of funds prior to conversion to the expanded Fedwire message format.* The following provisions apply to transmittals of funds effected through the Federal Reserve's Fedwire funds transfer system or otherwise by a financial institution before the bank that sends the order to the Federal Reserve Bank or otherwise completes its conversion to the expanded Fedwire message format.

(i) *Transmittor's financial institution.* A transmittor's financial institution will be deemed to be in compliance with the provisions of paragraph (f)(1) of this section if it:

(A) Includes in the transmittal order, at the time it is sent to the receiving financial institution, the information specified in paragraphs (f)(1)(iii) through (v), and the information specified in paragraph (f)(1)(vi) of this section to the extent that such information has been received by the financial institution, and

(B) Provides the information specified in paragraphs (f)(1)(i), (ii) and (vii)

²For transmittals of funds effected through the Federal Reserve's Fedwire funds transfer system by a financial institution, only one of the items is required to be included in the transmittal order, if received with the sender's transmittal order, until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire message format.

³For transmittals of funds effected through the Federal Reserve's Fedwire funds transfer system by a financial institution, only one of the items is required to be included in the transmittal order, if received with the sender's transmittal order, until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire message format.

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of this section to a financial institution that acted as an intermediary financial institution or recipient's financial institution in connection with the transmittal order, within a reasonable time after any such financial institution makes a request therefor in connection with the requesting financial institution's receipt of a lawful request for such information from a Federal, State, or local law enforcement or financial regulatory agency, or in connection with the requesting financial institution's own Bank Secrecy Act compliance program.

(ii) *Intermediary financial institution.* An intermediary financial institution will be deemed to be in compliance with the provisions of paragraph (f)(2) of this section if it:

(A) Includes in the transmittal order, at the time it is sent to the receiving financial institution, the information specified in paragraphs (f)(2)(iii) through (f)(2)(vi) of this section, to the extent that such information has been received by the intermediary financial institution; and

(B) Provides the information specified in paragraphs (f)(2)(i), (ii) and (vii) of this section, to the extent that such information has been received by the intermediary financial institution, to a financial institution that acted as an intermediary financial institution or recipient's financial institution in connection with the transmittal order, within a reasonable time after any such financial institution makes a request therefor in connection with the requesting financial institution's receipt of a lawful request for such information from a Federal, State, or local law enforcement or regulatory agency, or in connection with the requesting financial institution's own Bank Secrecy Act compliance program.

(iii) *Obligation of requesting financial institution.* Any information requested under paragraph (f)(3)(i)(B) or (f)(3)(ii)(B) of this section shall be treated by the requesting institution, once received, as if it had been included in the transmittal order to which such information relates.

(4) *Exceptions.* The requirements of this paragraph (f) shall not apply to transmittals of funds that are listed in

paragraph (e)(6) of this section or § 1020.410(a)(6) of this chapter.

[75 FR 65812, Oct. 26, 2010, as amended at 81 FR 76864, Nov. 4, 2016]

§ 1010.415 Purchases of bank checks and drafts, cashier's checks, money orders and traveler's checks.

(a) No financial institution may issue or sell a bank check or draft, cashier's check, money order or traveler's check for \$3,000 or more in currency unless it maintains records of the following information, which must be obtained for each issuance or sale of one or more of these instruments to any individual purchaser which involves currency in amounts of \$3,000-\$10,000 inclusive:

(1) If the purchaser has a deposit account with the financial institution:

- (i)(A) The name of the purchaser;
- (B) The date of purchase;
- (C) The type(s) of instrument(s) purchased;
- (D) The serial number(s) of each of the instrument(s) purchased; and
- (E) The amount in dollars of each of the instrument(s) purchased.

(ii) In addition, the financial institution must verify that the individual is a deposit accountholder or must verify the individual's identity. Verification may be either through a signature card or other file or record at the financial institution provided the deposit accountholder's name and address were verified previously and that information was recorded on the signature card or other file or record; or by examination of a document which is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors and which contains the name and address of the purchaser. If the deposit accountholder's identity has not been verified previously, the financial institution shall verify the deposit accountholder's identity by examination of a document which is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors and which contains the name and address of the purchaser, and shall record the specific identifying information (e.g., State of issuance and number of driver's license).

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(2) If the purchaser does not have a deposit account with the financial institution:

(1)(A) The name and address of the purchaser;

(B) The social security number of the purchaser, or if the purchaser is an alien and does not have a social security number, the alien identification number;

(C) The date of birth of the purchaser;

(D) The date of purchase;

(E) The type(s) of instrument(s) purchased;

(F) The serial number(s) of the instrument(s) purchased; and

(G) The amount in dollars of each of the instrument(s) purchased.

(i) In addition, the financial institution shall verify the purchaser's name and address by examination of a document which is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors and which contains the name and address of the purchaser, and shall record the specific identifying information (e.g., State of issuance and number of driver's license).

(b) Contemporaneous purchases of the same or different types of instruments totaling \$3,000 or more shall be treated as one purchase. Multiple purchases during one business day totaling \$3,000 or more shall be treated as one purchase if an individual employee, director, officer, or partner of the financial institution has knowledge that these purchases have occurred.

(c) Records required to be kept shall be retained by the financial institution for a period of five years and shall be made available to the Secretary upon request at any time.

§ 1010.420 Records to be made and retained by persons having financial interests in foreign financial accounts.

Records of accounts required by § 1010.350 to be reported to the Commissioner of Internal Revenue shall be retained by each person having a financial interest in or signature or other authority over any such account. Such records shall contain the name in which each such account is maintained, the number or other designa-

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tion of such account, the name and address of the foreign bank or other person with whom such account is maintained, the type of such account, and the maximum value of each such account during the reporting period. Such records shall be retained for a period of 5 years and shall be kept at all times available for inspection as authorized by law. In the computation of the period of 5 years, there shall be disregarded any period beginning with a date on which the taxpayer is indicted or information instituted on account of the filing of a false or fraudulent Federal income tax return or failing to file a Federal income tax return, and ending with the date on which final disposition is made of the criminal proceeding.

§ 1010.430 Nature of records and retention period.

(a) Wherever it is required that there be retained either the original or a copy or reproduction of a check, draft, monetary instrument, investment security, or other similar instrument, there shall be retained a copy of both front and back of each such instrument or document, except that no copy need be retained of the back of any instrument or document which is entirely blank or which contains only standardized printed information, a copy of which is on file.

(b) Records required by this chapter to be retained by financial institutions may be those made in the ordinary course of business by a financial institution. If no record is made in the ordinary course of business of any transaction with respect to which records are required to be retained by this chapter, then such a record shall be prepared in writing by the financial institution.

(c) The rules and regulations issued by the Internal Revenue Service under 26 U.S.C. 6109 determine what constitutes a taxpayer identification number and whose number shall be obtained in the case of an account maintained by one or more persons.

(d) All records that are required to be retained by this chapter shall be retained for a period of five years. Records or reports required to be kept pursuant to an order issued under

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§1010.370 of this chapter shall be retained for the period of time specified in such order, not to exceed five years. All such records shall be filed or stored in such a way as to be accessible within a reasonable period of time, taking into consideration the nature of the record, and the amount of time expired since the record was made.

[75 FR 65812, Oct. 26, 2010, as amended at 81 FR 76864, Nov. 4, 2016]

§ 1010.440 Person outside the United States.

For the purposes of this chapter, a remittance or transfer of funds, or of currency, other monetary instruments, checks, investment securities, or credit to the domestic account of a person whose address is known by the person making the remittance or transfer, to be outside the United States, shall be deemed to be a remittance or transfer to a person outside the United States, except that, unless otherwise directed by the Secretary, this section shall not apply to a transaction on the books of a domestic financial institution involving the account of a customer of such institution whose address is within approximately 50 miles of the location of the institution, or who is known to be temporarily outside the United States.

(3) Crediting Iranian accounts on the books of a U.S. financial institution; and

(4) Making unauthorized transfers from U.S. persons to Iran or the Government of Iran.

(c) *When reports are due.* Reports are required to be filed within 10 business days by any financial institution rejecting instructions to execute payments or transfers involving underlying transactions prohibited by the provisions of this chapter.

(d) *What must be reported.* The report shall include the name and address of the transferee financial institution, the date of the transfer, the amount of the payment transfer, and a photocopy of the payment or transfer instructions received, and shall state the basis for the rejection of the transfer instructions. The report shall also provide the name and telephone number of a contact person at the transferee financial institution from whom compliance information may be obtained.

(e) *Where to report.* Reports must be filed with the Office of Foreign Assets Control, Compliance Programs Division, U.S. Treasury Department, 1500 Pennsylvania Avenue NW.—Annex, Washington, DC 20220.

[62 FR 45101, Aug. 25, 1997, as amended 70 FR 34061, June 13, 2005; 81 FR 43073, July 1, 2016]

§ 501.604 Reports by U.S. financial institutions on rejected funds transfers.

(a) *Who must report.* Any financial institution that rejects a funds transfer where the funds are not blocked under the provisions of this chapter, but where processing the transfer would nonetheless violate, or facilitate an underlying transaction that is prohibited under, other provisions contained in this chapter, must report. For purposes of this section, the term “financial institution” shall include a banking institution, depository institution or United States depository institution, domestic bank, financial institution or U.S. financial institution, as those terms are defined in the applicable part of this chapter.

(b) *Rejected transfers.* Examples of transactions involving rejected funds transfers include funds transfer instructions:

(1) Referencing a blocked vessel but where none of the parties or financial institutions involved in the transaction is a blocked person;

(2) Transferring unlicensed gifts or charitable donations from the Government of Syria to a U.S. person;

the persons required to make such reports. Reports with respect to transactions may be required either before or after such transactions are completed. Except as provided in parts 596 and 597, the Director may, through any person or agency, conduct investigations, hold hearings, administer oaths, examine witnesses, receive evidence, take depositions, and require by subpoena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under investigation, regardless of whether any report has been required or filed in connection therewith.

NOTE: See subpart F of part 597 for the relationship between this section and part 597.
[62 FR 45101, Aug. 25, 1997, as amended at 62 FR 52494, Oct. 8, 1997]

§ 501.603 Reports on blocked property.

(a) *Who must report*—(1) *Holders of blocked property*. Any person, including a financial institution, holding property blocked pursuant to this chapter must report. The requirement includes financial institutions that receive and block payments or transfers. This requirement is mandatory and applies to all U.S. persons (or persons subject to U.S. jurisdiction in the case of parts 500 and 515 of this chapter) who have in their possession or control any property or interests in property blocked pursuant to this chapter.

(2) *Primary responsibility to report*. A report may be filed on behalf of a holder of blocked property by an attorney, agent, or other person. Primary responsibility for reporting blocked property, however, rests with the actual holder of the property, or the person exercising control over property located outside the United States, with the following exceptions: primary responsibility for reporting any trust assets rest with the trustee; and primary responsibility for reporting real property rests with any U.S. co-owner, legal representative, agent, or property manager in the United States. No person is excused from filing a report by reason of the fact that another person has submitted a report with regard to the same property, except upon actual knowledge of the report filed by such

other person. Reports filed are regarded as privileged and confidential.

(3) *Financial institutions*. For purposes of this section, the term "financial institution" shall include a banking institution, domestic bank, United States depository institution, financial institution, or U.S. financial institution, as those terms are defined in the applicable part of this chapter.

(b) *What must be reported*—(1) *Initial reports*—(i) *When reports are due*. Reports are required to be filed within 10 business days from the date that property becomes blocked. This reporting requirement includes payments or transfers that are received and blocked by financial institutions.

(ii) *Contents of reports*. Initial reports on blocked property shall describe the owner or account party, the property, its location, any existing or new account number or similar reference necessary to identify the property, actual or estimated value and the date it was blocked, and shall include the name and address of the holder, along with the name and telephone number of a contact person from whom compliance information can be obtained. If the report is filed by a financial institution and involves the receipt of a payment or transfer of funds which are blocked by the financial institution, the report shall also include a photocopy of the payment or transfer instructions received and shall confirm that the payment has been deposited into a new or existing blocked account which is labeled as such and is established in the name of, or contains a means of clearly identifying the interest of, the individual or entity subject to blocking pursuant to the requirements of this chapter.

(2) *Annual reports*—(i) *When reports are due*. A comprehensive report on all blocked property held as of June 30 of the current year shall be filed annually by September 30. The first annual report is due September 30, 1997.

(ii) *Contents of reports*. Annual reports shall be filed using Form TDF 90-22.50, Annual Report of Blocked Property. Copies of Form TDF 90-22.50 may be obtained directly from the Office of Foreign Assets Control by downloading the form from the OFAC Reporting and License Application Forms page on

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OFAC's Web site (<https://www.treasury.gov/resource-center/sanctions/Pages/forms-index.aspx>). A copy of reports filed using form TDF 90-22.50 or in alternative formats must be retained for the reporter's records.

(c) *Reports on retained funds pursuant to § 596.504(b) of this chapter.* The reporting requirements set forth in this section are applicable to any financial institution retaining funds pursuant to § 596.504(b) of this chapter, except that the account name shall reflect the name of the person whose interest required retention of the funds.

(d) *Where to report.* All reports must be filed with the Office of Foreign Assets Control, Compliance Programs Division, U.S. Treasury Department, 1500 Pennsylvania Avenue NW.—Annex, Washington, DC 20220.

NOTE: See subpart F of part 597 for the relationship between this section and part 597.

[62 FR 45101, Aug. 25, 1997, as amended at 62 FR 52495, Oct. 8, 1997; 81 FR 76863, Nov. 4, 2016]

Office of Foreign Assets Control, Treasury

§ 594.304

§ 594.204 Prohibited transaction or dealing in property; contributions of funds, goods, or services.

Except as otherwise authorized, no U.S. person may engage in any transaction or dealing in property or interests in property of persons whose property and interests in property are blocked pursuant to § 594.201(a), including but not limited to the following transactions:

(a) The making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to § 594.201(a); and

(b) The receipt of any contribution or provision of funds, goods, or services from any person whose property and interests in property are blocked pursuant to § 594.201(a).

[78 FR 38575, June 27, 2013]

SOURCE: 68 FR 34197, June 6, 2003, unless otherwise noted.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 594.101 Relation of this part to other laws and regulations.

This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security circumstances may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Subpart B—Prohibitions

§ 594.201 Prohibited transactions involving blocked property.

(a) Except as authorized by statutes, regulations, orders, directives, rulings, instructions, licenses or otherwise, and notwithstanding any contracts entered into or any license or permit granted prior to the effective date, property and interests in property of the following persons that are in the United States, that hereafter come within the United States, or that hereafter come within the possession or control of U.S. persons, including their overseas branches, are blocked and may not be transferred, paid, exported, withdrawn or otherwise dealt in:

(1) Foreign persons listed in the Annex to Executive Order 13224 of September 23, 2001, as may be amended;

(2) Foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of Homeland Security and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States;

(3) Persons determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of Homeland Security and the Attorney General, to be owned or controlled by, or to act for or on behalf of, any person whose property or interests in property are blocked pursuant to paragraphs (a)(1), (a)(2), (a)(3), or (a)(4)(i) of this section;

(4) Except as provided in section 5 of Executive Order 13224, any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of Homeland Security and the Attorney General:

(i) To assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of:

(A) Acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States, or

(B) Any person whose property or interests in property are blocked pursuant to paragraph (a) of this section; or

(ii) To be otherwise associated with any person whose property or interests in property are blocked pursuant to paragraphs (a)(1), (a)(2), (a)(3), or (a)(4)(i) of this section; or

(5) Foreign persons that are identified on the Specially Designated Nationals and Blocked Persons List (SDN List) maintained by the Office of Foreign Assets Control as officials, agents, or affiliates of Iran's Islamic Revolutionary Guard Corps (IRGC).

NOTE 1 TO PARAGRAPH (a): Section 5 of Executive Order 13224, as amended, provides that, with respect to those persons designated pursuant to paragraph (a)(4) of this section, the Secretary of the Treasury, in the exercise of his discretion and in consultation with the Secretary of State, the Secretary of Homeland Security and the Attorney General, may take such other actions than the complete blocking of property or

interests in property as the President is authorized to take under the International Emergency Economic Powers Act and the United Nations Participation Act if the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of Homeland Security and the Attorney General, deems such other actions to be consistent with the national interests of the United States, considering such factors as he deems appropriate.

NOTE 2 TO PARAGRAPH (a) OF § 594.201: The names of persons whose property and interests in property are blocked pursuant to § 594.201(a) are published in the FEDERAL REGISTER and incorporated into the Office of Foreign Assets Control's SDN List with the identifier "[SDGT]." Persons who have been identified by the Office of Foreign Assets Control as officials, agents, or affiliates of the IRGC are identified by a special reference to the "IRGC" at the end of their entries on the SDN List, in addition to the reference to this part. For example, an affiliate of the IRGC whose property and interests in property are blocked pursuant to this part will have the program tags "[SDGT] [IRGC]" at the end of its entry on the SDN List. The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: <http://www.treasury.gov/sdn>. Additional information pertaining to the SDN List can be found in appendix A to this chapter. See § 594.412 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked pursuant to paragraph (a) of this section.

NOTE 3 TO PARAGRAPH (a) OF § 594.201: Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to paragraph (a) of this section.

(b) Unless otherwise authorized by this part or by a specific license expressly referring to this section, any dealing in any security (or evidence thereof) held within the possession or control of a U.S. person and either registered or inscribed in the name of or known to be held for the benefit of any person whose property or interests in property are blocked pursuant to § 594.201(a) is prohibited. This prohibition includes but is not limited to the transfer (including the transfer on the books of any issuer or agent thereof), disposition, transportation, importation, exportation, or withdrawal of any

such security or the endorsement or guaranty of signatures on any such security. This prohibition applies irrespective of the fact that at any time (whether prior to, on, or subsequent to the effective date) the registered or inscribed owner of any such security may have or might appear to have assigned, transferred, or otherwise disposed of the security.

NOTE 1 TO § 594.201: The International Emergency Economic Powers Act (50 U.S.C. 1701-1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to paragraph (a) of this section also are published in the FEDERAL REGISTER and incorporated into the SDN List with the identifier “[BPI-PA]” or “[BPI-SDGT].” The scope of the property or interests in property blocked during the pendency of an investigation may be more limited than the scope of the blocking set forth in § 594.201(a). Inquiries regarding the scope of any such blocking should be directed to OFAC’s Sanctions Compliance & Evaluation Division at 202/622-2490.

NOTE 2 TO § 594.201. The prohibitions set forth in this part are separate from and in addition to other parts of 31 CFR chapter V, including but not limited to the Terrorism Sanctions Regulations (part 595), the Terrorism List Government Sanctions Regulations (part 596), and the Foreign Terrorist Organizations Sanctions Regulations (part 597). The prohibitions set forth in this part also are separate and apart from the criminal prohibition, set forth at 18 U.S.C. 2339B, against providing material support or resources to foreign terrorist organizations designated pursuant to section 219 of the Immigration and Nationality Act, as amended.

[68 FR 34197, June 6, 2003, as amended at 72 FR 4206, Jan. 30, 2007; 76 FR 38544, June 30, 2011; 78 FR 38575, June 27, 2013; 82 FR 50814, Oct. 31, 2017]

ties, consistent with section 6802 of this title, including the categories of information that may be disclosed;

(2) disclosing nonpublic personal information of persons who have ceased to be customers of the financial institution; and

(3) protecting the nonpublic personal information of consumers.

(b) Regulations

Disclosures required by subsection (a) shall be made in accordance with the regulations prescribed under section 6804 of this title.

(c) Information to be included

The disclosure required by subsection (a) of this section shall include—

(1) the policies and practices of the institution with respect to disclosing nonpublic personal information to nonaffiliated third parties, other than agents of the institution, consistent with section 6802 of this title, and including—

(A) the categories of persons to whom the information is or may be disclosed, other than the persons to whom the information may be provided pursuant to section 6802(e) of this title; and

(B) the policies and practices of the institution with respect to disclosing of nonpublic personal information of persons who have ceased to be customers of the financial institution;

(2) the categories of nonpublic personal information that are collected by the financial institution;

(3) the policies that the institution maintains to protect the confidentiality and security of nonpublic personal information in accordance with section 6801 of this title; and

(4) the disclosures required, if any, under section 1681a(d)(2)(A)(iii) of this title.

(d) Exemption for certified public accountants

(1) In general

The disclosure requirements of subsection (a) do not apply to any person, to the extent that the person is—

(A) a certified public accountant;

(B) certified or licensed for such purpose by a State; and

(C) subject to any provision of law, rule, or regulation issued by a legislative or regulatory body of the State, including rules of professional conduct or ethics, that prohibits disclosure of nonpublic personal information without the knowing and expressed consent of the consumer.

(2) Limitation

Nothing in this subsection shall be construed to exempt or otherwise exclude any financial institution that is affiliated or becomes affiliated with a certified public accountant described in paragraph (1) from any provision of this section.

(3) Definitions

For purposes of this subsection, the term "State" means any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Trust

§ 6803. Disclosure of institution privacy policy

(a) Disclosure required

At the time of establishing a customer relationship with a consumer and not less than annually during the continuation of such relationship, a financial institution shall provide a clear and conspicuous disclosure to such consumer, in writing or in electronic form or other form permitted by the regulations prescribed under section 6804 of this title, of such financial institution's policies and practices with respect to—

(1) disclosing nonpublic personal information to affiliates and nonaffiliated third parties,

Territory of the Pacific Islands, the Virgin Islands, or the Northern Mariana Islands.

(e) Model forms

(1) In general

The agencies referred to in section 6804(a)(1) of this title shall jointly develop a model form which may be used, at the option of the financial institution, for the provision of disclosures under this section.

(2) Format

A model form developed under paragraph (1) shall—

(A) be comprehensible to consumers, with a clear format and design;

(B) provide for clear and conspicuous disclosures;

(C) enable consumers easily to identify the sharing practices of a financial institution and to compare privacy practices among financial institutions; and

(D) be succinct, and use an easily readable type font.

(3) Timing

A model form required to be developed by this subsection shall be issued in proposed form for public comment not later than 180 days after October 13, 2006.

(4) Safe harbor

Any financial institution that elects to provide the model form developed by the agencies under this subsection shall be deemed to be in compliance with the disclosures required under this section.

(Pub. L. 106-102, title V, § 503, Nov. 12, 1999, 113 Stat. 1439; Pub. L. 109-351, title VI, § 609, title VII, § 728, Oct. 13, 2006, 120 Stat. 1983, 2003.)

AMENDMENTS

2006—Pub. L. 109-351 designated concluding provisions of subsec. (a) as (b), inserted heading, substituted “Disclosures required by subsection (a)” for “Such disclosures”, redesignated former subsec. (b) as (c), and added subsecs. (d) and (e).

§ 6802. Obligations with respect to disclosures of personal information

(a) Notice requirements

Except as otherwise provided in this subchapter, a financial institution may not, directly or through any affiliate, disclose to a nonaffiliated third party any nonpublic personal information, unless such financial institution provides or has provided to the consumer a notice that complies with section 6803 of this title.

(b) Opt out

(1) In general

A financial institution may not disclose nonpublic personal information to a nonaffiliated third party unless—

(A) such financial institution clearly and conspicuously discloses to the consumer, in writing or in electronic form or other form permitted by the regulations prescribed under section 6804 of this title, that such information may be disclosed to such third party;

(B) the consumer is given the opportunity, before the time that such information is initially disclosed, to direct that such information not be disclosed to such third party; and

(C) the consumer is given an explanation of how the consumer can exercise that non-disclosure option.

(2) Exception

This subsection shall not prevent a financial institution from providing nonpublic personal information to a nonaffiliated third party to perform services for or functions on behalf of the financial institution, including marketing of the financial institution's own products or services, or financial products or services offered pursuant to joint agreements between two or more financial institutions that comply with the requirements imposed by the regulations prescribed under section 6804 of this title, if the financial institution fully discloses the providing of such information and enters into a contractual agreement with the third party that requires the third party to maintain the confidentiality of such information.

(c) Limits on reuse of information

Except as otherwise provided in this subchapter, a nonaffiliated third party that receives from a financial institution nonpublic personal information under this section shall not, directly or through an affiliate of such receiving third party, disclose such information to any other person that is a nonaffiliated third party of both the financial institution and such receiving third party, unless such disclosure would be lawful if made directly to such other person by the financial institution.

(d) Limitations on the sharing of account number information for marketing purposes

A financial institution shall not disclose, other than to a consumer reporting agency, an account number or similar form of access number or access code for a credit card account, deposit account, or transaction account of a consumer to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer.

(e) General exceptions

Subsections (a) and (b) of this section shall not prohibit the disclosure of nonpublic personal information—

(1) as necessary to effect, administer, or enforce a transaction requested or authorized by the consumer, or in connection with—

(A) servicing or processing a financial product or service requested or authorized by the consumer;

(B) maintaining or servicing the consumer's account with the financial institution, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity; or

(C) a proposed or actual securitization, secondary market sale (including sales of servicing rights), or similar transaction related to a transaction of the consumer;

(2) with the consent or at the direction of the consumer;

(3)(A) to protect the confidentiality or security of the financial institution's records pertaining to the consumer, the service or product, or the transaction therein; (B) to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability; (C) for required institutional risk control, or for resolving customer disputes or inquiries; (D) to persons holding a legal or beneficial interest relating to the consumer; or (E) to persons acting in a fiduciary or representative capacity on behalf of the consumer;

(4) to provide information to insurance rate advisory organizations, guaranty funds or agencies, applicable rating agencies of the financial institution, persons assessing the institution's compliance with industry standards, and the institution's attorneys, accountants, and auditors;

(5) to the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.], to law enforcement agencies (including a Federal functional regulator, the Secretary of the Treasury with respect to subchapter II of chapter 53 of title 31, and chapter 2 of title I of Public Law 91-508 (12 U.S.C. 1951-1959), a State insurance authority, or the Federal Trade Commission), self-regulatory organizations, or for an investigation on a matter related to public safety;

(6)(A) to a consumer reporting agency in accordance with the Fair Credit Reporting Act [15 U.S.C. 1681 et seq.], or (B) from a consumer report reported by a consumer reporting agency;

(7) in connection with a proposed or actual sale, merger, transfer, or exchange of all or a

portion of a business or operating unit if the disclosure of nonpublic personal information concerns solely consumers of such business or unit; or

(8) to comply with Federal, State, or local laws, rules, and other applicable legal requirements; to comply with a properly authorized civil, criminal, or regulatory investigation or subpoena or summons by Federal, State, or local authorities; or to respond to judicial process or government regulatory authorities having jurisdiction over the financial institution for examination, compliance, or other purposes as authorized by law.

(Pub. L. 106-102, title V, § 502, Nov. 12, 1999, 113 Stat. 1437; Pub. L. 111-203, title X, § 1093(2), July 21, 2010, 124 Stat. 2095.)

AMENDMENT OF SUBSECTION (e)(5)

Pub. L. 111-203, title X, §§ 1093(2), 1100H, July 21, 2010, 124 Stat. 2095, 2113, provided that, effective on the designated transfer date, subsection (e)(5) of this section is amended by inserting "the Bureau of Consumer Financial Protection" after "(including)". See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a) and (c), was in the original "this subtitle", meaning subtitle A (§ 501 et seq.) of title V of Pub. L. 106-102, Nov. 12, 1999, 113 Stat. 1436, which enacted this subchapter and amended section 1681s of this title. For complete classification of subtitle A to the Code, see Tables.

The Right to Financial Privacy Act of 1978, referred to in subsec. (e)(5), is title XI of Pub. L. 95-630, Nov. 10, 1978, 92 Stat. 3697, which is classified generally to chapter 35 (§ 3401 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 3401 of Title 12 and Tables.

Chapter 2 of title I of Public Law 91-508, referred to in subsec. (e)(5), is chapter 2 (§§ 121-129) of title I of Pub. L. 91-508, Oct. 26, 1970, 84 Stat. 1116, which is classified generally to chapter 21 (§ 1951 et seq.) of Title 12, Banks and Banking. For complete classification of chapter 2 to the Code, see Tables.

The Fair Credit Reporting Act, referred to in subsec. (e)(6)(A), is title VI of Pub. L. 90-321, as added by Pub. L. 91-508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1127, which is classified generally to subchapter III (§ 1681 et seq.) of chapter 41 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the designated transfer date, see section 1100H of Pub. L. 111-203, set out as a note under section 552a of Title 5, Government Organization and Employees.

- Sec. 6802. Obligations with respect to disclosures of personal information.
- 6803. Disclosure of institution privacy policy.
- 6804. Rulemaking.
- 6805. Enforcement.
- 6806. Relation to other provisions.
- 6807. Relation to State laws.
- 6808. Study of information sharing among financial affiliates.
- 6809. Definitions.

SUBCHAPTER II—FRAUDULENT ACCESS TO FINANCIAL INFORMATION

- 6821. Privacy protection for customer information of financial institutions.
- 6822. Administrative enforcement.
- 6823. Criminal penalty.
- 6824. Relation to State laws.
- 6825. Agency guidance.
- 6826. Reports.
- 6827. Definitions.

SUBCHAPTER I—DISCLOSURE OF NONPUBLIC PERSONAL INFORMATION

§ 6801. Protection of nonpublic personal information

(a) Privacy obligation policy

It is the policy of the Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' nonpublic personal information.

(b) Financial institutions safeguards

In furtherance of the policy in subsection (a) of this section, each agency or authority described in section 6805(a) of this title shall establish appropriate standards for the financial institutions subject to their jurisdiction relating to administrative, technical, and physical safeguards—

- (1) to insure the security and confidentiality of customer records and information;
- (2) to protect against any anticipated threats or hazards to the security or integrity of such records; and
- (3) to protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer.

(Pub. L. 106-102, title V, § 501, Nov. 12, 1999, 113 Stat. 1436; Pub. L. 111-203, title X, § 1093(1), July 21, 2010, 124 Stat. 2095.)

AMENDMENT OF SUBSECTION (b)

Pub. L. 111-203, title X, §§ 1093(1), 1100H, July 21, 2010, 124 Stat. 2095, 2113, provided that, effective on the designated transfer date, subsection (b) of this section is amended by inserting “, other than the Bureau of Consumer Financial Protection,” after “6805(a) of this title”. See Effective Date of 2010 Amendment note below.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the designated transfer date, see section 1100H of Pub. L. 111-203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Pub. L. 106-102, title V, § 510, Nov. 12, 1999, 113 Stat. 1445, provided that: “This subtitle [subtitle A

CHAPTER 94—PRIVACY

SUBCHAPTER I—DISCLOSURE OF NONPUBLIC PERSONAL INFORMATION

- Sec. 6801. Protection of nonpublic personal information.

(§§ 501-510) of title V of Pub. L. 106-102, enacting this subchapter and amending section 1681s of this title] shall take effect 6 months after the date on which rules are required to be prescribed under section 504(a)(3) [15 U.S.C. 6804(a)(3)], except—

“(1) to the extent that a later date is specified in the rules prescribed under section 504; and

“(2) that sections 504 [15 U.S.C. 6804] and 506 [enacting section 6806 of this title and amending section 1681s of this title] shall be effective upon enactment [Nov. 12, 1999].”