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(c) A Component requesting financial records under paragraph (a) of this section, may notify the financial institution from which records are sought that section 3414(3) of 12 U.S.C., prohibits disclosure to any person by the institution, its agents, or employees that financial records have been sought or obtained.

(d) The annual reporting requirements of § 275.14 shall apply to any request for access under paragraph (a) of this section.

[45 FR 17576, Mar. 19, 1980. Redesignated and amended at 56 FR 57984, Nov. 15, 1991]

§ 275.11 Emergency access procedures.

(a) Except as provided in paragraph (b) and (c) of this section, nothing in this part shall apply to a request for financial records from a financial institution when the law enforcement office making such request determines that a delay in obtaining access to such records would create an imminent danger of:

- (1) Physical injury to any person.
- (2) Serious property damage.
- (3) Flight to avoid prosecution.

(b) When access is made to financial records under paragraph (a) of this section, Component official designated by the Secretary of Defense or the Secretary of a Military Department shall:

(1) Certify in writing, in a format set forth in Enclosure 4 of this part, to the financial institution that the Component has complied with the provisions of 12 U.S.C. 3401 et seq., as a prerequisite to obtaining access.

(2) Submit for filing with the appropriate court a signed sworn statement setting forth the grounds for the emergency access within 5 days of obtaining access to financial records.

(c) After filing of the signed sworn statement required by paragraph (b)(2) of this section, the Component that has obtained access to financial records under paragraph (a) of this section, shall personally serve or mail to the customer a copy of the request to the financial institution and the following notice, unless a delay of notice has been obtained under § 275.12.

Records concerning your transactions held by the financial institution named in the attached request were obtained by [agency or department] under the Right to Financial

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Privacy Act of 1978 on [date] for the following purpose: [state with reasonable specificity the nature of the law enforcement inquiry]. Emergency access to such records was obtained on the grounds that [state grounds].

Mailings under this paragraph shall be by certified or registered mail to the last known address of the customer.

(d) The annual reporting requirements of § 275.14 shall apply to any access pursuant to paragraph (a) of this section.

[45 FR 17576, Mar. 19, 1980. Redesignated and amended at 56 FR 57984, Nov. 15, 1991]

§ 275.12 Procedures for delay of notice.

(a) The customer notice required by § 275.9(b)(3), § 275.11(c), or § 275.13(c) may be delayed for successive periods of 90 days. The notice required by paragraph (a)(2)(ii) of this section may be delayed for one period of 180 days and successive periods of 90 days. A delay of notice may only be granted by a court of competent jurisdiction and only when not serving the notice would result in:

(1) Endangering the life or physical safety of any person.

(2) Flight from prosecution.

(3) Destruction of or tampering with evidence.

(4) Intimidation of potential witnesses.

(5) Otherwise seriously jeopardizing an investigation or official proceeding or unduly delaying a trial or ongoing official proceeding to the same degree as the circumstances in paragraphs (a)(1) through (4) of this section.

(b) When a delay of notice is appropriate, legal counsel shall be consulted to obtain such a delay. Application for delays of notice shall be made with reasonable specificity.

(c) Upon the expiration of a delay obtained under paragraph (a) of this section, of a notice required by:

(1) Section 275.9(a)(2)(ii), the law enforcement office obtaining such records shall mail to the customer a copy of the search warrant and the following notice:

Records or information concerning your transactions held by the financial institution named in the attached search warrant

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were obtained by this [agency or department] on [date]. Notification was delayed beyond the statutory 90-day delay period pursuant to a determination by the court that such notice would seriously jeopardize an investigation concerning [state with reasonable specificity]. You may have rights under the Right to Financial Privacy Act of 1978.

(2) Section 275.9(b)(3), the law enforcement office obtaining such records shall serve personally or mail to the customer a copy of the process or request and the following notice:

Records of information concerning your transactions which are held by the financial institution named in the attached process or request were supplied to or requested by the Government authority named in the process or request on [date]. Notification was withheld pursuant to a determination by the [title of the court so ordering] under the Right to Financial Privacy Act of 1978 that such notice might [state reason]. The purpose of the investigation or official proceeding was [state purpose with reasonable specificity].

(3) Section 275.11(c), the law enforcement office obtaining financial records shall serve personally or mail to the customer a copy of the request and the notice required by §275.11(c).

(4) Section 275.13(c), the law enforcement office or personnel security element transferring such records shall serve personally or mail to the customer the notice required by §275.13(c).

(d) The annual reporting requirements of §275.14 shall apply to any request for access under the delay of notice.

[45 FR 17576, Mar. 19, 1980. Redesignated and amended at 56 FR 57984, Nov. 15, 1991]

§ 275.13 Procedures for releasing information obtained from financial institutions.

(a) Financial records obtained under 12 U.S.C. 3401 et seq., shall be marked:

This record was obtained pursuant to the Right to Financial Privacy Act of 1978, 12 U.S.C. 3401 et seq., and may not be transferred to another federal agency or department without prior compliance with the transferring requirements of 12 U.S.C. 3412.

(b) Financial records obtained under the provisions of 12 U.S.C. 3401 et seq., shall not be transferred to another agency or department outside the Department of Defense unless the head of the transferring law enforcement of-

fice, personnel security element, or delegate certifies in writing that there is reason to believe that the records are relevant to a legitimate law enforcement inquiry within the jurisdiction of the receiving agency or department. Such certificates shall be maintained with the DoD Component copy of the released records.

(c) Unless a delay of customer notice has been obtained under §275.12, when financial information is transferred under paragraph (b) of this section the law enforcement office or personnel security element shall within 14 days, personally serve or mail to the customer, at his or her last known address, a copy of the certificate required by paragraph (b) of this section, and the following notice:

Copies of or information contained in your financial records lawfully in possession of (name of Component) have been furnished to (name of agency) pursuant to the Right to Financial Privacy Act of 1978 for the following purposes: [state the nature of the law enforcement inquiry with reasonable specificity]. If you believe that this transfer has not been made to further a legitimate law enforcement inquiry, you may have legal rights under the Financial Privacy Act of 1978 or the Privacy Act of 1974.

(d) If a request for release of information is from a federal agency authorized to conduct foreign intelligence or foreign counterintelligence activities, as defined in E.O. 12036 for purposes of conducting such activities, the transferring DoD Component shall release the information without notifying the customer, unless permission to provide notification is given in writing by the requesting agency.

(e) Whenever financial data obtained under this part is incorporated into a report of investigation or other correspondence, precautions must be taken to ensure that:

(1) The reports or correspondence are not distributed outside the Department of Defense except in compliance with paragraphs (b) and (c) of this section; and

(2) The report or correspondence contains an appropriate warning restriction on the first page or cover.

(f) A suggested restrictive legend for use on the first page or cover sheet of reports or other correspondence follows: