

§ 275.8

(b) A request for disclosure of the above specified basic identifying information concerning a customer's account shall not require any customer notice (§§ 275.9, 275.11, and 275.13), challenge (§ 275.9) or transfer (§ 275.13) procedures. However, this partial exception for basic identifying data shall not alter the mandatory access requirements set forth in §§ 275.8 and 275.9 to obtain the actual financial record itself.

(c) A format for requesting basic identifying account data is set forth in enclosure 1 of this part.

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

§ 275.8 Procedures for obtaining customer's consent.

(a) A DoD law enforcement office or personnel security element seeking access to a person's financial records shall, when feasible, obtain the customer's consent.

(b) Any consent obtained under § 275.8(a) shall:

(1) Be in writing, signed, and dated.

(2) Identify the particular financial records that are being disclosed.

(3) State that the customer may revoke the consent at any time before disclosure.

(4) Specify the purpose for disclosure and to which agency the records may be disclosed.

(5) Authorize the disclosure for a period not in excess of 3 months.

(6) Contain a Privacy Act advisory statement required by part 286a of this title for a personnel security investigation.

(7) Contain a "Statement of Customer Rights Under the Right to Financial Privacy Act of 1978" (enclosure 2).

(c) Any customer's consent not containing all of the elements listed in § 275.8(b), shall be void. A customer consent form, in a format set forth in enclosure 2, shall be used for this purpose.

(d) A copy of the customer's consent shall be made a part of the law enforcement inquiry or personnel security investigation file.

(e) A certification of compliance with 12 U.S.C. 3401 et seq., in writing (enclosure 4), along with the customer's con-

32 CFR Ch. I (7-1-99 Edition)

sent, shall be provided to the financial institution as a prerequisite to obtaining access to financial records.

(f) The annual reporting requirements of § 275.14 shall apply to any request for access under § 275.8(a).

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

§ 275.9 Other access procedures.

(a) *Access by compulsory legal process—*

(1) *Administrative summons or subpoena.*

(i) Within the Department of Defense, the Inspector General, DoD, has the authority under Pub. L. 95-452 (The Inspector General Act of 1978, as amended by Pub. L. 97-252) to issue administrative subpoenas for access to financial records. No other DoD Component official may issue summonses or subpoenas for access to these records.

(ii) The Inspector General, DoD, shall issue administrative procedures for access to financial records in accordance with established procedures.

(2) *Search warrant.* (i) A law enforcement office may obtain financial records by using a search warrant obtained under Rule 41 of the Federal Rules of Criminal Procedure in appropriate cases.

(ii) Unless a delay of notice has been obtained under provisions of § 275.12, the law enforcement office shall, no later than 90 days after serving the search warrant, mail to the customer's last known address a copy of the search warrant together with the following notice:

Records or information concerning your transactions held by the financial institution named in the attached search warrant were obtained by this [agency or department] on [date] for the following purpose: [state purpose]. you may have rights under the Right to Financial Privacy Act of 1978.

(iii) In any state or territory of the United States, or in the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands, search warrants signed by installation commanders or military judges shall not be used to gain access to financial records.

(3) *Judicial subpoena.* Judicial subpoenas are those issued in connection with a pending judicial proceeding and include subpoenas issued under paragraph 115 of the Manual for Courts-

Office of the Secretary of Defense

§ 275.10

Martial (1969 Revised) and Article 46 of the Uniform Code of Military Justice. Cognizant legal counsel shall be consulted on the availability and use of judicial subpoenas.

(b) *Formal written request.* (1) A law enforcement office may issue a formal written request for financial records when the records sought are relevant to a legitimate law enforcement inquiry. This request may be issued only if the customer has declined to consent, §275.8, to the disclosure of his or her records, or if it is determined that to seek consent from the customer would compromise or harmfully delay a legitimate law enforcement inquiry.

(2) A formal written request shall be in a format set forth in enclosure 3 and shall:

(i) State that the request is issued under the Right to Financial Privacy Act of 1978 and the Component's implementation of this part.

(ii) Describe the specific records to be examined.

(iii) State that access is sought in connection with a legitimate law enforcement inquiry.

(iv) Describe the nature of the inquiry.

(v) Be signed by the head of the law enforcement office or a designee.

(3) When a formal written request is issued to a financial institution, a copy of the request shall, at the same time or before, be personally served upon, or mailed to the customer's last known address unless a delay of customer notice has been obtained under §275.12. The notice to the customer shall be in a format similar to enclosure shall be personally served at least 14 days or mailed at least 18 days prior to the date on which access is sought.

(4) The official who signs the customer notice shall be designated to receive any challenge from the customer.

(5) The customer shall have 14 days to challenge a notice request when personal service is made and 18 days when service is by mail.

(6) Components shall establish procedures to ensure that no access to financial records is attempted before the expiration of the pertinent time period while awaiting receipt of a potential customer challenge, or prior to the ad-

judication, prescribed by 12 U.S.C. 3410, of any challenge made.

(7) When a customer fails to file a challenge to access to financial records within the pertinent above time periods, or after a challenge is adjudicated in favor of the law enforcement office, the head of the office, or a designee, shall certify in writing to the financial institution that such office has complied with the requirements of 12 U.S.C. 3401 et seq. No access to any financial records shall be made before such certification is given.

(c) *Certification.* Prior to obtaining the requested records under §275.9 (a)(2) and (a)(3), a certification of compliance with 12 U.S.C. 3401 et seq. and Enclosure 4 of this part, shall be provided to the financial institution as a prerequisite to obtaining access to financial records.

(d) *Annual report.* The annual reporting requirements of §275.14 shall apply to access procedures under paragraph (a) and (b) of this section.

[45 FR 17576, Mar. 19, 1980, as amended at 48 FR 20228, May 5, 1983. Redesignated and amended at 56 FR 57984, Nov. 15, 1991]

§275.10 Requests for financial records in connection with foreign intelligence and foreign counterintelligence activities.

(a) Except as specified in paragraph (b) of this section, nothing in this part shall apply to requests for financial records in connection with authorized foreign intelligence and foreign counterintelligence activities as defined in E.O. 12036, January 24, 1978.

(b) When a request for financial records is made under paragraph (a) of this section, a Component official designated by the Secretary of Defense, the Secretary of a Military Department, or the Head of the DoD Component authorized to conduct foreign intelligence and foreign counterintelligence activities shall certify to the financial institution that the requesting Component has complied with the provisions of 12 U.S.C. 3401 et seq. Such certification, in a format similar to enclosure 4 of this part, shall be made before obtaining any records.