

1998—Subsec. (q). Pub. L. 105-264 added subsec. (q).

1992—Subsec. (p). Pub. L. 102-568 added subsec. (p).

1991—Subsec. (h)(1)(A), (4). Pub. L. 102-242, § 411(2), (3), substituted “a financial institution (whether or not such proceeding, investigation, examination, or inspection is also directed at a customer)” for “the financial institution in possession of such records”.

Subsec. (l). Pub. L. 102-242, § 411(4), inserted at end “No supervisory agency which transfers any such record under this subsection shall be deemed to have waived any privilege applicable to that record under law.”

1990—Subsec. (l)(2). Pub. L. 101-647 inserted before period at end “or of section 1956 or 1957 of title 18”.

1989—Subsec. (b). Pub. L. 101-73, § 942(1), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “Nothing in this chapter prohibits examination by or disclosure to any supervisory agency of financial records or information in the exercise of its supervisory, regulatory, or monetary functions with respect to a financial institution.”

Subsecs. (m) to (o). Pub. L. 101-73, § 942(2), added subsecs. (m) to (o).

1988—Subsec. (l). Pub. L. 100-690 added subsec. (l).

1986—Subsec. (c). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

Subsec. (i). Pub. L. 99-570 inserted “, except that a court shall have authority to order a financial institution, on which a grand jury subpoena for customer records has been served, not to notify the customer of the existence of the subpoena or information that has been furnished to the grand jury, under the circumstances and for the period specified and pursuant to the procedures established in section 3409 of this title”.

Subsec. (k)(1). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

1983—Subsec. (k). Pub. L. 98-21 added subsec. (k).

#### 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 OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-264 effective Oct. 1, 1983, and applicable to any records created pursuant to United States Travel and Transportation Payment and Expense Control System or any Federal contractor-issued travel charge card issued for official Government travel, see section 2(c)(2) of Pub. L. 105-264, set out as a Requiring Use of Travel Charge Card note under section 5701 of Title 5, Government Organization and Employees.

#### EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-21 applicable to benefits received after Dec. 31, 1983, in taxable years ending after such date, except for any portion of a lump-sum payment of social security benefits received after Dec. 31, 1983, if the generally applicable payment date for such portion was before Jan. 1, 1984, see section 121(g) of Pub. L. 98-21, set out as an Effective Date note under section 86 of Title 26, Internal Revenue Code.

## § 3414. Special procedures

### (a) Access to financial records for certain intelligence and protective purposes

(1) Nothing in this chapter (except sections 3415, 3417, 3418, and 3421<sup>1</sup> of this title) shall apply to the production and disclosure of financial records pursuant to requests from—

(A) a Government authority authorized to conduct foreign counter- or foreign positive-intelligence activities for purposes of conducting such activities;

(B) the Secret Service for the purpose of conducting its protective functions (18 U.S.C. 3056; 18 U.S.C. 3056A, Public Law 90-331,<sup>1</sup> as amended); or

(C) a Government authority authorized to conduct investigations of, or intelligence or counterintelligence analyses related to, international terrorism for the purpose of conducting such investigations or analyses.

(2) In the instances specified in paragraph (1), the Government authority shall submit to the financial institution the certificate required in section 3403(b) of this title signed by a supervisory official of a rank designated by the head of the Government authority.

(3)(A) If the Government authority described in paragraph (1) or the Secret Service, as the case may be, certifies that otherwise there may result a danger to the national security of the United States, interference with a criminal, counterterrorism, or counterintelligence investigation, interference with diplomatic relations, or danger to the life or physical safety of any person, no financial institution, or officer, employee, or agent of such institution, shall disclose to any person (other than those to whom such disclosure is necessary to comply with the request or an attorney to obtain legal advice or legal assistance with respect to the request) that the Government authority or the Secret Service has sought or obtained access to a customer's financial records.

(B) The request shall notify the person or entity to whom the request is directed of the non-disclosure requirement under subparagraph (A).

(C) Any recipient disclosing to those persons necessary to comply with the request or to an attorney to obtain legal advice or legal assistance with respect to the request shall inform such persons of any applicable nondisclosure requirement. Any person who receives a disclosure under this subsection shall be subject to the same prohibitions on disclosure under subparagraph (A).

(D) At the request of the authorized Government authority or the Secret Service, any person making or intending to make a disclosure under this section shall identify to the requesting official of the authorized Government authority or the Secret Service the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, except that nothing in this section shall require a person to inform the requesting official of the authorized Government authority or the Secret Service of the identity of an attorney to whom disclosure was made or will be made to obtain

<sup>1</sup> See References in Text note below.

legal advice or legal assistance with respect to the request for financial records under this subsection.

(4) The Government authority specified in paragraph (1) shall compile an annual tabulation of the occasions in which this section was used.

(5)(A) Financial institutions, and officers, employees, and agents thereof, shall comply with a request for a customer's or entity's financial records made pursuant to this subsection by the Federal Bureau of Investigation when the Director of the Federal Bureau of Investigation (or the Director's designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director) certifies in writing to the financial institution that such records are sought for foreign counterintelligence<sup>2</sup> purposes to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

(B) The Federal Bureau of Investigation may disseminate information obtained pursuant to this paragraph only as provided in guidelines approved by the Attorney General for foreign intelligence collection and foreign counterintelligence investigations conducted by the Federal Bureau of Investigation, and, with respect to dissemination to an agency of the United States, only if such information is clearly relevant to the authorized responsibilities of such agency.

(C) On the dates provided in section 415b of title 50, the Attorney General shall fully inform the congressional intelligence committees (as defined in section 401a of title 50) concerning all requests made pursuant to this paragraph.

(D) PROHIBITION OF CERTAIN DISCLOSURE.—

(i) If the Director of the Federal Bureau of Investigation, or his designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director, certifies that otherwise there may result a danger to the national security of the United States, interference with a criminal, counterterrorism, or counterintelligence investigation, interference with diplomatic relations, or danger to the life or physical safety of any person, no financial institution, or officer, employee, or agent of such institution, shall disclose to any person (other than those to whom such disclosure is necessary to comply with the request or an attorney to obtain legal advice or legal assistance with respect to the request) that the Federal Bureau of Investigation has sought or obtained access to a customer's or entity's financial records under subparagraph (A).

(ii) The request shall notify the person or entity to whom the request is directed of the nondisclosure requirement under clause (i).

(iii) Any recipient disclosing to those persons necessary to comply with the request or to an attorney to obtain legal advice or legal

assistance with respect to the request shall inform such persons of any applicable nondisclosure requirement. Any person who receives a disclosure under this subsection shall be subject to the same prohibitions on disclosure under clause (i).

(iv) At the request of the Director of the Federal Bureau of Investigation or the designee of the Director, any person making or intending to make a disclosure under this section shall identify to the Director or such designee the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, except that nothing in this section shall require a person to inform the Director or such designee of the identity of an attorney to whom disclosure was made or will be made to obtain legal advice or legal assistance with respect to the request for financial records under subparagraph (A).

**(b) Emergency access to financial records**

(1) Nothing in this chapter shall prohibit a Government authority from obtaining financial records from a financial institution if the Government authority determines that delay in obtaining access to such records would create imminent danger of—

- (A) physical injury to any person;
- (B) serious property damage; or
- (C) flight to avoid prosecution.

(2) In the instances specified in paragraph (1), the Government shall submit to the financial institution the certificate required in section 3403(b) of this title signed by a supervisory official of a rank designated by the head of the Government authority.

(3) Within five days of obtaining access to financial records under this subsection, the Government authority shall file with the appropriate court a signed, sworn statement of a supervisory official of a rank designated by the head of the Government authority setting forth the grounds for the emergency access. The Government authority shall thereafter comply with the notice provisions of section 3409(c) of this title.

(4) The Government authority specified in paragraph (1) shall compile an annual tabulation of the occasions in which this section was used.

**(d)<sup>3</sup> Definition of "financial institution"**

For purposes of this section, and sections 3415 and 3417 of this title insofar as they relate to the operation of this section, the term "financial institution" has the same meaning as in subsections (a)(2) and (c)(1) of section 5312 of title 31, except that, for purposes of this section, such term shall include only such a financial institution any part of which is located inside any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the United States Virgin Islands.

(Pub. L. 95-630, title XI, §1114, Nov. 10, 1978, 92 Stat. 3707; Pub. L. 97-320, title IV, §432(b), Oct. 15, 1982, 96 Stat. 1527; Pub. L. 99-569, title IV, §404, Oct. 27, 1986, 100 Stat. 3197; Pub. L. 107-56,

<sup>2</sup> So in original. Probably should be "counterintelligence".

<sup>3</sup> So in original. No subsec. (c) has been enacted.

title III, §358(f)(2), title V, §505(b), Oct. 26, 2001, 115 Stat. 327, 365; Pub. L. 107-306, title VIII, §811(b)(9), Nov. 27, 2002, 116 Stat. 2426; Pub. L. 108-177, title III, §374(a), Dec. 13, 2003, 117 Stat. 2628; Pub. L. 109-177, title I, §116(d), (e), title VI, §605(e)(1), Mar. 9, 2006, 120 Stat. 215, 216, 255; Pub. L. 109-178, §4(d), Mar. 9, 2006, 120 Stat. 280.)

## REFERENCES IN TEXT

Section 3421 of this title, referred to in subsec. (a)(1), was repealed by Pub. L. 104-66, title III, §3001(d), Dec. 21, 1995, 109 Stat. 734.

Public Law 90-331, as amended, referred to in subsec. (a)(1)(B), is Pub. L. 90-331, June 6, 1968, 82 Stat. 170, as amended, which was set out as a note under section 3056 of Title 18, Crimes and Criminal Procedure, prior to repeal by Pub. L. 98-587, §2, Oct. 30, 1984, 98 Stat. 3111. See 18 U.S.C. 3056(a)(7).

## AMENDMENTS

2006—Subsec. (a)(1)(B). Pub. L. 109-177, §605(e)(1), which directed the amendment of section 3414 of title 12, United States Code, by substituting “18 U.S.C. 3056A” for “3 U.S.C. 202” in subsec. (a)(1)(B), was executed to this section, which is section 1114 of the Right to Financial Privacy Act of 1978, to reflect the probable intent of Congress.

Subsec. (a)(3). Pub. L. 109-177, §116(d), which directed the general amendment of section 1114(a)(3) of the Right to Financial Privacy Act, was executed to subsec. (a)(3) of this section, which is section 1114 of the Right to Financial Privacy Act of 1978, to reflect the probable intent of Congress. Prior to amendment, par. (3) read as follows: “No financial institution, or officer, employee, or agent of such institution, shall disclose to any person that a Government authority described in paragraph (1) has sought or obtained access to a customer’s financial records.”

Subsec. (a)(3)(D). Pub. L. 109-178, §4(d)(1), which directed the general amendment of subsec. (a)(3)(D) of section 1114(a)(3) of the Right to Financial Privacy Act, was executed to subsec. (a)(3)(D) of this section, which is section 1114 of the Right to Financial Privacy Act of 1978, to reflect the probable intent of Congress. Prior to amendment, subpar. (D) read as follows: “At the request of the authorized Government agency or the Secret Service, any person making or intending to make a disclosure under this section shall identify to the requesting official of the authorized Government agency or the Secret Service the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, but in no circumstance shall a person be required to inform such requesting official that the person intends to consult an attorney to obtain legal advice or legal assistance.”

Subsec. (a)(5)(D). Pub. L. 109-177, §116(e), which directed the general amendment of section 1114(a)(5)(D) of the Right to Financial Privacy Act, was executed to subsec. (a)(5)(D) of this section, which is section 1114 of the Right to Financial Privacy Act of 1978, to reflect the probable intent of Congress. Prior to amendment, subpar. (D) read as follows: “No financial institution, or officer, employee, or agent of such institution, shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to a customer’s or entity’s financial records under this paragraph.”

Subsec. (a)(5)(D)(iv). Pub. L. 109-178, §4(d)(2), which directed the general amendment of clause (iv) of section 1114(a)(5)(D) of the Right to Financial Privacy Act, was executed to clause (iv) of subsec. (a)(5)(D) of this section, which is section 1114 of the Right to Financial Privacy Act of 1978, to reflect the probable intent of Congress. Prior to amendment, cl. (iv) read as follows: “At the request of the Director of the Federal Bureau of Investigation or the designee of the Director, any person making or intending to make a disclosure under this section shall identify to the Director or such des-

ignee the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, but in no circumstance shall a person be required to inform the Director or such designee that the person intends to consult an attorney to obtain legal advice or legal assistance.”

2003—Subsec. (d). Pub. L. 108-177 added subsec. (d).

2002—Subsec. (a)(5)(C). Pub. L. 107-306 substituted “On the dates provided in section 415b of title 50, the Attorney General shall fully inform the congressional intelligence committees (as defined in section 401a of title 50)” for “On a semiannual basis the Attorney General shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate”.

2001—Subsec. (a)(1)(C). Pub. L. 107-56, §358(f)(2), added subpar. (C).

Subsec. (a)(5)(A). Pub. L. 107-56, §505(b), inserted “in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director” after “Director’s designee” and substituted “sought for foreign counter intelligence purposes to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution of the United States” for “sought for foreign counterintelligence purposes and that there are specific and articulable facts giving reason to believe that the customer or entity whose records are sought is a foreign power or an agent of a foreign power as defined in section 1801 of title 50”.

1986—Subsec. (a)(5). Pub. L. 99-569 added par. (5).

1982—Subsec. (b)(2). Pub. L. 97-320 struck out “of” after “financial institution”.

## EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-178, Mar. 9, 2006, 120 Stat. 282, provided in part that: “This Act [amending this section, sections 1681u and 1681v of Title 15, Commerce and Trade, section 2709 of Title 18, Crimes and Criminal Procedure, and sections 436 and 1861 of Title 50, War and National Defense, and enacting provisions set out as a note under section 1 of Title 18] shall become effective immediately upon enactment [Mar. 9, 2006].”

## EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 358(f)(2) of Pub. L. 107-56 applicable with respect to reports filed or records maintained on, before, or after Oct. 26, 2001, see section 358(h) of Pub. L. 107-56, set out as a note under section 1829b of this title.

## TRANSFER OF FUNCTIONS

For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

## § 3415. Cost reimbursement

Except for records obtained pursuant to section 3403(d) or 3413(a) through (h) of this title, or as otherwise provided by law, a Government authority shall pay to the financial institution assembling or providing financial records pertaining to a customer and in accordance with procedures established by this chapter a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in searching for, reproducing, or transporting books, papers, records, or other data required or