

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.

EFFECTIVE DATE

Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95-630, set out as a note under section 375b of this title.

§ 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 3421¹ 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 90-331,¹ 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 and a term that specifically identifies a customer, entity, or account to be used as the basis for the production and disclosure of financial records.

(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 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 counterintelligence² 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.

¹ See References in Text note below.

² So in original. Probably should be "counterintelligence".

(C) On the dates provided in section 3106 of title 50, the Attorney General shall fully inform the congressional intelligence committees (as defined in section 3003 of title 50) concerning all requests made pursuant to this paragraph.

(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.

(c) Prohibition of certain disclosure

(1) Prohibition

(A) In general

If a certification is issued under subparagraph (B) and notice of the right to judicial review under subsection (d) is provided, no financial institution that receives a request under subsection (a), or officer, employee, or agent thereof, shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to information or records under subsection (a).

(B) Certification

The requirements of subparagraph (A) shall apply if the Director of the Federal Bureau of Investigation, or a designee of the Director whose rank shall be no lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge of a Bureau field office, certifies that the absence of a prohibition of disclosure under this subsection may result in—

- (i) a danger to the national security of the United States;
- (ii) interference with a criminal, counterterrorism, or counterintelligence investigation;
- (iii) interference with diplomatic relations; or
- (iv) danger to the life or physical safety of any person.

(2) Exception

(A) In general

A financial institution that receives a request under subsection (a), or officer, em-

ployee, or agent thereof, may disclose information otherwise subject to any applicable nondisclosure requirement to—

- (i) those persons to whom disclosure is necessary in order to comply with the request;
- (ii) an attorney in order to obtain legal advice or assistance regarding the request; or
- (iii) other persons as permitted by the Director of the Federal Bureau of Investigation or the designee of the Director.

(B) Application

A person to whom disclosure is made under subparagraph (A) shall be subject to the nondisclosure requirements applicable to a person to whom a request is issued under subsection (a) in the same manner as the person to whom the request is issued.

(C) Notice

Any recipient that discloses to a person described in subparagraph (A) information otherwise subject to a nondisclosure requirement shall inform the person of the applicable nondisclosure requirement.

(D) Identification of disclosure recipients

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 clause (i) or (iii) of subparagraph (A) 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.

(d) Judicial review

(1) In general

A request under subsection (a) or a nondisclosure requirement imposed in connection with such request under subsection (c) shall be subject to judicial review under section 3511 of title 18.

(2) Notice

A request under subsection (a) shall include notice of the availability of judicial review described in paragraph (1).

(e) 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, 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; Pub. L. 114-23, title V, §§ 501(b), 502(b), 503(b), June 2, 2015, 129 Stat. 282, 284, 290.)

Editorial Notes

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, 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

2015—Subsec. (a)(2). Pub. L. 114-23, § 501(b), inserted before period at end “and a term that specifically identifies a customer, entity, or account to be used as the basis for the production and disclosure of financial records”.

Subsec. (a)(5)(D). Pub. L. 114-23, § 502(b)(1), struck out subpar. (D) which related to prohibition of certain disclosure.

Subsec. (c). Pub. L. 114-23, § 502(b)(2), added subsec. (c).

Subsecs. (d), (e). Pub. L. 114-23, § 503(b), added subsec. (d) and redesignated former subsec. (d) as (e).

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 In-

vestigation 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 designee 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”.

Statutory Notes and Related Subsidiaries

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.

EFFECTIVE DATE

Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95-630, set out as a note under section 375b of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, includ-

ing 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.

TERMINATION PROCEDURES

Pub. L. 114-23, title V, §502(f), June 2, 2015, 129 Stat. 288, provided that:

“(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act [June 2, 2015], the Attorney General shall adopt procedures with respect to nondisclosure requirements issued pursuant to section 2709 of title 18, United States Code, section 626 or 627 of the Fair Credit Reporting Act (15 U.S.C. 1681u and 1681v), section 1114 of the Right to Financial Privacy Act [of 1978] (12 U.S.C. 3414), or section 802 of the National Security Act of 1947 (50 U.S.C. 3162), as amended by this Act, to require—

“(A) the review at appropriate intervals of such a nondisclosure requirement to assess whether the facts supporting nondisclosure continue to exist;

“(B) the termination of such a nondisclosure requirement if the facts no longer support nondisclosure; and

“(C) appropriate notice to the recipient of the national security letter, or officer, employee, or agent thereof, subject to the nondisclosure requirement, and the applicable court as appropriate, that the nondisclosure requirement has been terminated.

“(2) REPORTING.—Upon adopting the procedures required under paragraph (1), the Attorney General shall submit the procedures to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives.”

§ 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 requested to be produced. The Board of Governors of the Federal Reserve System shall, by regulation, establish the rates and conditions under which such payment may be made.

(Pub. L. 95-630, title XI, §1115(a), Nov. 10, 1978, 92 Stat. 3708.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 95-630, title XI, §1115(b), Nov. 10, 1978, 92 Stat. 3708, provided that: “This section shall take effect on October 1, 1979.”

§ 3416. Jurisdiction

An action to enforce any provision of this chapter may be brought in any appropriate United States district court without regard to the amount in controversy within three years from the date on which the violation occurs or the date of discovery of such violation, whichever is later.

(Pub. L. 95-630, title XI, §1116, Nov. 10, 1978, 92 Stat. 3708.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95-630, set out as a note under section 375b of this title.

§ 3417. Civil penalties

(a) Liability of agencies or departments of United States or financial institutions

Any agency or department of the United States or financial institution obtaining or disclosing financial records or information contained therein in violation of this chapter is liable to the customer to whom such records relate in an amount equal to the sum of—

(1) \$100 without regard to the volume of records involved;

(2) any actual damages sustained by the customer as a result of the disclosure;

(3) such punitive damages as the court may allow, where the violation is found to have been willful or intentional; and

(4) in the case of any successful action to enforce liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(b) Disciplinary action for willful or intentional violation of chapter by agents or employees of department or agency

Whenever the court determines that any agency or department of the United States has violated any provision of this chapter and the court finds that the circumstances surrounding the violation raise questions of whether an officer or employee of the department or agency acted willfully or intentionally with respect to the violation, the Director of the Office of Personnel Management shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the agent or employee who was primarily responsible for the violation. The Director after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Director recommends.

(c) Good faith defense

Any financial institution or agent or employee thereof making a disclosure of financial records pursuant to this chapter in good-faith reliance upon a certificate by any Government authority or pursuant to the provisions of section 3413(l) of this title shall not be liable to the customer for such disclosure under this chapter, the constitution of any State, or any law or regulation of any State or any political subdivision of any State.

(d) Exclusive judicial remedies and sanctions

The remedies and sanctions described in this chapter shall be the only authorized judicial remedies and sanctions for violations of this chapter.

(Pub. L. 95-630, title XI, §1117, Nov. 10, 1978, 92 Stat. 3708; 1978 Reorg. Plan No. 2, §102, eff. Jan.