

## § 274.7

(c) *Group bids.* A syndicate or other group submitting a bid must act through a representative who must be a member of the group. The representative must warrant to the Secretary of Defense or his designee, that he has all necessary power and authority to act for each member and to bind the members jointly and severally. In addition to whatever other data may be required by the Secretary of Defense or his designee, in the case of a syndicate, the representative must file, within 1 hour after the time for opening bids, at the place specified in the public notice for receipt of bids a final statement of the composition of the syndicate membership and the amount of each member's underwriting participation.

### § 274.7 Acceptance of bids.

(a) *Opening bids.* Bids will be opened at the time and place specified in the public notice.

(b) *Acceptance of successful bid.* The Secretary of Defense or his designee will notify any successful bidder of acceptance in the manner and form specified in the public notice.

### § 274.8 Bids-revocations-rejections-postponements.

The Secretary of Defense or his designee in his discretion, may (a) revoke the public notice of invitation to bid at any time before opening bids, (b) return all bids unopened either at or prior to the time specified for their opening, (c) reject any or all bids, (d) postpone the time for presentation and opening of bids, and (e) waive any immaterial or obvious defect in any bid. Any action the Secretary of Defense or his designee may take in these respects shall be final. In the event of a postponement, known bidders will be advised thereof and their bids returned unopened.

### § 274.9 Delegation of authority to the Secretary of the Treasury.

There is hereby delegated to the Secretary or Acting Secretary of the Treasury the authority, in the name of and title of the Secretary of the Treasury, to invite bids under this memorandum, to issue, modify and revoke public notices, notices, and announcements concerning such bids, to pre-

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scribe additional terms and conditions with respect thereto, consistent with this memorandum, to receive, return, open, reject, and accept bids, and to take such other actions as may be necessary and proper to execute this delegation of authority to implement this memorandum, excluding, however, the issuance of guaranties under § 274.4.

### § 274.10 Reservations.

The Secretary of Defense reserves the right, at any time, or from time to time, to amend, repeal, supplement, revise or withdraw all or any of the provisions of this memorandum.

## PART 275—RIGHT TO FINANCIAL PRIVACY ACT

### Sec.

- 275.1 Purpose.
- 275.2 Definitions.
- 275.3 Authorization.
- 275.4 Formal written request.
- 275.5 Certification.
- 275.6 Cost reimbursement.

AUTHORITY: 12 U.S.C. 3401, *et seq.*

SOURCE: 84 FR 24708, May 29, 2019, unless otherwise noted.

### § 275.1 Purpose.

The purpose of this part is to authorize DoD Components to request financial records from a financial institution pursuant to the formal written request procedure authorized by section 1108 of the Act and to set forth the conditions under which such requests may be made.

### § 275.2 Definitions.

The terms used in this part have the same meaning as similar terms used in the Right to Financial Privacy Act of 1978, Title XI of Public Law 95-630.

*Act* means the Right to Financial Privacy Act of 1978.

*DoD Components* means the law enforcement activities of the Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff, the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the

Department of Defense (hereafter referred to as the “DoD Components”).

**§ 275.3 Authorization.**

The DoD Components are authorized to request financial records of any customer from a financial institution pursuant to a formal written request under the Act only if:

(a) No administrative summons or subpoena authority reasonably appears to be available to the DoD Component to obtain financial records for the purpose for which the records are sought;

(b) There is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry and will further that inquiry;

(c) The request is issued by a supervisory official of a grade designated by the head of the DoD Component. Officials so designated shall not delegate this authority to others;

(d) The request adheres to the requirements set forth in § 275.4; and

(e) The notice requirements required by section 1108(4) of the Act, or the requirements pertaining to the delay of notice in section 1109 of the Act, and described in paragraphs (e)(1) through (5) of this section are satisfied, except in situations (*e.g.*, section 1113(g)) where no notice is required.

(1) The notice requirements are satisfied when a copy of the request has been served on the customer or mailed to the customer’s last known address on or before the date on which the request was made to the financial institution together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry: “Records or information concerning your transactions held by the financial institution named in the attached request are being sought by the Department of Defense [or the specific DoD Component] in accordance with the Right to Financial Privacy Act of 1978 for the following purpose:”

(2)(i) Within ten days of service or within fourteen days of mailing of a subpoena, summons, or formal written request, a customer may file a motion to quash an administrative summons or judicial subpoena, or an application to enjoin a Government authority from obtaining financial records pursuant to

a formal written request, with copies served upon the Government authority. A motion to quash a judicial subpoena shall be filed in the court that issued the subpoena. A motion to quash an administrative summons or an application to enjoin a Government authority from obtaining records pursuant to a formal written request shall be filed in the appropriate United States District Court. Such motion or application shall contain an affidavit or sworn statement stating:

(A) That the applicant is a customer of the financial institution from which financial records pertaining to said customer have been sought; and

(B) The applicant’s reasons for believing that the financial records sought are not relevant to the legitimate law enforcement inquiry stated by the Government authority in its notice, or that there has not been substantial compliance within the provisions of the Act.

(ii) Service shall be made upon a Government authority by delivering or mailing by registered or certified mail a copy of the papers to the person, office, or department specified in the notice which the customer has received a request.

(3) If a customer desires that such records or information not be made available, the customer must:

(i) Fill out the accompanying motion paper and sworn statement or write one of the customer’s own, stating that he or she is the customer whose records are being requested by the Government and either giving the reasons the customer believes that the records are not relevant to the legitimate law enforcement inquiry stated in this notice or any other legal basis for objecting to the release of the records.

(ii) File the motion and statement by mailing or delivering them to the clerk at an appropriate United States District Court.

(iii) Serve the Government authority requesting the records by mailing or delivering a copy of the motion and statement to the Government authority.

(iv) Be prepared to go to court and present the customer’s position in further detail.

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(v) The customer does not need to have a lawyer, although he or she may wish to employ a lawyer to represent the customer and protect the customer's rights.

(4) If the customer does not follow the procedures in paragraphs (e)(2) and (3) of this section, upon the expiration of ten days from the date of service or fourteen days from the date of mailing of the notice, the records or information requested therein may be made available. The records may be transferred to other Government authorities for legitimate law enforcement inquiries, in which event the customer will be notified after the transfer.

(5) Also, the records or information requested therein may be made available if ten days have expired from the date of service or fourteen days from the date of mailing of the notice and within such time period the customer has not filed a sworn statement and an application to enjoin the Government authority in an appropriate court, or the customer challenge provisions.

### § 275.4 Formal written request.

(a) The formal written request must be in the form of a letter or memorandum to an appropriate official of the financial institution from which financial records are requested. The request shall be signed by the issuing official, and shall set forth that official's name, title, business address, and business phone number. The request shall also contain the following:

(1) The identity of the customer or customers to whom the records pertain;

(2) A reasonable description of the records sought; and

(3) Such additional information which may be appropriate—*e.g.*, the date when the opportunity for the customer to challenge the formal written request expires, the date on which the DoD Component expects to present a certificate of compliance with the applicable provisions of the Act, the name and title of the individual (if known) to whom disclosure is to be made.

(b) In cases where customer notice is delayed by court order, a copy of the court order must be attached to the formal written request.

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### § 275.5 Certification.

Before obtaining the requested records pursuant to a formal written request described in § 275.4, an official of a rank designated by the head of the requesting DoD Component shall certify in writing to the financial institution that the DoD Component has complied with the applicable provisions of the Act.

### § 275.6 Cost reimbursement.

Cost reimbursement to financial institutions for providing financial records will be made consistent with 12 CFR part 219, subpart A.

## PART 277—IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL REMEDIES ACT

Sec.

277.1 Purpose.

277.2 Applicability.

277.3 Policy.

277.4 Responsibilities.

APPENDIX TO PART 277—PROGRAM FRAUD CIVIL REMEDIES

AUTHORITY: 31 U.S.C. 3807.

SOURCE: 53 FR 39262, Oct. 6, 1988, unless otherwise noted.

### § 277.1 Purpose.

This part establishes uniform policies, assigns responsibilities, and prescribes procedures for implementation of Pub. L. 99-509.

### § 277.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD); the Military Departments; the Office of the Inspector General, Department of Defense (OIG, DoD); the Defense Agencies; and the DoD Field Activities (hereafter referred to collectively as “DoD Components”).

### § 277.3 Policy.

It is DoD policy to redress fraud in DoD programs and operations through the nonexclusive use of Pub. L. 99-509. All DoD Components shall comply with the requirements of this part in using this new remedy. Changes or modifications to this part by implementing organizations are prohibited. Implementing regulations are authorized