Summary of Bank Secrecy Act Rules

The records required to be kept by the Bank Secrecy Act and the Regulations based on it are basically these: 1) Banks must keep records of the identification by taxpayer or social security number of all account holders and all those with signature power concerning any accounts; 2) They must keep records of each extension of credit over $5,000, including its nature and purpose, except those transactions secured by real property; 3) They must keep records of every request or instruction concerning the transfer of more than $10,000 outside the United States; 4) Most surprisingly, banks must microfilm all checks and all money orders drawn on all checking accounts, with some exceptions for large corporations such as payroll checks, employee dividends, benefit, and pension checks; 5) Banks must also photocopy each check drawn on or issued by any foreign bank in excess of $10,000; 6) In addition, banks must keep for two years records required for tracing any check through any demand deposit account.

Banks must immediately report to the federal government any foreign transaction of more than $5,000 accomplished by the use of any monetary instrument, which is defined to include among other things currency, travelers checks, money orders, securities, and probably unendorsed personal checks as well. Banks must report any currency transaction, foreign or domestic, that exceeds $10,000.

A handy exception for good customers is made in the Regulations, so that banks are permitted to fail to file reports for "established customers" whom they may reasonably conclude have transactions that do not exceed their "customary conduct".

The requirements for reporting and record keeping are by no means limited to banks but affect all sorts of financial institutions, from banks and savings and loans right down to pawnbrokers and dealers in securities. Even individuals must make certain reports and keep certain records. For example, any person with any interest in a foreign bank account must keep for five years records to be prescribed by the Internal Revenue Service, and must report whatever the Internal Revenue Service tells them to report with regard to those accounts.

If this were not bad enough, there are several special provisions in the Act and Regulations which make the whole scheme a great deal worse. First, the Act itself expressly says that any information gathered by the Secretary of the Treasury shall be made available to any other department or agency of the federal government on the request of the head of the agency. Presumably, then, the FBI could simply send a letter to the Secretary of the Treasury asking for financial information.

Second, and perhaps most outrageous, there is a regulation buried deep in the back of the full set of Regulations which permits the Secretary in his sole discretion by "written order or authorization", which amounts to no more than a letter on his letterhead with his signature, to impose whatever additional record keeping or reporting requirements he wants to impose. By regulation these extra record keeping and reporting requirements may apply to particular persons or particular classes of persons, and may apply to particular transactions or classes of transactions. That exception makes most of the rest of the Act and Regulations fairly meaningless, because it means that the Secretary may alter them at will simply by writing a letter.

The Act and the Regulations contain very big teeth for their enforcement. The Secretary is empowered (but not required) to impose fines of $1000 per violation per day of violation, and to seek criminal penalties that not only impose a similar $1000 fine per day of violation but can include up to a year in jail for bank personnel who refuse to comply with the Secretary's orders.