

**A REPORT TO CONGRESS
IN ACCORDANCE WITH § 326(b)**

OF THE

**UNITING AND STRENGTHENING AMERICA BY PROVIDING
APPROPRIATE TOOLS REQUIRED TO INTERCEPT AND OBSTRUCT
TERRORISM ACT OF 2001**

(USA PATRIOT ACT)

**SUBMITTED BY THE
DEPARTMENT OF THE TREASURY
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Executive Summary

Section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (“USA PATRIOT Act”) requires the Secretary of the Treasury (“Treasury”) to prescribe regulations establishing minimum standards for the identification and verification of financial institution customers in connection with the opening of an account. The regulations must include reasonable procedures for: (i) verifying the identity of any person who opens an account; (ii) maintaining records of the information used to verify a person’s identity; and (iii) consulting government lists of known or suspected terrorists or terrorist organizations.

In addition, section 326 of the Act requires Treasury, in consultation with the Federal functional regulators and other appropriate Government agencies, to conduct a study and to issue a report providing recommendations with respect to the application of customer identification requirements when a customer is a foreign national. In formulating its recommendations, Treasury has consulted with other appropriate agencies and reviewed current financial institution practices regarding the verification of customer identities.

Treasury finds that there are significant impediments to domestic financial institutions’ ability to identify, much less verify the identity of, foreign nationals. The wide disparity in identification documents, the pervasive problem of fraudulent identification documents, and the fact that many foreign nationals who establish accounts in the United States are not physically present here mean that it might not be practicable for Treasury to prescribe rigid rules of acceptable or unacceptable forms of identification.

Moreover, there currently is no single, reliable system within the Federal government that domestic financial institutions could access to verify the identity of foreign nationals for any of a

variety of purposes, including opening accounts. Were one to be created, the most effective system could be patterned after the Social Security number (“SSN”) system, assigning each foreign national a unique identification number. Such a system could ensure that all foreign nationals are included and that the responsible agency verify the identity of the foreign nationals before providing them with a number. The system described would involve a substantial resource commitment and would require extensive interagency coordination for a mission that is generally outside of Treasury’s purview.

In lieu of the creation of a new system, certain identification numbers and documents are presently available to assist in the identification of foreign nationals. In some cases, foreign nationals may receive an SSN or an individual taxpayer identification number (“ITIN”) issued by the Internal Revenue Service. In addition, some states issue driver’s licenses and identity cards with identification numbers only after a relatively thorough review of authenticating documents.¹ While Treasury believes that financial institutions should be encouraged to collect these numbers in connection with account opening by these individuals, for a number of reasons, Treasury does not recommend requiring that such numbers be provided in all cases. For example, with respect to ITINs, those numbers should not be relied on for the purpose of verifying the identity of a foreign national. The ITIN is designed to facilitate the collection of tax revenue, not to serve as evidence that the Internal Revenue Service has verified the identity of the foreign national. Additionally, while some states markedly improved their procedures for verifying identity when issuing driver’s licenses after September 2001, other states do not have rigorous identification procedures and the ability to counterfeit these documents still limits their utility as an identification instrument.

¹ See, e.g., [Http://www.dmv.state.va.us/webdoc/citizen/drivers/idproof.asp](http://www.dmv.state.va.us/webdoc/citizen/drivers/idproof.asp) (Virginia).

In light of these findings, and in response to the specific charge in section 326, Treasury makes the following recommendations:

- (i) The most effective way in the current environment for financial institutions to verify the identity of foreign nationals is to comply with the requirements of the regulations promulgated pursuant to section 326 of the USA PATRIOT Act, which take into account the unique issues associated with verifying the identity of a non-U.S. person.
- (ii) Currently, there is no system available for assigning all foreign nationals a unique identification number that could be used by financial institutions to assist in identifying and verifying the identity of customers. For such a system to be beneficial to financial institutions, the government entity responsible for assigning such a number must itself take adequate steps to verify the identity of foreign nationals. Moreover, the creation of such a system must necessarily be addressed within the framework of an overall plan to address immigration and national security issues. Accordingly, Treasury recommends that appropriate parties study further whether a unique identification numbering or other system for all foreign nationals is feasible and appropriate as part of an overall plan to improve our system for tracking foreign nationals.
- (iii) Until a new system can be created, to the extent a foreign national has an SSN, ITIN, or other identification number, Treasury encourages financial institutions to obtain that number as part of their account opening procedures as it may provide an audit trail for law enforcement. However, Treasury does not recommend imposing a requirement that all foreign nationals obtain such a number prior to opening an account at a U.S. financial institution. The currently available systems for providing an SSN-like number to foreign nationals do not provide significant benefits to financial institutions seeking to verify the identity of foreign nationals. Moreover, not all foreign nationals obtain or should obtain such numbers.
- (iv) Other than current requirements to check lists or information disseminated by the Federal government, in connection with the opening of an account, financial institutions should not be required to consult with government agencies to verify the identity of foreign nationals until the United States develops a database that is accessible by financial institutions that contains the relevant information needed for verification. Treasury further recommends that financial institutions file Suspicious Activities Reports where there are circumstances at account opening justifying such a filing.

I. Background

On October 26, 2001, President Bush signed into law the USA PATRIOT Act.² Title III of the USA PATRIOT Act, the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001 (“Money Laundering Abatement Act” or “Act”), both amends existing anti-money laundering law and imposes new requirements, particularly in connection with relations between U.S. financial institutions and foreign persons. A primary purpose of the USA PATRIOT Act is to strengthen the provisions put into place by the Money Laundering Control Act of 1986, especially with respect to transactions by non-United States nationals and foreign institutions.³

Section 326 of the Act addresses the identification and verification of all customers seeking to open accounts at financial institutions. It requires Treasury to prescribe regulations that will establish minimum standards for the identification and verification of financial institution customers in connection with the opening of an account. The regulations must include reasonable procedures for: (i) verifying the identity of any person who opens an account; (ii) maintaining records of the information used to verify a person’s identity; and (iii) consulting government lists of known or suspected terrorists or terrorist organizations. On July 23, 2002, Treasury, jointly with the banking regulators,⁴ issued a Notice of Proposed Rulemaking to implement the requirements of section 326 of the Act with respect to banks, thrifts, and credit

² Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act, Pub. L. No. 107-56 (2001).

³ *Id.* at § 302(b)(3).

⁴ The Proposed Rule was issued jointly with the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration.

unions.⁵ That same day, Treasury also issued proposed rules to implement the requirements of section 326 of the Act jointly with the Securities and Exchange Commission for broker-dealers and mutual funds and with the Commodity Futures Trading Commission for futures commission merchants and introducing brokers.⁶ Treasury also separately issued a proposed rule applicable state chartered, non-depository trust companies; privately insured credit unions; and private banks.⁷ The proposed rules are discussed in detail below in section III.

For purposes of verifying the identity of financial institution customers, the Act generally does not distinguish between individuals who are U.S. citizens and those who are foreign nationals.⁸ With respect to foreign nationals, however, section 326(b) of the Act requires Treasury, in consultation with the Federal functional regulators and other appropriate Government agencies, to conduct a study and to issue a report containing recommendations for:

- 1) Determining the most timely and effective way to require foreign nationals to provide domestic financial institutions and agencies with appropriate and accurate information, comparable to that which is required of United States nationals, concerning the identity, address, and other related information about such foreign nationals necessary to enable such institutions and agencies to comply with the requirements of section 326;
- 2) Requiring foreign nationals to apply for and obtain, before opening an account with a domestic financial institution, an identification number which would function similarly to an SSN or tax identification number (“TIN”); and
- 3) Establishing a system for domestic financial institutions and agencies to review information maintained by relevant Government agencies for purposes of verifying the identities of foreign nationals seeking to open accounts at those institutions and agencies.

⁵ See 67 Fed. Reg. 48,290 (July 23, 2002).

⁶ See 67 Fed. Reg. 48,306 (July 23, 2002).

⁷ See 67 Fed. Reg. 48,299 (July 23, 2002).

⁸ Through the process of drafting proposed regulations pursuant to section 326 of the Act, Treasury and the Federal functional regulators considered how a customer’s status as a U.S. citizen or foreign national would affect a financial institution’s ability to comply with identity verification requirements. The proposed regulations will require financial institutions to have adequate procedures to verify the identity of both U.S. citizens and foreign nationals.

This Report responds to the Act’s requirement that Treasury submit to Congress its recommendations for achieving the customer identification and verification objectives of section 326 of the Act with respect to foreign nationals. Treasury, in consultation with staff at the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the National Credit Union Administration, the Department of Justice, the Internal Revenue Service (“IRS”), and the Immigration and Naturalization Service (“INS”), developed these regulations to help identify issues and impediments inherent in creating a system for financial institutions to identify foreign nationals.⁹ Treasury asked these agencies to offer suggestions for developing an effective and practical system and, where possible, has drawn upon their expertise in making the recommendations contained in this report.

The Congressional mandate to Treasury is broad and cuts across numerous agency boundaries. As a result, although Treasury has enlisted the assistance of other agencies, there are inherent limitations on Treasury’s ability to propose comprehensive solutions. In this report, Treasury has sought to identify the significant impediments to the identification and verification of the identity of foreign nationals by domestic financial institutions. However, Treasury is not well positioned to articulate the view of other agencies, such as the INS, on issues concerning immigration and accompanying recordkeeping provisions. Treasury considers this report to be the first step in the process of both analyzing the issues surrounding identification and verification of the identity of foreign nationals as well as proposing possible solutions.

⁹ This report, however, does not necessarily reflect the views of other agencies, which understandably may have different interests and policy goals than Treasury.

II. Issues Affecting Identity Verification of Foreign Nationals

Treasury has identified a number of factors that complicate the development and implementation of a single methodology or system for financial institutions to accurately verify the identity of foreign nationals prior to permitting them to open accounts in the United States. These factors are discussed below.

A. The practical difficulty of determining which customers are foreign nationals.

A significant issue in developing any system to verify the identity of foreign nationals is the practical question of how a financial institution will be able to determine whether a customer is a foreign national who will be subject to the enhanced identity verification system. This basic question may not be easily answered in many situations.

The multi-cultural society of the United States and its widely available opportunities for citizenship make it difficult for any financial institution to judge reliably the citizenship status of a customer based on the customer's language, appearance, residence, or physical characteristics. There is no consistent or effective means of distinguishing long-time residents, citizens, or new arrivals. Even relying on direct questioning or a review of documentation presented will not always resolve this issue. For example, a financial institution may be reluctant to ask a new customer directly whether he or she is a foreign national because of the possibility that such questions might be interpreted as potentially discriminatory on the basis of national origin in violation of the Equal Credit Opportunity Act¹⁰ or the Fair Housing Act.¹¹ As explained below, however, the proposed rules implementing section 326 of the Act specifically authorize financial

¹⁰ 15 U.S.C. § 1691 *et seq.*

¹¹ 42 U.S.C. §§ 3601 – 3619.

institutions to distinguish between U.S. citizens and non-U.S. citizens for the purpose of determining acceptable forms of identifying information. Thus, financial institutions may ask whether a new customer is a U.S. citizen.

Even if a financial institution did inquire directly as to whether a new customer is a U.S. citizen, there is no guarantee that the financial institution would receive a truthful answer. To the contrary, to avoid enhanced scrutiny and further questions, a foreign national would have a strong incentive to hide the fact that he or she is not a U.S. citizen. Finally, a foreign national may well possess the same types of identity documents typically possessed by a U.S. citizen. For example, foreign nationals may have valid driver's licenses and some may have Social Security numbers. Alternatively, a foreign national might provide the financial institution with one of the easily obtained fraudulent U.S. identification documents, as discussed more fully below. Thus, a financial institution that asks a new customer for identity documents to determine whether he or she is a foreign national may not be in a better position to make that determination after examining such documents.

B. The inherent need to rely on foreign documents to verify identity.

A fundamental problem with the current system for verifying the identity of foreign nationals is that no single, uniform identification document exists for all foreign nationals. First, for those foreign nationals to whom status or identification documents are issued when they enter the United States, there is no universal type of identification document. Generally, foreign nationals enter the United States pursuant to a visa. There are two basic types of visas: non-immigrant visas (temporary) and immigrant visas (permanent). Within the nonimmigrant category of visas there are many types that can be granted for many different reasons. Second, some classes of visitors, such as Canadians, Western Europeans, and people of certain other

nationalities, are exempt from a nonimmigrant visa requirement, and, therefore, no status or identification document is required to be issued. Third, there are foreign nationals who do not have any documentation from the INS because they have entered the United States illegally. Accordingly, even setting aside the issue of illegal entry, there is not any one system for identifying foreign nationals that relies exclusively on INS documentation. As a result, absent significant changes in the INS system, any identity verification system for foreign nationals will have to rely, at least to some extent, on foreign documents.

Reliance on foreign documents to verify the identity of the foreign national itself presents significant challenges. Identity documents vary widely from country to country, and they change from time to time. Such documents are not standardized and even so-called “standard” documents such as a passport or driver’s license differ widely among countries. For example, some passports do not contain a picture of the passport holder, thereby making it an inherently less reliable form of identification. As a result of the many possible types of identification documents, an identity verification system for foreign nationals would not be able to list “acceptable” forms of identification that would cover all possible documents that exist in all other countries.

Moreover, it is not reasonable for the government to expect financial institution employees to be familiar with all of the different types of foreign documents that might be presented to prove identity, especially when those documents are in a foreign language or even in a foreign alphabet. The system, therefore, will be less reliable because it is unlikely that financial institution employees will be able to detect non-official forms of identification. In addition, like many U.S. documents, many of these foreign documents may be easy to counterfeit. Financial institution staff that is already unfamiliar with these foreign documents

will have a difficult time detecting forged or false foreign documents. Consequently, there will be certain intrinsic weaknesses in the identity verification system because of its inevitable reliance on foreign documents.

C. The ready availability of counterfeit identification documents.

The availability of fraudulent identification documents will affect the reliability of any identification verification system for foreign nationals. Although false identification documents have long been available, the Internet has made obtaining such documents easy and inexpensive. In connection with the problem of identity theft, officials have testified before Congressional committees about the ease with which all types of identification documents, from Social Security cards to driver's licenses to graduation certificates to birth certificates, may be falsified.¹² Websites offer counterfeit identification documents based on legitimate documents for each of the fifty states.¹³

Likewise, counterfeit foreign identification documents are as easy to obtain as counterfeit U.S. documents. As a result, foreign nationals who otherwise are not eligible to receive a genuine document could easily obtain a counterfeit version, thereby allowing the foreign national to disguise his or her status or to purport to be another person altogether. The ready availability of these counterfeit documents will have an impact on the effectiveness of any identity verification system for foreign nationals.

¹² *Statement of Michael Robinson, Special Agent, Office of the Inspector General, Social Security Administration, Protecting Privacy and Preventing the Misuse of Social Security Numbers, Hearing Before the Subcommittee on Social Security of the House Committee on Ways and Means (May 22, 2001).*

¹³ *Id.*

D. *Limitations in the tracking systems of the Immigration and Naturalization Service.*

Currently, financial institutions cannot rely on information maintained by any one U.S. government entity to verify the identity of foreign nationals. For example, the INS does not have a single records system or database for all non-U.S. citizens who are in the United States at any given time. Instead, records maintained are placed in a variety of databases that reflect the status of the non-U.S. citizen. The following is a summary of the various records systems maintained by the INS:

- **Central Index System (“CIS”)**: The CIS contains records on Lawful Permanent Residents, refugees, asylees, and those persons granted a status associated with an Alien Number,¹⁴ as well as Naturalized Citizens.
- **Computer Linked Applications Information Management System (“CLAIMS”)**: CLAIMS is an umbrella system that contains records on applications and petitions filed for immigrant and nonimmigrant benefits at all INS Service Centers and those field offices at which filings can be uploaded to CLAIMS. Applications made at field offices where information cannot be uploaded are not entered into the CLAIMS system.
- **Employment Authorization Document System (“EADS”)**: The EADS contains records on all EADs issued to non-immigrants, asylees, refugees, parolees, and persons in Temporary Protected Status (“TPS”).¹⁵ This information is uploaded to both CLAIMS3 (a later generation of CLAIMS) and CIS through which queries may be made.
- **Non-Immigrant Information System (“NIIS”)**: The NIIS contains records on all nonimmigrants who have been lawfully admitted into the U.S. and issued an Arrival/Departure (“I-94”) record and number. However, many foreign nationals admitted into the U.S. are immigrants rather than non-immigrants, and not all non-immigrants have either (i) been lawfully admitted into the U.S., or (ii) been issued an I-94 record and number.

¹⁴ An Alien Number is a number assigned by the INS to individuals who are placed in removal or deportation status or have requested permanent benefits.

¹⁵ Persons may be placed in Temporary Protected Status, meaning that they may remain legally in the United States, if the Attorney General finds that as a result of certain conditions occurring in their home countries, including civil war or natural disasters, it is unsafe for them to return home.

- **Student/School System (“STSC”)**: The STSC contains records on foreign students (including Canadians) in the United States and the schools authorized to enroll them.
- **Detained Alien Control System (“DACs”)**: The DACS contains records on illegal aliens under removal proceedings, including detention status. Information is maintained on the alien’s entry and departure status until the alien is either granted a stay, deported, or granted relief.
- **Refugee, Asylum & Parole System (“RAPS”)**: The RAPS contains records and information associated with all individuals who have filed for and been denied/approved asylum, refugee status, or humanitarian parole status with the INS, and it interfaces with CIS, DACS, and the lookout systems of INS and the FBI. The lookout systems are electronic databases containing information about individuals who are on terrorist watchlists or have committed crimes that would affect their immigration status.
- **Enforcement Case Tracking System (“ENFORCE”)**: The ENFORCE contains records of arrest bookings and is a database from which criminal activities can be analyzed to identify local and international criminal and fraudulent immigration schemes.

Because the INS has jurisdiction over all non-citizens who enter and stay in the U.S., there are multiple INS systems that contain information about immigrants and nonimmigrants, and financial institutions potentially would face a significant burden if required to review all INS databases as part of a system to verify the identity of foreign nationals.

In addition to the issue of multiple INS databases, another complicating factor is access to such systems. Outside access by either government or non-government entities for purposes of verifying alien status and employment authorization is currently restricted to a limited number of Federal and State entitlement agencies seeking to verify a foreign national’s eligibility for benefits and a select group of employers who are voluntarily participating in one of the Employer Verification Pilot programs administered by the INS’ SAVE program. The SAVE program is the INS program that extracts data from the principal INS databases containing

records on immigrants and nonimmigrants, through which only entities participating in the SAVE program pilot may confirm an individual's INS status.

The database accessed for all outside inquiries under the SAVE program is the Alien Status Verification Index System ("ASVI"). ASVI is a database that extracts data from the CIS and NIIS databases. Some information from the INS' CLAIMS database is passed through to the ASVI via the information that is extracted from CIS. ASVI presently contains over 60 million records. SAVE provides immigration status verification through the ASVI system both through automated queries and manual searches by INS Immigration Status Verifiers ("ISVs"). If an automated search indicates that there is no information about an individual or provides information that does not appear to make sense, a manual search is required. Authorized outside users and participants in SAVE can make a direct electronic query on an alien's immigration or employment status for any alien whose record is within the ASVI database. For individuals not contained within ASVI, the ISV must conduct individual searches of all INS systems that might contain a record on the individual being queried about. If financial institutions were required to review INS databases in connection with the opening of an account by a foreign national, significant technological upgrades, systems enhancements, and increased staffing resource allocations would be required.

Finally, the most basic problem with reliance solely on INS databases to verify the identity of foreign nationals is that many foreign nationals in the United States are not reflected in INS records systems. The millions of undocumented aliens and aliens who entered the United States without inspection ("EWI") are not in any records system of the INS, as well as tens of thousands of Canadian and Mexican visitors who enter for brief visits. Only those illegal/undocumented aliens and EWIs who have been arrested, detained, or put in removal

proceedings by INS are in the current databases. The vast majority of illegal/undocumented aliens and EWIs, however, are in no INS database. Likewise, most temporary Canadian and Mexican visitors who enter the United States by land border also may not be in a database. As a result, it would not be uncommon to find that a foreign national opening an account at a financial institution is not in any INS database or records system, even if the requirement to consult the INS databases was instituted only in connection with account opening by foreign nationals who are physically present in the United States.

E. Balancing of anti-money laundering concerns and efforts to move the unbanked population, including foreign nationals, into the banking system.

In its efforts to deter money laundering and disrupt terrorist financing, Treasury is cognizant that additional regulatory burdens on financial institutions might have a negative impact on other Treasury programs, such as the initiative to encourage “unbanked” families and individuals, including non-U.S. persons living and working in the United States, to use mainstream financial services. In addition to discouraging the unbanked from using mainstream financial services, imposing burdensome requirements with respect to non-U.S. customers could discourage financial institutions from serving these populations as such institutions already face special challenges in complying with identification requirements because many of their customers may not have standard forms of U.S. identification.

The issue of how to manage identification of non-U.S. persons is being considered carefully by Treasury as part of an intra-governmental effort to develop identification standards for the various types of financial services providers. Accordingly, the recommendations in this report reflect Treasury’s recognition of the importance of providing non-U.S. persons with access to the financial system and its effort to find a balance between the need for strong

regulation that provides a real benefit to those working to achieve national security and law enforcement objectives and the ability of financial institutions to serve non-U.S. persons living and working in the United States.

While the impediments to identifying foreign nationals must be acknowledged as part of analyzing the issue of customer identification, they reaffirm the importance of the need for financial institutions to be vigilant in their account opening procedures. A purpose of the regulations issued pursuant to section 326 of the Act is to create minimum standards for customer identification applicable to all financial institutions opening accounts. Once final, the regulations must be followed, meaning that financial institutions must take steps, consistent with their identification program, to form a reasonable belief as to the identity of their customers. When a financial institution is unable to form a reasonable belief as to the identity of a customer, appropriate action must be taken in accordance with the financial institution's procedures, including refusing to open the account.

III. The Proposed Customer Identification and Verification Rules

On July 23, Treasury, jointly with the seven Federal functional regulators, issued proposed rules that would require certain financial institutions to establish minimum procedures for identifying and verifying the identity of customers who open financial accounts. While separate rules were issued to reflect the differences in the operations of these financial institutions, they are intended to have the same effect on all the various industries. The regulations were developed jointly, and are designed to ensure that minimum customer identification requirements be standardized across the various financial industries. The financial

institutions covered by the proposed rules include: banks, thrifts, credit unions, securities brokers and dealers, mutual funds, futures commission merchants and introducing brokers, state chartered, non-depository trust companies, privately insured credit unions, and private banks.¹⁶

The proposed rules set forth the requirement that financial institutions would have to establish a customer identification and verification program applicable to all new accounts that are opened, regardless of whether the customer is a U.S. citizen or a foreign national. While the proposed rules prescribe minimum standards for such programs, they leave sufficient flexibility to permit financial institutions to tailor their program to fit their business operations. The customer identification program would have to contain reasonable procedures for identifying any person, including a business, that opens an account, setting forth the type of identifying information that the financial institution will require. At a minimum, for U.S. persons the proposed rules would require financial institutions to obtain the following information: name, address, taxpayer identification number, and, for individuals, date of birth. While a taxpayer identification number is not required for non-U.S. persons, a financial institution must describe what type of information it will require of a non-U.S. person in place of a taxpayer identification number. The regulations state that financial institutions may accept one or more of the following: a U.S. taxpayer identification number; a passport number and country of issuance; an alien identification card number; or the number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.¹⁷ For businesses opening accounts, the proposed rules would require financial institutions to identify any individual with signatory authority over the account, or, in the case of

¹⁶ See *supra* notes 4, 5 & 6.

¹⁷ Thus, the proposed regulations do not discourage bank acceptance of the "matricula consular" identity card that is being issued by the Mexican government to immigrants.

futures commission merchants, anyone granted authority to effect transactions with respect to the account.

Financial institutions would also have to establish procedures for verifying the identity of customers who open an account. The proposed rules would require financial institutions to set forth procedures describing how identification will be verified, when it will use documents for this purpose, and when it will use other methods in lieu of or in addition to documents. While the proposed rules are flexible concerning how verification will be accomplished, they set a minimum standard and state that the financial institution is ultimately responsible for exercising reasonable efforts to identify customers, and that the financial institution's procedures must enable it to form a reasonable belief that it knows each customer's true identity.

Beyond that, the proposed rules would require financial institutions to maintain records of information used to verify a customer's name, address, and other identifying information. Customer names must be checked against lists of known or suspected terrorists and terrorist organizations issued by the Federal government. Finally, financial institutions would have to develop procedures for determining when an account should not be opened (or when an existing account should be closed) as a result of an inability to verify the identity of a customer. Such procedures must include determining when an account may be opened while a customer's identity is being verified, and whether a suspicious activity report should be filed.

Treasury and the Federal functional regulators are now evaluating extensive comments received on the proposed rules in order to draft final regulations. Commenters have raised many significant issues that will be taken into account. Additionally, Treasury is drafting similar proposed rules implementing section 326 for the remaining categories of financial institutions, as defined by the Bank Secrecy Act, that maintain accounts.

IV. Recommendations

The impediments to domestic financial institutions' ability to consistently and accurately identify and verify the identity of foreign nationals are complex and varied. These difficulties simply cannot be resolved by crafting a single set of procedures that financial institutions can follow in all circumstances. A comprehensive solution will require additional research and study that will give rise to an action plan involving both administrative and legislative measures. This report, combined with the work of Treasury and the Federal functional regulators in drafting regulations implementing section 326, is the first step in this process.

A. Identity requirements for foreign nationals.

Congress has requested that Treasury make recommendations for determining the most timely and effective way to require foreign nationals to provide domestic financial institutions and agencies with appropriate and accurate identity, address, and other related information to enable such institutions and agencies to comply with the requirements of section 326 of the Act. The development of recommendations on this issue has been tied directly to the development of regulations implementing section 326. Through the process of drafting the regulations, Treasury, along with the Federal functional regulators, specifically considered the issues related to verifying the identity of foreign nationals discussed above. In addition, Treasury consulted with other appropriate government agencies, including the Department of State and INS, to determine what types of standard identity documents foreign nationals possess. Based upon the work conducted thus far, Treasury offers the following recommendation:

Recommendation: Given the current absence of reliable or standardized identification for foreign nationals, domestic financial institutions should make reasonable efforts to identify foreign nationals using existing and available information and documents

pursuant to the domestic financial institution's customer identification procedures that will comply with the regulations implementing section 326 of the Act and any other existing identity verification requirements.

As discussed above, one of the problems with trying to identify foreign nationals is a lack of standardization of identification documents. Different countries obviously use different forms of identification, and the INS does not employ any single form of identification that could be used across the board. The proposed regulations specifically address identification requirements for foreign nationals within the framework of a domestic financial institution's overall customer identification and verification procedures. These rules necessarily provide an appropriate amount of flexibility for financial institutions in verifying the identity of foreign nationals. Prior to opening an account with a financial institution, all customers, including foreign nationals, must provide the financial institution with a name, address, and date of birth. In addition, where a U.S. person would be required to provide a U.S. TIN, a non-U.S. person will need to provide a TIN, passport number, or number from another government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard. But the collection of such information alone is not sufficient to verify the identity of the customer under the proposed rules. A financial institution must then verify that customer's identity using documentary or non-documentary methods sufficient to enable the financial institution to form a reasonable belief that it knows the customer's true identity.

Accordingly, until there is a reliable and standard form of identification that is issued to all foreign nationals who enter the United States, Treasury recommends that, for purposes of verifying the identity of foreign nationals, the approach in these proposed rules is not only the most reasonable approach, but is also the most timely and effective method to verify the identity of foreign nationals.

B. Identification numbers for foreign nationals.

The search for effective ways to enable domestic financial institutions to identify foreign nationals inevitably leads to consideration of whether a single identification number, similar to an SSN, should be required before a foreign national may open an account. Congress has requested recommendations for requiring foreign nationals to apply for and obtain, before opening an account with a domestic financial institution, an identification number.

A predicate issue is whether an identification number would be helpful in establishing the true identity of the customer, and thus whether it would be helpful in deterring and investigating money laundering and terrorist financing. The answer depends upon the role of the government agency issuing the number. To the extent the identification number is not issued until the government agency itself verifies the identity of the foreign national, such an identification number would be quite beneficial. Furthermore, if it is linked to such things as the foreign national's immigration status or restrictions on the length of time the foreign national may stay in the United States, its value increases further. On the other hand, an identification number that is available to foreign nationals with minimal identification and no link to the applicant's immigration status would seem to hold less value from the perspective of law enforcement or of the domestic financial institution. Finally, the creation of any such system, to be truly useful, must allow domestic financial institutions to confirm the validity of such identification numbers when a customer presents it prior to opening an account.

Thus, the creation of a new system for assigning and providing verification of unique identification numbers for foreign nationals would enhance domestic financial institutions' ability to identify and verify the identity of foreign nationals. But the creation and implementation of such a system would require both the commitment of substantial resources for

the technological infrastructure and staffing as well as an overall restructuring of the system for maintaining information on foreign nationals. Moreover, a system for identifying and tracking foreign nationals should be constructed to further national security interests and the enforcement of immigration laws, not just the needs of financial institutions to identify customers. Treasury is not well positioned to itself devise such a system, and restructuring the INS system for tracking foreign nationals and creating such an identification program, in addition to being beyond the scope of this report, would require significantly more consideration and study.

Based on a request by the President, Congress is now considering legislation that would create a new Department of Homeland Security, which will likely subsume some or all components of the INS. These developments will impact directly the possible creation of a comprehensive identification and tracking system, reinforcing the need to address this issue as part of an overall assessment of our national immigration controls and national security interests. To that end, Treasury recommends that the appropriate parties further study these issues within the framework of the overall revision to the current system.

Recommendation: Treasury recommends that appropriate parties study further whether a unique identification numbering system for all foreign nationals is feasible and appropriate as part of an overall plan to improve our system for tracking foreign nationals.

In the absence of a new system for identifying and tracking foreign nationals, Treasury also considered whether it might be useful and appropriate to employ the currently available SSN and ITIN systems and require foreign nationals to obtain such numbers prior to opening an account at a U.S. financial institution. Based on a review of existing statutes, rules, and practices and in light of their inherent limitations, Treasury makes the following recommendation:

Recommendation: To the extent a foreign national has an ITIN or an SSN, Treasury encourages financial institutions to obtain that number as part of their account opening procedures as it may provide an audit trail for law enforcement. However, Treasury does not recommend imposing a requirement that all foreign nationals obtain such a number prior to opening an account at a U.S. financial institution.

The Social Security Administration originally intended SSNs as a means to identify workers' earnings and eligibility for Social Security benefits. Eventually, use of the SSN spread to other government agencies (*e.g.*, the Civil Service Commission adopted the SSN as an official federal employee identifier, and the IRS decided to use the SSN as its TIN). Certain statutes also require the use of SSNs (*e.g.*, Medicare), as does the private sector. SSNs generally are available only to U.S. citizens and aliens authorized by the INS to work in the United States. SSNs also can be issued to aliens, who are not otherwise eligible to receive an SSN, for nonwork purposes if: (i) a federal statute or regulation requires the alien to provide his or her SSN to get the particular benefit or service; or (ii) a state or local law requires the alien to provide his or her SSN to get general assistance benefits to which the alien has established entitlement. Thus, the SSN is available to foreign nationals, but only in limited circumstances.

In 1996, the IRS introduced the ITIN, a tax processing number for certain nonresident and resident aliens, their spouses, and dependents who cannot obtain an SSN. While the ITIN is a nine-digit number formatted like an SSN, its purpose is fundamentally different. ITINs are used only for federal income tax purposes and do not entitle the recipient to Social Security benefits or the earned income tax credit. They do not create an inference regarding the individual's immigration status and they do not give the individual the right to work in the United States. Indeed, ITINs were created solely for the purpose of facilitating voluntary compliance with the internal revenue laws. As a result, the IRS does not employ rigorous identification verification procedures. For example, a foreign national can apply for an ITIN by

mail or through an authorized ITIN Acceptance Agent, which is a person or entity authorized by the IRS to take applications. Thus, the ITIN does not have significant value as a tool for verifying the identity of an account holder. The IRS has issued over 5 million ITINs and it now receives over 1 million applications for ITINs each year. Yet despite the number of ITINs issued, in the 2000 tax year, only 1.5 million ITINs were reflected in filed returns.

Treasury recognizes the utility of financial institutions obtaining such identification numbers at the time of account opening if the foreign national has one. Even if such numbers were fraudulently obtained or stolen, they may provide law enforcement with important clues in the event of an investigation. For example, they could be used to link various transactions together. With respect to ITINs in particular, however, because they are issued without rigorous identification verification, financial institutions must avoid relying on the ITIN to verify the identity of the foreign national.

Finally, at present, requiring foreign nationals to obtain an SSN-like number prior to opening an account at a financial institution could likely be achieved only by using the existing SSN and ITIN systems. Given that most foreign nationals would not be eligible for an SSN, the majority of foreign nationals would have to obtain an ITIN. But because the ITIN serves an entirely different purpose, requiring a foreign national to provide an ITIN prior to opening an account at a U.S. financial institution would not prove a useful means for actually verifying the foreign national's identity.

In addition, given its limited utility with respect to identity verification, requiring all foreign nationals to obtain a tax collection number might unnecessarily discourage foreign nationals from using the U.S. financial system. Many foreign nationals who establish accounts in the United States never physically visit this country, but rather place funds here or use U.S.

financial services because of the reliability, integrity, and quality of the U.S. financial system. Requiring these individuals to obtain an ITIN, the primary purpose of which is to facilitate the payment of U.S. taxes, would not serve the goal of providing financial institutions with a better means for verifying the identity of these customers. Using this tax number as a required proxy for a foreign national identification number may discourage legitimate business without providing a corresponding benefit to financial institutions.

C. System for review of government information.

The absence of available governmental databases containing complete information about foreign nationals in the United States means that domestic financial institutions cannot reasonably be expected to accurately verify the identity of foreign nationals in this manner. Therefore, until such databases are created and are made available, the obligation of a financial institution in this regard should be limited to the following:

- Checking the name against information provided to the financial institution via information sharing provisions of section 314(a) of the USA PATRIOT Act in accordance with the terms and conditions of the final rule.¹⁸
- Checking the name against any other list or control list provided to the financial institution by its regulator or Federal law enforcement.
- If a customer is matched against a list, taking all appropriate measures in response, such as alerting law enforcement immediately or, where appropriate, filing a SAR.

In addition, financial institutions are reminded that they are prohibited from engaging in transactions with, or providing financial services to, individuals or entities identified on Treasury's Office of Foreign Assets Control's (OFAC) Specially Designated Nationals List (available on the OFAC website).

¹⁸ 67 Fed. Reg. 60579 (Sept. 26, 2002).

In practice, a financial institution will be required by section 326 to develop a customer identification and verification program. The program must involve the financial institution checking whether the customer is on the OFAC list of individuals and entities with whom a financial institution may be restricted from doing business or on any other government list of known or suspected terrorists. Based on these facts, Treasury offers the following recommendation:

Recommendation: Other than their obligation to review the lists and information described above, at present, domestic financial institutions should not be required to review information maintained by relevant government agencies to verify the identity of foreign nationals.

Any system requiring further verification of the identity of foreign nationals by consulting with appropriate government agencies would be inappropriate given the current situation. The INS is not currently in a position to provide financial institutions access to a single database containing the relevant information needed to verify the identity of foreign nationals in the United States. Accordingly, Treasury, at present, would not recommend requiring financial institutions to consult with INS to verify the identity of foreign nationals seeking to open accounts until there is a single database that is accessible by financial institutions and contains the relevant information needed to verify the identity of foreign nationals.

V. Conclusion

Domestic financial institutions face complex challenges in identifying and verifying the identity of foreign nationals to guard against money laundering and terrorist financing. Through additional study and research, options for improving existing capabilities within the Federal government can be formulated and, where appropriate, implemented. In the meantime, financial

institutions should use existing resources and develop customer identification and verification procedures consistent with Treasury regulations when they are published in final form.