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September 4, 2002

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552

Attention: No. 2002-27

The main goal of this proposal is protecting against terrorism efforts, which is accomplished somewhat by regulated financial institutions that already must comply with OFAC requirements. While FinCEN has concluded the proposed rule does not impose a significant burden under its Regulatory Flexibility analysis, we disagree. The Treasury must realize that implementation of any additional customer identification program requirements will be very expensive for financial institutions to implement in respect to the time required to institute written procedures, train all staff, time required to verify and validate identification by employees, maintain proper records (including storage facilities and/or microfilming costs), audit the program, pay for additional software changes, and so forth.

We support government efforts to effectively track financial transactions by terrorists and criminals, but financial institutions should not be burdened by extraneous information requirements. Will implementation of a customer identification program actually stop terrorists from entering our country to commit crimes? It does not appear to accomplish that task. Checking all accounts with OFAC or control lists, however, may more effectively accomplish the goal. And, as pointed out, that is already being conducted by financial institutions.

Nonetheless, if the proposal is implemented, the following are some suggestions or comments for your review.

Suggestion: Immediately after this comment period ends, announce that compliance with the final regulations will not be mandatory until 180 days after their publication in the Federal Register.

The clear language of the USA Patriot Act indicates these regulations are to be effective October 25, 2002. However, this proposal was not published until July 23 and the comment period does not end until September 6. Even if the agencies spend very little

time reviewing and discussing the comments received, the best case scenario is that final regulations will be issued very close to their effective date.

The conclusion reached in the proposal, that the new requirements have a minimal effect on small institutions, is obviously not true in our case. The regulations will greatly increase the amount of identification we must obtain, especially for credit-related accounts that have not previously required photo identification. It will be necessary for us to write procedures; determine how the information can be sufficiently and economically stored, and draft amendments to our existing BSA policy for the board to approve at a regularly scheduled meeting (may need to call a special meeting of the board to have them approve prior to effective date of October 25 if not given sufficient time after final regulation issued). We cannot complete any of those tasks until we see the final regulation. Having advance knowledge of exactly how much time we will have is important to our ability to perform the task well.

Suggestion: Clarify the terms for "account" and "customer" for credit-related accounts that coincide with verification procedures outlined in the regulation.

The definition of "customer" in the proposal states "any person seeking to open a new account and any signatory on the account at the time the account is opened, and any new signatory added thereafter." The term "account" means each formal banking or business relationship established to provide ongoing services, dealings, or other financial transactions. The terms appear contradictory, and it is confusing to determine whether the customer identification procedures apply to those accounts that do not get opened (e.g., denied loan or deposit account). The rule should exclude coverage for those that are simply seeking information and also to those denied any products or services.

The Identity Verification Procedures (103.121(b)(2)) states that procedures should be in place that specifies identifying information to be obtained from customers prior to opening an account or adding a signatory to an account. The Verification also states that verification of information should be done within a reasonable time after the account is established or a signatory is added to the account. Additionally, it states "the proposed regulation provides a bank with the flexibility to use a risk-based approach to determine how soon identity must be verified." Again, there is contradiction and it is questionable about whether identification procedures should be conducted prior to opening an account, during the process, or afterward.

Coverage to be included for all new signatories on an account also is extremely problematic. There will be some cases where multiple signatories to an account will number in the hundreds. The final rule should be reasonable and practical regarding verification of signatories to accounts. Additionally, does "opening" a new account refer to new note advances under an existing line of credit wherein the identification was not obtained prior to an account opened before the effective date of this new rule? Similarly, what about modifications, renewals, etc. where identification was not obtained prior to the new rule?

As previously stated, the proposed rule defines customer to mean any person seeking to open an account. It is not clear as to whether the identification procedures will need to apply to those parties not actually opening accounts but only serving as co-signers, guarantors, etc. on credit accounts.

Suggestion: Non-Documentary Verification proposed regulation is in need of clarification for accounts opened when the customer is not physically present and suggestions would be helpful.

While it is understood that procedures will need to be implemented regarding verification in instances when the customer is not physically present, it is recommended that additional suggestions be included in the regulation as to possible verification methods in these cases. Credit departments deal with many situations where they do not meet with customers such as through indirect auto financing, telephone and mail applications, credit applications through brokers and other third-parties, and Internet transactions. It may not be feasible to always obtain photo identification in these cases and would be impractical for financial institutions to rely on third-parties who are not subject to this regulation to obtain and verify identity for banks.

Suggestion: Identity Verification Procedures section of the proposal needs to be clarified as to the extent the bank must "form a reasonable belief that it knows the true identity of the customer" and that "the program must contain risk-based procedures for verifying the information obtained....within a reasonable period of time..." and "the resolution of any discrepancy in the identifying information obtained."

It is not clear from the proposal whether financial institutions must determine whether the documents presented are fraudulent (such as a bogus driver's license or social security card) or just ensure the photo identification matches with the name, address, and age of identification material presented by the customer. If financial institutions must act as the CIP police and ensure all documents presented are legitimate, this will surely add to the burdensome procedures already imposed.

The proposal states, in part that the "basic information that banks would be required to obtain under this proposed regulation reflects the type of information that financial institutions currently obtain in the account-opening process and is similar to the identifying information currently required for each deposit or share account." While this might be partially true for deposit accounts, in my experience (including as a past regulator) financial institutions have not had any identification procedures like those in the proposed regulation in place for opening credit accounts. It will take financial institutions some time to establish adequate procedures in the credit area, which cannot be feasibly accomplished prior to October 25. In banker's forums that I have taken part in, I see financial institutions struggling with all the issues on what types, how, and when for the identification procedures outlined in the proposal.

The procedures state at a minimum that for U.S. persons, a U.S. taxpayer identification number is required. For non-U.S. persons it notes that one or more of the following is required: a U.S. taxpayer identification number, passport number and country of issuance; alien identification card number; or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard. Does the "and bearing a photograph or similar safeguard" apply to any of the documents mentioned? It is unclear from this statement for non-U.S. persons whether a photograph is required on a government-issued document (uncertain whether all of the aforementioned documents already have a picture ID). If it is required, then it appears that photo identification is not necessarily required for U.S. persons but is required for non-U.S. persons. It is not clear from the proposal whether this is the case. Could this be discriminatory in nature if we are requiring non U.S. persons to present photo identification and for U.S. persons it may not necessarily be required? What about those instances when we do not meet face-to-face with non U.S. persons when opening a credit account, how is adequate verification to be accomplished if photo identification is required?

As a side note, driver's license (or possibly other picture identification) can be very old and not look like the person shown in the picture, especially with various state renewal procedures in place where an updated picture is not required. We're not sure how valuable picture identification could be in these instances. Do we also turn down a loan since the individual has an unexpired driver's license? Validating other information such as driver's license number, social security number, credit report information, etc. may be more useful.

Furthermore, how do we adequately verify identification of a deposit accountholder who is underaged and may not have a driver's license or some other photo identification, credit accounts to verify, or other similar identification requirements? Will these individuals be exempt? How can financial institutions handle customers whose permanent address cannot be verified such as foreign students (difficult to verify addresses in foreign countries)? In addition, Treasury should indicate what financial institutions should do with funds in an account that is closed due to inability to verify identity.

Currently, community banks collect social security numbers as a way to verify customer identity. It is suggested that the Treasury develop verification methods that will ease the burden of social security number verification (that we believe is currently being implemented). The development of an electronic verification system, however, must ensure the security and protection of this type of data in order to combat fraud, identity theft, and even terrorism.

Suggestion: Information required includes date of birth. It is suggested that the final regulation state date of birth or age.

Generally, credit applications (FannieMae/FreddieMac 1003 form) do not request the date of birth but instead ask for the "age" of the individual. Applications forms also do

not generally request the mailing address of individuals. Unless the vendor companies change application forms to instead include date of birth and mailing address and software companies update their credit software systems to accommodate this additional information, credit departments may need to devise another form to specifically ask for date of birth and mailing address for the recordkeeping requirements. Deposit account forms and software systems also may need to be revised. This cannot be feasibly accomplished prior to October 25, 2002.

Suggestion: Revise the period that financial institutions have to retain all records to two years after action an account is closed, which is similar to other regulations such as TILA, TISA, and ECOA. Define in better terms what "account closing" means. Additional guidance also is necessary under the recordkeeping requirements for fair lending implications such as providing financial institutions a "safe harbor" from obtaining required identification documentation.

The current proposal states a bank must retain all records for five years after the date the account is closed. While this may be similar to other BSA requirements, it will be very burdensome and costly for financial institutions. Further, requiring financial institutions to keep extensive records on their customers for such a longer period will not necessarily mean a safer, more secure America and it is unreasonable to require community banks to use precious compliance resources to meet the proposed requirement.

For instance, we are only required to keep denied or withdrawn loan files for a period of two years after action is taken. While technically the account will not be opened, the definition of "customer" means any person seeking to open an account (but not necessarily close). Therefore, it would appear that we would have to maintain other than originated loan file verification information for five years, which is longer than the required two-year period for other credit documentation. This would be very costly in terms of storage space, microfilming, purging files, etc. In addition, how would a financial institution address adverse action notices if credit were denied because an applicant's identity cannot be verified. It is recommended that the CIP not apply to accounts not opened.

In addition, it may need to be clarified what "closed" means. Does this mean at the time the loan account actually is approved and is originated (and therefore, other than originated loans would be exempt). Does it mean retaining records for all customers, wherein the definition states any person seeking to open an account (but who may not necessarily close on that account such as if we deny the person the transaction)? Do you start counting the five-year period after a loan is paid off and closed (much too burdensome and costly in that situation)? Does it mean five years after a deposit account is opened or five years after the individuals closes the account?

Additionally, some software systems or filing systems may not be set up to adequately determine when the account has been closed for a five-year period. (It may take five years just to find the records for an account closed for a five-year period.) It may be costly and burdensome for systems that are set up alphabetically or numerically, and may

not be feasible to determine from the manual filing system if the accountholder's account has been closed for five years. In addition, it now will prove more costly for financial institutions that do not film certain documents (such as our financial institution's deposit account documents) to now maintain additional documentation such as driver's licenses, business articles of incorporation, business licenses, partnership agreements, etc. This will add to the storage costs, photocopying, and additional time it will take staff to verify and maintain these types of records. It may even be more difficult to comply with the 120 hour rule contained in section 319 of the USA Patriot Act.

In addition to ensuring a more expensive, time-consuming burden for financial institutions, photocopying and maintaining the identification of account holders for such an extended period raises privacy and security issues for bank customers. These documents would be particularly attractive to an identity thief and the safe keeping of this information over such a longer period of time, particularly offsite, would be challenging.

The recordkeeping section of the proposal states that collection and retention of information about a customer does not relieve a bank from its obligation to comply with anti-discrimination laws or regulations. In the past, examiners have cited financial institutions for maintaining photo identification in loan files since this could possibly lead to biases and discriminatory practices. If financial institutions now will be required to maintain copies of photo identification in files (separately maintaining from loan files also is very impractical), will we be cited for fair lending violations? It appears that financial institutions need a "safe harbor" in the BSA for maintaining identification and/or fair lending laws and regulations such as ECOA need to be revised. More guidance is clearly needed in this area in order to meet the requirements of both the BSA and fair lending laws and regulations. (Approximately two years ago there also was a Regulation B proposal to optionally gather monitoring information on all types of credit accounts. Yet, there was never any final rule from that proposal.) Treasury should work with federal regulators to resolve this issue without creating additional burdens.

Suggestion: Establish specific, objective criteria in the final regulations for the content and timing of the required notice to customers, including model language deemed to be in compliance with the regulation.

A number of regulations require banks to post public notices on their premises. Generally, those requirements are very specific and compliance can be evaluated objectively. While the proposal's flexibility is intended to benefit the banks, its lack of an objective standard introduces a probability that individual examiners would feel comfortable imposing their personal opinion as to a notice's adequacy. Oral disclosure would be the worst choice for the bank as it would be impossible to verify compliance, the wording of the "disclosure" would vary greatly between employees and it is the method most likely to generate a series of follow-up questions by the customer. A timing/placement requirement might be: "The notice is to be posted where it would most likely be seen by a customer prior to opening or requesting a change to an account." There will be customer resistance to the identification requirements. The more consistently they are communicated to the public and the more obvious it is that they are

required by law, the more readily they will be accepted as a routine part of opening a bank account.

Also, no purpose is served by leaving the specific wording of the notice to individual institutions, but it should be permissible for them to add additional information to any model language that might be provided. A model notice might read: "In order to prevent the use of the U.S. banking system in terrorist and other illegal activity, federal regulations require all financial institutions to obtain, verify, and record identification from all persons opening new accounts or being added as signatories to existing accounts. This institution cannot waive these requirements. – U.S. Treasury"

Identity verification is an issue of particular concern to financial institution, and they will have many questions about implementing a CIP program (similar to the ones mentioned in this comment letter). To help banks comply with the rule as quickly and thoroughly as possible, we urge the Treasury and the federal regulators to ensure that staff is well trained and prepared to answer CIP questions consistently across the agencies. A Q&A of frequently asked questions also would be very beneficial.

We will work with the Treasury to implement regulations that are effective without being unduly burdensome. Thank you for your strong consideration of these comments to the proposed customer identification program rules.

Sincerely,

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