27

September 6, 2002

VIA FACSIMILE AT 202/452-3819
Secretary
Board of Governors of
the Federal Reserve System
20th Street and Constitution Ave., NW
Washington, D.C. 20551
Attention: Docket No. R-1127

VIA FACSIMILE AT 202/898-3838
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20429
Attention: Comments/OES

VIA FACSIMILE AT 202/906-6518
Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, D.C. 20552
Attention: No. 2002-27

VIA FACSIMILE AT 202/874-4448
Office of the Comptroller of the Currency
250 E Street, SW
Public Information Room, Mailstop 1-5
Washington, D.C. 20219
Attention: Docket No. 02-11

VIA EMAIL AT regcomments@fincen.treas.gov
FinCEN
Attention: Section 326 Certain Credit Union & Trust Company Rule Comments

RE: Customer Identification Programs Regulations

Dear Sir/Madam:

The Wisconsin Bankers Association (WBA) is the largest financial institution trade association in Wisconsin and represents nearly 400 state and nationally chartered banks, savings and loan associations, and savings banks located in communities throughout the state. In addition, WBA has a wholly owned subsidiary, Financial Institution Products Corporation (FIPCO), which sells forms and licenses documentation software to financial institutions located throughout the United States.

WBA appreciates the opportunity to comment on the proposed regulations issued by the Treasury's Financial Crimes Enforcement Network, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision ("the Agencies"), which would implement section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (Act), signed into law on October 26, 2001.

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Section 326 requires the Secretary of Treasury to prescribe regulations setting forth the minimum standards for financial institutions and their customers regarding the identity of the customer that shall apply in connection with the opening of an account at a financial institution. Specifically, the Act requires that the regulations, at a minimum, require each covered financial institution to: 1) verify the identity of any person seeking to open an account to the extent reasonable and practicable; 2) maintain records of the information used to verify a person's identity, including name, address, and other identifying information; and 3) consult lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency to determine whether a person seeking to open an account appears on any such list. In addition, the Act requires that the regulations must take effect by October 25, 2002.

WBA supports the fight against terrorism, terrorist financing and all other financial crimes, and it recognizes the significant role financial institutions play in this effort. To that end, WBA generally supports Treasury's risk-based approach that provides financial institutions with flexibility in developing Customer Identification Programs (CIPs) that are appropriate to the particular institution's size, location and type of business. However, portions of the proposed regulations impose significant, costly and unnecessary recordkeeping requirements, and operational burdens. Therefore, WBA respectfully requests Treasury and the Agencies to promulgate final regulations that adopt the changes discussed below.

The Final Regulations Should Exclude the Recordkeeping Requirement Because It Imposes Unnecessary Costs and Operational Burdens on Financial Institutions, and May Even Cause Unavoidable Violations of Fair Lending Laws and Regulation B.

Under the proposed regulations, financial institutions are required to verify the identity of new customers and are charged with the safekeeping of that information for five years after the account is closed. This record retention requirement would be very expensive and would pose operational problems for financial institutions. In addition, WBA does not believe that requiring financial institutions to keep extensive records on their customers for such a long period will facilitate the purpose of the Act—to create a safer, more secure America. As a result, it would be unreasonable to require financial institutions to use precious compliance resources to meet the proposed requirement that does not assist in the objective of the Act.

In addition, institutions already undertake extensive measures to verify the identity of their customers as a matter of good business practice, and have compliance programs in place to check lists of known and suspected terrorists and terrorist organizations; however, many do not photocopy customers' identifying information for deposit accounts, nor do they maintain this information once an account is closed. WBA is aware that some states prohibit or strongly recommend against photocopying drivers' licenses. In fact, until very recently, it was a violation of Wisconsin law to reproduce a driver's license and it remains a violation of the law to reproduce a State of Wisconsin Identification Card. Some states are even introducing anti-photocopy features that render copies worthless.

Furthermore, the requirement to obtain and retain these types of record will be cost prohibitive regardless of whether an institution uses computer imaging or traditional storage methods. Maintenance of computerized images is costly and requires considerable computer memory.

Moreover, from an operational standpoint, many financial institutions do not have the storage capacity to retain these records for the proposed time, thus institutions will be forced to either create storage capacity or outsource the storage of these documents. In either case, the operational aspects of retention will result in costly storage fees.

Not only would the proposed requirement be expensive, record retrieval would pose additional challenges, particularly in light of the 120 hour rule contained in section 319 of the Act. This rapid reporting provision requires financial institutions to provide federal regulators with anti-money laundering compliance information and documentation for any account "opened, maintained, administered, or managed in the United States." Compliance with this statutory provision is costly in and of itself, and requiring institutions to produce documents up to five years after an account is closed would be particularly harsh.

There is also concern that the retention of identification documents containing photographs may violate fair lending laws and Regulation B. Treasury requires financial institutions to maintain records of an account holder's identity, yet it emphasizes that the collection and retention of customer information does not relieve banks from complying with anti-discrimination laws. These requirements could cause financial institutions to unavoidably violate these laws, and could make institutions vulnerable to claims of discrimination.

Thus, WBA urges Treasury to work with the Agencies to resolve this issue without creating additional burdens. For example, WBA would oppose any requirement obligating banks to maintain separate identification and loan files. On the other hand, WBA encourages the Agencies to train examiners to evaluate compliance with both laws without exposing financial institutions to fair lending and Regulation B violations. WBA also supports the development of procedures to help institutions guard against discrimination claims. In addition, WBA encourages the federal regulators to clarify how institutions should address adverse action notices if credit is denied because an applicant's identity cannot be verified.

For the reasons identified above, WBA urges Treasury and the Agencies to exclude the recordkeeping requirement from the final regulations. If Treasury and the Agencies are unwilling to exclude this requirement in its entirety, then the retention period should be reduced to no more than two years after an account is closed, and significant efforts should be made to resolve the discrimination issues.

The Final Regulations Should Contain an Exception to the Verification Procedures for Existing Customers.

As early indicated, financial institutions already have well-established measures in place to verify the identity of customers. It makes no sense to require financial institutions to engage in verification of the same customer each time that customer seeks to open a new account. Such a requirement would not serve the purpose of the Act, and would result in huge costs and unnecessary burden. Therefore, WBA adamantly urges Treasury and the Agencies to incorporate in the final regulations a provision which would except existing customers from the verification procedures.

A Mandatory Compliance Date Should Be Established of No Less Than Six-Months After the Publication of the Final Regulations in the *Federal Register*.

The Act clearly states the final regulations shall take effect October 25, 2002. However, the proposed regulations were not published until July 23, and the comment period does not end until September 6. This leaves very little time for financial institutions to review and digest the final regulations in order to properly write or revise verification and Bank Secrecy Act procedures, and to sort out operational issues, such as those related to any recordkeeping requirements that are adopted. While financial institutions currently have established procedures by which a customer's identification is verified, these institutions should be given a reasonable period of time to be sure that their procedures comply with the requirements of the final regulations. Furthermore, without a reasonable amount of time between promulgation and mandatory compliance with the regulations, forms vendors will have great difficulty providing financial institutions with revised products to assist such institutions in complying with the final regulations.

For these reasons, WBA believes that a reasonable amount of time between the promulgation and mandatory compliance with the final regulations is, at minimum, six-months. Therefore, WBA strongly urges Treasury and Agencies to establish a mandatory compliance date of no less than six-months after the final regulations have been published in the *Federal Register*.

The Definition of "Customer" Should Be Modified to Clearly Exclude Those Persons Who Do Not Actually Open an Account.

The proposed regulations, in part, define a "customer" as any person seeking to open an account to the extent reasonable and practicable. As proposed, the regulations do not clearly identify what is meant by "seeking" an account. To avoid overly broad application, the final regulations should clearly exclude from the definition of "customer" those persons who do not actually open an account. WBA recommends that the final regulations incorporate the language contained in the preamble that clarifies this definition.

The Final Regulations Should Emphasize a Risk-Based Response to the Verification of Signatories Added to Accounts, Rather than Imposing a More Rigid Requirement.

The proposed regulations require an institution to obtain, at minimum, information regarding the identity of any signatory that will be added to an account. This requirement is quite problematic, as there will be many cases where multiple signatories to an account will be very high in number. Collection and verification of identification information of such individuals will be extremely costly. Therefore, WBA urges Treasury and the Agencies to adopt final regulations that emphasize a "risk-based" response to the issue of signatories, as reflected in the congressional directive that the regulations be reasonable and practical.

The Final Regulations Should Provide Additional Examples that Clarify the Definition of "Account."

A number of issues arise from the definition of "account," and WBA encourages Treasury and the Agencies to further clarify this definition in the final regulations. To achieve consistency,

the proposal follows the Act's definition and identifies an account as "each formal business or banking relationship established to provide ongoing dealings, services, or other transactions," and cites deposit accounts, transaction accounts, and extensions of credit as examples. Questions have arisen as to whether the definition applies to: loan guarantors; indirect loan customers, even if the bank is an assignee rather than the original creditor (this will affect loans by car dealers and the purchase/sale of mortgages); employee benefit plan participants; and trust beneficiaries. In light of these questions, additional examples would be instructive to help clarify the definition of "account."

Treasury and the Agencies Should Issue Guidance On How to Handle Accounts When Information Cannot Be Verified.

As implementation of the regulations occurs, there will be many questions that arise regarding how to handle accounts where information cannot be verified. Currently, there are several issues in particular that have been raised for which the issuance of guidance would be instructive.

First, Treasury and the Agencies should issue guidance outlining how to handle customers whose permanent address cannot be verified. Financial institutions servicing foreign students will find complying with the multiple address verification requirement particularly difficult in many circumstances where such addresses are in foreign countries.

Secondly, while WBA supports the proposal's flexibility in allowing institutions to take a risk-based approach in determining how soon information must be verified, it would be helpful to have guidance in determining a timeframe for closing accounts because of pending verifications or failed verifications.

Finally, Treasury and the Agencies should issue guidance that addresses what institutions should do with funds in an account that is closed due to an inability to verify the customer's identity.

The Final Regulations Should Ensure that Financial Institutions be Permitted to Accept Matricula Consular as a Proper Form of Identification.

WBA recognizes there are many Mexican Nationals who make a vital contribution to this country's economy, yet many would be unable to open an account with a financial institution if matricula consular documentation was not accepted as evidence of a person's identity. WBA is very pleased that the proposed rule does not discourage financial institutions from accepting this type of documentation. Accepting matricula consular as a form of identification will continue to allow Mexican immigrants to enter the financial mainstream while providing banks with a new, fast-growing market. Therefore, WBA urges Treasury and the Agencies to ensure this type of documentation is clearly identified as acceptable in the final regulations.

Conclusion.

WBA supports the fight against terrorism and financial crimes, and recognizes the vital role financial institutions play in that effort. However, WBA is very concerned about certain

aspects of the CIP regulations as currently proposed, as such provisions will adversely impact its membership. Therefore, WBA very much appreciates the opportunity to comment on this very important proposal.

Sincerely,

Kristine Cleven
Director--Legal