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Sent: Friday, September 06, 2002 5:29 PM
To: 'regs.comments@ots.treas.gov'
Subject: No. 2002-27

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

Attention 2002-27--Joint Notice of Proposed Rulemaking 12 CFR Part 563

Dear Sirs:

I am writing to you on behalf of American Sterling Bank, a federally chartered thrift, located in Sugar Creek, Missouri, with assets of approximately \$180 million. This letter reflects our views on the Joint Notice of Proposed Rulemaking, also referred to as 12 CFR Part 563, relating to Customer Identification Programs for Banks.

We have traditionally practiced much of what is contained in the proposed rule and currently employ verification and identification procedures when opening accounts. We also recognize and appreciate the efforts of the Agencies to propose rules that provide a degree of flexibility by permitting banks to establish "risk-based" procedures in the design of their Customer Identification Programs. In commenting on the proposed rule, we recognize that the USA Patriot Act mandates the primary elements of the rule but would like to provide the following suggestions and comments which could strengthen and improve the implementing regulations.

1. Recordkeeping

§ 103.121(b)(3)(i)(B) of the proposed rule requires that the bank keep a copy of any document relied on when verifying identity through documents. We have not retained copies of documents identifying customers for a variety of reasons, including regulatory concerns that the practice may be considered a basis for discrimination. We have however made notations in the customer's records of the source, type and number of the identifying document. However, to require banks to establish new workflows and additional recordkeeping systems will be burdensome and costly. While customers are accustomed to showing their identification when opening new accounts, they are likely to become concerned and untrusting when their identifying documents are copied and retained without their consent. In recent years, customers have grown particularly sensitive and protective of the use and treatment of their tax ID numbers, in light of the increase in identity theft.

In short, we believe this requirement goes a step too far, and that appropriate notations of the identifying document on the bank's primary account records adequately serves the purpose intended, without significantly increasing costs or paperwork. It also honors the concerns customers may have regarding a business retaining copies of their identifying records.

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In addition, we believe the retention period of five years is excessive. Other federal regulations, Regulation B (Equal Credit Opportunity) and Regulation Z (Truth In Lending) have record retention periods of two years. This shorter retention period will decrease the cost associated with implementation of these requirements due to fewer documents being kept.

2. Minimum Identifying Information on Signatories

§ 103.121(b)(2) of the proposed rule requires procedures for verifying the identity of each customer, to the extent reasonable and practicable, and further requires banks to obtain minimum specific identifying information for each customer prior to opening an account. Frequently, businesses and corporations have numerous signers on a transaction account. These often change due to employee turnover. It is impractical, costly and burdensome to require identification and verification on those individuals. The same can be true on accounts set up for estate planning.

Full identification and verification should be limited to the primary/beneficial owner(s) of the account. The owner of the account is responsible for all activities that occur on the account and authorizes access to the account

3. Existing Customers

§ 103.121(b)(2)(ii) states that "A bank need not verify the information about an existing customer seeking to open a new account or who becomes a signatory on an account, if the bank previously verified the customer's identity in accordance with procedures consistent with this section, and continues to have a reasonable belief that it knows the true identity of the customer." As stated earlier, we did not maintain documentation when opening accounts. We would ask for clarification in this section relating to recordkeeping requirements. If the bank does not maintain documentation on current accounts but has a reasonable belief that it knows the true identity of the customer, does that mean that identification and verification are not necessary? We would ask for a formal interpretation that will eliminate examiner latitude in verifying compliance with this section.

4. Notice Requirements

Section 103.121(b)(5) requires bank customers to receive adequate notice that the bank is requesting information to verify their identity. The term customer is defined as all individuals that seek to open an account and all signatories. Therefore it appears that the notice requirement would apply to all signors and all applicants. We would suggest that the notice requirement be modified to allow one notice for each account rather than one notice per customer. This approach has been adopted in other federal regulations, most notably Regulation P implementing the privacy provision of the Gramm-Leach Bliley Act.

5. Exemptions

We encourage the Agencies to incorporate the addition of exemptions contained in §103.22(d) which would exempt certain accounts, such as student school savings accounts. Specifically we would suggest that corporations listed on exchanges (New York Stock Exchange, American Stock Exchange, NASDAQ) be exempted from these requirements. These corporations are already

excluded from Currency Transaction Reporting (Phase I exemptions) and the burden involved with obtaining documentation and verification from these entities would be burdensome.

6. Recordkeeping of Customer Information when account is not opened

§ 103.121(b)(3)(D)(ii) states that records must be maintained for five years after the account is closed. We would ask that this definition be clarified to indicate that records need not be maintained if the account was never opened. Not only would this information be of little value, the maintenance costs of these records would be extremely high.

7. Comparison With Government Lists

§ 103.121(b)(3) requires the bank to have "reasonable procedures" for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations provided to the bank by any federal government agency. Some banks may currently rely upon agreements with consumer reporting agencies to provide this comparison upon the bank's inquiry or request for a consumer report. The bank is subsequently notified only if there is a match. Do the Agencies have expectations as to the timing of the comparison, and the proof of comparison regardless of whether there is a match, or are these matters discretionary? Additionally, it would be of value if the Agencies defined more clearly the term "provided to the bank". Currently the only list provided to the bank is the Control List. The Office of Foreign Asset Control list is currently not provided to the bank, the bank is responsible for obtaining the list from OFAC. In addition we have anecdotally learned that other departments of the federal government maintain lists. We would hope for clarification on what specific lists are supposed to be checked prior to account opening.

8. Effective Date of Final Rules

The Agencies have indicated that the final rule is effective by October 25, 2002. Certain provisions of the proposed rule, such as the recordkeeping requirements noted above, requirements to obtain alternative mailing addresses, etc. will require us to redesign forms, computer systems and workflow procedures. We will need a significant amount of time (once final regulations are issued) to develop policies, procedures, records and recordkeeping systems and most importantly train associates in the bank. The training can not occur until all of the other related items-workflow, documentation, policies and procedures-are established. We hope you will consider the impact on banks and allocate sufficient time to prepare for compliance with the final rules. We would estimate a reasonable time period would be one year from the date the final rules are adopted.

9. Definition of Bank

Being a federal thrift which receives a majority of business through independent contractors and brokers, we are concerned with the exclusion of non-bank mortgage companies from these provisions. This uneven playing field could cause distrust among customers shopping for a mortgage loan. It could even serve to limit opportunities for mortgage financing due to the extra paperwork and time that obtaining and verifying identification will cause. Brokers and their customers may flock to those entities that are not required to collect and verify information. We note the mass volume of consumer comments relating to the "Know Your Customer Proposal" several years ago. This outpouring of citizen concerns centered on the amount of

information that financial institutions were required to obtain when opening and maintaining accounts. While circumstances have changed since that proposal, we feel that any entity that does not need to comply with the burdensome, costly, and extensive identification requirements may have a competitive advantage in the marketplace. We would recommend the inclusion of all financial companies, (as defined in the Gramm-Leach-Bliley Act) be subject to these provisions.

Thank you for the opportunity to comment on the proposed rule pertaining to Customer Identification Programs for Banks.

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