



21

September 6, 2002

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

Via electronic mail: regs.comments@ots.treas.gov

Attention: No. 2002-27

Dear Sir or Madam:

Commercial Federal Bank welcomes the opportunity to comment on the proposed regulations implementing section 326 of the USA PATRIOT Act. While we fully support the purpose of these proposed regulations and recognize the important role the banking industry plays in the prevention and detection of money laundering and the financing of terrorism, we believe that the proposed regulations go beyond the intent of the statute, and impose unnecessary burdens on the banking industry.

As noted in the proposal, "the legislative history of section 326 indicates that Congress intended 'the verification procedures prescribed by Treasury [to] make use of information currently obtained by most financial institutions in the account opening process.' See H.R. Rep. No. 107-250, pt. 1, at 63 (2001)." We believe these proposed regulations go beyond the current account opening process and impose new burdens on the banking industry. The Agencies indicated in the Regulatory Flexibility analysis that the proposed rule will not have a significant impact. We disagree, and we question whether the industry was adequately consulted about current practices and how they could best be adjusted to meet the goals of the statute.

What the proposed regulations are intended to accomplish and how the regulations meet the overall goals of combating terrorism and money laundering have not been clearly articulated. We believe that the intent of the USA PATRIOT Act would be better served if the Agencies and the banking industry were able to participate in a constructive dialogue that would allow the industry to better understand the goals of the regulations and allow the Agencies to better understand industry norms associated with current account opening processes.

To allow time for this dialogue to occur, we suggest that the Agencies consider issuing interim as opposed to final regulations that provide the greatest flexibility in implementing the provisions. We then recommend that the Agencies hold focus group meetings or otherwise engage the industry in discussions about how these provisions can best be implemented.

If the Agencies choose to issue final regulations without providing additional opportunity for input from the banking industry, we request that the mandatory compliance date be delayed to allow financial institutions sufficient time to make the necessary changes to systems, policies, procedures

and training materials. We request that the agencies establish a mandatory compliance date no sooner than April 1, 2003, as we believe an earlier date would not provide adequate implementation time.

Because the banking industry is susceptible to fraudulent accounts, it has long been necessary for banks to take reasonable precautions in establishing new account relationships. These precautions are adjusted as we feel necessary based on our experiences and our perceived risk. We believe these precautions are adequate for our purposes and could, without significant adjustment, fulfill the purposes of the statute. However, we believe these proposed regulations go beyond the current account opening process. We would like to address the new burdens imposed in the following areas:

Record Retention

We believe the record retention requirements will impose significant costs and operational difficulties for banks. The proposed regulations go substantially beyond the statutory requirement of "maintaining records of the information used to verify a person's identity, including name, address, and other identifying information." It is also not clear how this extensive record retention furthers the goals of preventing and detecting money laundering or the financing of terrorism.

The statute requires that a record be made of the information used to verify a person's identity. Making and retaining an actual copy of identification documents should not be necessary to meet this requirement. Simply making a record of what documents were reviewed should serve the purpose.

The retention period of 5 years after the account is closed will impose significant new costs, particularly if some of the information cannot be electronically stored in the bank's customer information file. These costs will be significant whether a bank uses computer imaging or traditional storage methods. Maintaining computer images is costly. On the other hand, most banks do not have adequate storage capacity to retain the records for the proposed time frame and would incur additional costs in outsourcing the storage of documents.

The number of records that would have to be maintained under the proposed retention period would create significant operational challenges in light of the 120 hour rule contained in section 319 of the USA PATRIOT Act. This rule requires banks to provide federal regulators with documentation for any account "opened, maintained, administered, or managed in the United States" within 120 hours of receiving a request. Requiring banks to produce documents up to five years after an account is closed, which could be many years after the information was collected, is particularly difficult.

Maintaining records for such an extensive time period also raises concerns for banks in providing adequate protection of the customers' identity information. The information recorded is particularly sensitive, and protecting it is particularly important. The extensive retention requirement would result in significant challenges for institutions to protect this information, particularly if the information is stored off-site.

Because of the difficulties associated with storing records for an indefinite time period while the account is open, and then tracking and tagging the records for destruction five years after the account is closed, we request that whatever time frame is ultimately used for the retention of records, it be based on the date the account is opened, rather than the date the account is closed.

Current Customers

Requiring current, existing customers, when they enter a new customer relationship, to go through the identification process is too burdensome for both the bank and the customer. This will require changes in existing procedures, training, and changes to systems so that banks can track whether or not a customer has gone through the identification process. Many customers have had accounts established with our bank for many years and are in good standing with us. Requiring these customers to provide complete documentation of identity imposes a significant inconvenience to them.

We do not believe these customers pose any significant risk of involvement in either money laundering or the financing of terrorism. We request that the agencies establish a threshold for grandfathering established customers who are in good standing, for example, customers who have had account relationships with the bank for at least one year.

Business Accounts

Requiring complete identification on each signer of a business account is too burdensome for the risks involved. Often business accounts have numerous signers, including some at a corporate office who could not be identified in person. Requiring full identification of each signer will require significant changes in operational procedures and will require banks to spend considerably more time on documenting these businesses than they currently do.

Banks have long established practices for ensuring that businesses who wish to establish banking relationships are legitimate. As long as the bank has fully satisfied itself that the business is legitimate, the risks associated with choosing not to separately identify each signer do not warrant the efforts required to fully identify and verify the identity of each signer, including new signers added at a later date. As long as banks are prudent in their efforts to verify the legitimacy of the business, we do not believe that fully documenting identification for each signer will significantly further the purposes of combating money laundering and terrorism.

Board Oversight

Requiring the Customer Identification Program to be adopted and overseen by the bank's board of directors also creates additional burden. Boards of directors for financial institutions have faced increasing requirements with greater levels of detail in their oversight of normal banking operations. This has the potential impact of over-burdening the directors to the extent that they cannot provide adequate oversight of the areas where it is most important, such as the accurate presentation of financial statements.

Federal Lists

The proposed regulation indicates that banks are required to have 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." Because of the uncertainty banks would face in determining whether all lists had been identified and whether all notifications a federal agency had provided had been properly directed within the bank, we recommend that the federal agencies develop a standard system to disseminate to the banks they regulate, all lists which would need to be checked for the purposes of this regulation.

In addition to the above comments, we are seeking clarification on the following issues:

1. Are cosigners and guarantors of a loan also considered to be "customers" under the regulation? For business accounts, are owners of a privately held business, even if they are not signers, considered to be "customers" under the regulation?
2. The regulation exempts transfers of accounts as a result of a merger, acquisition or purchase of assets or assumption of liabilities from the requirements because they are not initiated by the customer. The regulation does not specifically address the transfer of loans on the secondary market. However, these transactions are also not initiated by the customer and should be exempted from the requirements.
3. The regulation exempts persons who conduct infrequent transactions at the bank but do not establish a customer relationship. Further clarification is needed for what is considered to be "infrequent". For example would a non-customer that comes to the bank every other week to cash a paycheck be exempt?
4. The regulations require verification of the identity of any person "seeking" to open a new account, and do not provide any exceptions for cases where the account is not opened. Is this verification process required even if the bank decides not to establish the relationship? For example, if a bank denies an application for credit because of information on the applicant's credit history, is the bank still required to complete the verification process? If the customer withdraws the application to establish an account, is the bank required in that case to complete the verification process?
5. The record retention requirements indicate that records should be maintained for 5 years from the time the account is closed. However, since the records do not have to be recreated and stored for each relationship the customer has, which "account" does this requirement refer to? Is it the account where identifying information was first recorded? Is it the last account relationship the customer has, regardless of when it was established? For example, please consider how a bank would document compliance in the following set of circumstances:
 - Customer has an existing account opened in 2001.
 - Customer opens a 2nd account in 2003. Since complete ID had not been documented, bank obtains and records all identifying information for 2nd account.
 - Customer opens a 3rd account in 2004, since ID is already documented, no identity records are tied to this account.
 - Customer closes the 2nd account in 2005, other accounts remain open.
 - Identifying information on customer is purged in 2010.
 - Request is made for identifying information for accounts opened in 2001 and 2004. How would a bank demonstrate compliance when no identifying information is recorded for the account opened in 2004?
6. Since the regulations require verification of identity for persons "seeking" to open new accounts, rather than for persons who actually do open an account, is record retention of identity information and verification required if an account is not established? If so, how is the time frame determined in that case? Since no account is established, there is no date the account was closed.

Regulation Comments, Chief Counsel's Office
Attention: No. 2002-27
September 6, 2002
Page 5

Please contact me at 303-932-3023 or via e-mail at JillKennedy@commercialfed.com if you have any questions or would like any additional information. Thank you for this opportunity to comment.

Sincerely,

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303-932-3023

cc: The Honorable Chuck Hagel, United State Senate
The Honorable Ben Nelson, United State Senate
The Honorable Doug Bereuter, United States House of Representatives
The Honorable Tom Osborne, United States House of Representatives
The Honorable Lee Terry, United States House of Representatives