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Sent: Tuesday, October 15, 2002 5:28 PM
To: regs.comments@ots.treas.gov
Subject: Attention 2002-27



October 14, 2002

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

Attn: No. 2002-27

To Whom it May Concern:

Thank you for the opportunity to comment on the proposed rule, Customer Identification Programs for Banks, Savings Associations, and Credit Unions.

Although this submission is after the deadline for comments, I hope you would

still consider these comments as you prepare final regulations. Capitol Federal

Savings Bank, of Topeka, Kansas, has assets of approximately \$9 billion, with 34

branch offices located throughout Kansas. Regarding the proposal, we would like

for the agencies to consider the following comments:

Recordkeeping

Section 563.121(b)(3) requires banks to include records of all identifying information provided by the customer, a copy of the identifying document, and the resolution of any discrepancies in the identifying information. In addition, this information must be maintained for a period of five years after the account is closed.

There are four concerns that should be looked at closely:

1. A considerable amount of effort has been made to avoid copying driver's licenses in the loan origination process due to concerns about misuse of the photo in connection with loan originations. Our primary regulator considers photos in loan files to be a problem when evaluating compliance with the Equal Credit Opportunity Act. A reconciliation of the prohibition of photos in loan files with the need to positively identify an applicant and retain the evidence should be done. Therefore, we will need to develop entirely separate files for retention at considerable cost.

2. The public perception of a financial institution maintaining files with the customer's identifying personal information will be unfavorable. This is especially true given the requirement to copy and retain a customer's

personal identification. The public has an expectation of privacy. Although the proposed regulation contains safeguards for the customer, a very significant effort must be made to educate the general public about why and how this information is collected and used. The notice to the customer needs to be carefully considered. Although the notice required by section 563.121(b)(5) helps explain the reasons for collecting information, the notice language must be required instead of simply suggested. Required notice language should provide a compliance safe harbor, and prevent the notice itself from being used as a competitive advantage by some financial institutions wanting to offer a more "private" account relationship than its competitors.

3. Again, cost to comply with the retention of evidence requirement cannot be overemphasized. A simple photo in a file is not all that simple. Savings customers do not have files, like loan customers. Signature cards are generally the extent of the file information for savings customers. If records are stored digitally, a massive effort to obtain and deploy digital scanners would be needed. In addition, efforts to safeguard this digital information and disaster recovery systems would have to be developed and tested regularly. If hard copies of personal information are retained, again, additional storage and retrieval costs will be incurred. A possible solution would be to retain evidence, such as an electronic reference number or report that a proper background check and verification process was performed and the results of the check would suffice as evidence of due diligence.

4. The retention of photo images and/or copies of "official" identification cards creates concern of liability for accuracy and safeguarding. If retention becomes a requirement, then it would be very helpful if there were limits on individuals private rights of action for errors or loss of the documents when reasonable efforts are made to manage this information.

Definitions

In section 563.121(a)(1) account is defined as "each formal banking or business relationship established to provide ongoing services, dealings, or other financial transactions." Is this definition meant to include all services provided by a bank, including safety deposit boxes, and transactions provided by a third party, such as investment services?

Also, the regulations indicate that customer is defined as "any

person seeking to open an account; and any signatory on the account at the time the account is opened, and any new signatory added thereafter."

Please clarify if this is meant to include accounts that were refused or a customer does not complete the account opening process. There are several situations when accounts are opened for nonprofit organizations that may have many signatories. Is the bank responsible for identifying all individuals that may be a signatory on an account?

How do the proposed rules apply in the situation where an individual opens a joint account without the joint applicant present? Will banks be required to implement new identification procedures that prevent access to funds until identification of the joint applicant is verified? How are banks to handle situations when one of the joint applicants are unlikely to be available (due to location, such as military service personnel assigned overseas, or health reasons) for a considerable time? Additional system changes may be required to handle situations when joint applicants visit more than one branch to capture identifying information. The internal controls necessary to ensure accuracy will have to be extensive.

Government Lists

Currently, the only widely circulated list available to banks for comparison to their accountholder base is the OFAC list. Please clarify how banks can determine that all federal lists have been received the institution for comparison to their files.

Effective Date

Final regulations will most likely not be published until close to the mandatory October 25, 2002 required effective date. For financial institutions to fully comply and develop internal controls, test disaster recovery systems, purchase and install storage devices, and train bank personnel, this regulation should be delayed for at least one year. This regulation is pervasive and changes the nature of the relationship that has developed between financial institutions and their customers. The government also needs time to inform the public about these requirements and reduce anxiety about using financial institutions.

This regulation needs considerable thought, and attention should be paid to alternative means to prove adequate efforts have been made to positively identify a person without requiring the retention of personal photos and documents. The public comment period should also be extended to allow the gathering of reliable cost estimates.

Capitol Federal Savings Bank appreciates the opportunity to comment on the

proposed regulation. If you have any questions relating to this letter,
I may
be reached by phone, 785.231.6251, or by email, padkins@capfed.com.
Thank you
for your consideration.

Sincerely,

Perry Adkins
First Vice President
Chief Compliance Officer
Capitol Federal Savings Bank
Topeka, KS