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From: Morris, Brent (TIFS) [Brent.Morris@guarantygroup.com]
Sent: Friday, September 06, 2002 6:40 PM
To: 'regs.comments@ots.treas.gov'
Subject: No. 2002-27; Public Comment in Regard to Customer Identification Programs for Banks, Savings Associations, and Credit Unions

Thank you for the opportunity to comment on the joint proposed regulation to implement section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 in regard to Customer Identification Programs for Banks, Savings Associations, and Credit Unions. We acknowledge and support the purpose of the proposed regulation and the need for customer identification programs. The purpose of our comment letter is to offer substantive recommendations and to request clarification as to the scope of certain proposed regulations.

Definition of Person

The definition of the term "Person" under Section 103.121(a) (7) indicates that a non-U.S. Person is neither a U.S. citizen nor a legal entity duly organized under the laws of the United States. The definition, as well as the proposed regulation, does not indicate whether a customer's status to legally be in the United States should be considered in the development of the Customer Identification Program, and its silence on this issue leads to the assumption that the regulation encourages or, at the very least, permits banks to open accounts for non-U.S. persons who have entered the country illegally. However, Section 103.121(b) (2) (ii) (A) provides the requirement for documentary identification to be unexpired, which leads to the assumption that account relationships may only be established for those individuals who are legally in the United States. Clarification of this contradiction is needed in order to formulate the required identification policies and procedures.

Identity Verification of Signatories

Under Section 103.121(b) (2) (i) (A), the documentation requirements for adding a signatory to or opening an account for an entity that is duly organized under the laws of the federal government or any state therein, are onerous and burdensome. If a corporation that has already established an account with a financial institution wishes to add a signatory, and if that signatory has been approved by a corporate resolution, it should suffice that the corporate account holder provides that resolution to the bank.
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require that the bank go behind the resolution to verify the authorized signatory's name, residence, date of birth, and social security number, will create the appearance of the bank regulating and second-guessing that corporation's corporate governance activities. In essence, the financial institution becomes the guarantor of the corporation's corporate governance system. In our opinion, this requirement is burdensome and will undoubtedly increase the legal risk associated with offering corporate accounts and services. We respectfully submit that the burden of conducting officer background verification should lie with the corporation, and not with the corporation's financial institution. We fully support enhanced analysis confirming the standing and authority of a corporate customer, but believe that the proposed regulation goes too far in its new requirements.

Risk-Based Procedures

For the verification of identities, the proposed regulation in Section 103.121(b)(2)(ii) describes the requirement for the establishment of risk-based procedures. Although it is vaguely referenced in the section-by-section analysis to the proposed regulation, additional guidance is requested for identifying specific, or classes of, account relationships that pose the greatest risk to the intended purpose of the proposed regulation.

Permissible Forms of Identification

Section 103.121(b)(2)(ii)(A) of the proposed regulation provides general guidelines for the acceptable verification of a customer's identity through documents. However, no guidelines are provided for the types of documents that may or may not be acceptable. Further, to enable banks to maintain a sound Customer Identification Program, we respectfully submit that the Agencies should implement a mechanism to immediately notify banks if certain forms of identification should no longer be acceptable, i.e. forms or classes of identification that have been discovered to be fraudulent or highly susceptible to forgery or fraud.

Recordkeeping - Possible Regulation B Conflict

Recordkeeping requirements established in Section 103.121(b)(3)(1)(B) specify that copies of documents relied on to verify the identify of customers must be retained. While we are certain that other banks will request clarification of this requirement as it relates to Regulation B, the implementing regulation for the Equal Credit Opportunity Act, we seek to request that specific guidance be written into the final regulation which acknowledges that such a recordkeeping requirement is not in contravention to the anti-discrimination practices promulgated by the aforementioned Regulation B. In the alternative, conflicts between the proposal and Regulation B should be reconciled.

Procedures for Mandatory Customer Notice

In contrast to other regulations that mandate customer notice, Section 103.121(b)(5) describes in general terms the requirement for providing

customers with adequate notice that the bank is requesting information to verify their identity. Because no definition is provided for the term "adequate" and because this term would be interpreted subjectively by individual examiners, its end effect is to produce the lack of an objective standard. Other regulations are very specific and provide model language for use in drafting required disclosures, which ensures consistency in the information disclosed to customers and a means for compliance with the regulation to be evaluated objectively. In any event, clarification is needed regarding the content, timing and delivery of the customer notice.

Establishment of Mandatory Compliance Date

The USA Patriot Act establishes that regulations in accordance with Section 326 are to be effective October 25, 2002. Because of the late date in which this proposal was published and the uncommonly short comment period, we request that the date for mandatory compliance be extended for a reasonable period beyond October 25, 2002. Even if the agencies fast track the review of the requested comments, the best case scenario is that final regulations will be issued very close to their effective date, leaving little time for banks to effect implementation of their Customer Identification Program and ensure compliance.

Thank you for your consideration of our comments.

Very Truly Yours,

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