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TREASURY FINAL RULES ON VERIFYING CUSTOMER IDENTITY FOR NEW ACCOUNTS

Executive Summary

On May 9, 2003, the U.S. Department of the Treasury, jointly with several federal functional regulators, published final rules requiring certain types of financial institutions to verify the identity of individuals and businesses opening new accounts. The rules require these financial institutions to establish a Customer Identification Program (“CIP”) -- a set of procedures for collecting, verifying, and retaining information documenting the identity of new account holders. These rules implement Section 326 of the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001, part of the USA PATRIOT Act,¹ the anti-terrorism bill passed in October 2001 in response to the September 11 attacks.

Four final rules were published, imposing identification verification requirements on (i) federally regulated banks, savings associations, credit unions, and

¹ Pub. L. No. 107-56, 115 Stat. 272, 296 (2001).

certain non-federally regulated banks;² (ii) registered broker-dealers;³ (iii) mutual funds;⁴ and (iv) futures commission merchants and introducing brokers.⁵ Although separate rules have been issued, the four rules were developed jointly by Treasury and the federal functional regulators and are designed to have the same effect on all types of covered financial institutions.⁶

² 31 C.F.R. § 103.121. Although the final rule does not apply to foreign branches of insured U.S. banks, Treasury encourages insured U.S. banks to implement an effective CIP throughout their organization, except to the extent that such implementation would conflict with local law governing a foreign branch. 68 Fed. Reg. 25,093 (May 9, 2003). Treasury also has issued a proposed rule that would extend the requirements of the bank final rule to cover all banks without a federal functional regulator. 68 Fed. Reg. 25,163 (May 9, 2003).

³ 31 C.F.R. § 103.122. The broker-dealer final rule covers broker-dealers who are required to register with the SEC under the Securities and Exchange Act of 1934, although broker-dealers who are required to register solely to effect transactions in securities futures products are not covered by the final rule. 31 C.F.R. § 103.122(a)(2).

⁴ 31 C.F.R. § 103.131. The mutual fund final rule covers an “investment company” that is an “open-end company” registered or required to register with the SEC under the Investment Company Act. 31 C.F.R. § 103.131(a)(5).

⁵ 31 C.F.R. § 103.123. The futures commission merchant final rule covers any person registered or required to register with the U.S. Commodity Futures Trading Commission as a futures commission merchant or introducing broker pursuant to the Commodity Exchange Act, except for persons required to register solely to effect transactions in a securities futures product. 31 C.F.R. § 103.123(a)(8) and (9).

⁶ Customer Identification Programs for Banks, Savings Associations, Credit Unions and Certain Non-Federally Regulated Banks, 68 Fed. Reg. 25,090 (May 9, 2003); Customer Identification Programs for Broker-Dealers, 68 Fed. Reg. 25,113 (May 9, 2003); Customer Identification Programs for Mutual Funds, 68 Fed. Reg. 25,131 (May 9, 2003); Customer Identification Programs for Futures Commission Merchants and Introducing Brokers, 68 Fed. Reg. 25,149 (May 9, 2003).

In this memorandum, provisions that are substantively similar in all four final rules are cited to the final rule for banks. Treasury’s use of four final rules mirrors four proposed rules that were published on July 23, 2002, and were discussed in our memorandum of August 2, 2002.

Section 326 requires that financial institutions collect and verify the identity of a “customer” “seeking to open an account.”⁷ Among the most important aspects of the final rules are the following:

- The final rules take a narrower view of the term “customer” than did the proposed rules -- excluding existing account holders who seek to open new accounts so long as the financial institution has a reasonable belief that it knows the true identity of the account holder. The final rules also do not require financial institutions to verify the identity of signatories to accounts.
- The final rules consider adoption of a CIP to be a “material alteration” of the financial institution’s anti-money laundering program that must be approved by the institution’s board of directors.
- The final rules require a CIP to provide for (i) collection of basic information, such as name, address, and tax identification number; (ii) verification of that information through documentary and/or non-documentary methods; (iii) recordkeeping; and (iv) comparison of collected information against government-issued lists of known or suspected terrorists and terrorist organizations.⁸

Although the final rules become effective on June 9, 2003, financial institutions are not required to have the requisite CIP in place until October 1, 2003.⁹

I. Covered Accounts and Customers

A. “Account”

In the final rules, “account” means “a formal ... relationship established to provide or engage in services, dealings or other financial transactions....”¹⁰ The rules apply

⁷ 31 U.S.C. § 5318(l).

⁸ 31 U.S.C. § 5318(l)(2)(A)-(C).

⁹ 68 Fed. Reg. 25,092 (May 9, 2003).

¹⁰ 31 C.F.R. § 103.121(a)(1)(i) (definition found in bank final rule). Each final rule contains a slightly different formulation of this definition. 31 C.F.R. § 103.122(a)(1)(i) (continued...)

only to “accounts” where a formal financial services relationship is established with a person, and exclude transactions such as check cashing, wire transfers, or the sale of a cashier’s check or money order.¹¹ The rules exclude relationships entered into for reasons other than providing financial products and services, such as operational contracts with vendors;¹² accounts acquired through an acquisition, merger, purchase of assets, or assumption of liabilities from any third party;¹³ and accounts opened for the purpose of participating in an employee benefit plan established under the Employee Retirement Income Security Act of 1974.¹⁴

Each of the final rules contains a list of examples of covered accounts. These lists, not intended to be comprehensive, include the following:

- For banks, savings associations, and credit unions: deposit accounts, transaction or asset accounts, credit accounts and other extensions of credit, safety deposit boxes or other safekeeping services, cash management, custodian services, and trust services;¹⁵

(broker-dealer definition: “a formal relationship with a broker-dealer established to effect transactions in securities...”); 31 C.F.R. § 103.131(a)(1)(i) (mutual fund definition: “any contractual or other business relationship between a person and a mutual fund established to effect transactions in securities issued by the mutual fund...”); 31 C.F.R. § 103.123(a)(1)(i) (futures commission merchant and introducing broker definition: “a formal relationship with a futures commission merchant...”).

¹¹ 31 C.F.R. § 103.121(a)(1)(ii)(A). This exclusion was not adopted in all of the final rules because certain types of financial institutions, such as broker-dealers, do not offer equivalent services.

¹² 68 Fed. Reg. 25,092 (May 9, 2003).

¹³ 31 C.F.R. § 103.121(a)(1)(ii)(B).

¹⁴ 31 C.F.R. § 103.121(a)(1)(ii)(C).

¹⁵ 31 C.F.R. § 103.121(a)(1)(i).

- For broker-dealers: accounts established for the purchase or sale of securities, loaned securities and borrowed activity, and accounts established to hold securities or other assets for safekeeping or as collateral;¹⁶
- For mutual funds: accounts established to effect the purchase or sale of securities issued by the mutual fund;¹⁷
- For futures commission merchants and introducing brokers: accounts established to effect transactions in contracts for the sale of commodities for future delivery, options on any such contract, or options on any commodity.¹⁸

B. “Customer”

The final rules define “customer” as “a person who opens a new account.”¹⁹

In a departure from the proposed rules, the final rules exclude existing account holders from the definition of “customer,” so long as the financial institution has a reasonable belief that it knows the true identity of the account holder.²⁰

A customer can be a natural or a legal person, such as a corporation.

Financial institutions are not required to verify the identity either of anyone opening an account on a person’s behalf or of beneficiaries of trusts, escrows, or other similar accounts;

¹⁶ 31 C.F.R. § 103.122(a)(1)(i). The broker-dealer final rule also notes that the sale of mutual fund shares or variable life annuities on a subscription way basis can constitute an account relationship. 68 Fed. Reg. 25,115 (May 9, 2003).

¹⁷ 31 C.F.R. § 103.131(a)(1)(i). The purchase or sale of a mutual fund’s underlying portfolio securities does not establish an “account” under the final rule. 68 Fed. Reg. 25,133 (May 9, 2003) (mutual fund final rule).

¹⁸ 31 C.F.R. § 103.123(a)(1)(i).

¹⁹ 31 C.F.R. § 103.121(a)(3)(i)(A). Persons who attempt to open an account but are denied permission to open the account are not considered to be “customers” under the final rule. 68 Fed. Reg. 25,093 (May 9, 2003).

²⁰ 31 C.F.R. § 103.121(a)(3)(ii)(C).

rather, only the new account holder's identity need be collected and verified.²¹ In rare circumstances, accounts may be opened where the account holder is not a "person" capable of giving legal consent, such as in the case of minor children or informal clubs. In these situations, the person who opens the account on behalf of the minor or informal entity is considered to be the "customer" and that person's identity must be collected and verified.²²

Although the proposed rules required financial institutions to collect and verify the identity of signatories to accounts, this requirement has been removed in the final rules.²³ The final rules require, however, that a CIP address situations where the financial institution will seek additional information about a customer that is not a natural person by collecting and verifying information about individuals with authority or control over the account.²⁴ Such an inquiry would be necessary only if the financial institution was not able to establish a reasonable belief that it knew the true identity of the accountholder without the additional information.²⁵

The final rules exempt certain "readily identifiable entities" from the definition of "customer": financial institutions regulated by federal functional regulators, banks regulated by state bank regulators, governmental agencies and instrumentalities, and

²¹ 68 Fed. Reg. 25,094 (May 9, 2003).

²² 31 C.F.R. § 103.121(a)(3)(i)(B).

²³ 68 Fed. Reg. 25,094 (May 9, 2003).

²⁴ 31 C.F.R. § 103.121(b)(2)(C).

²⁵ *Id.*; see also 68 Fed. Reg. 25,094 (May 9, 2003).

U.S. publicly traded companies.²⁶ When these entities open accounts, their identity need not be verified. The exemption for U.S. publicly traded companies applies only to their domestic operations.²⁷ Therefore, financial institutions must verify the identity of any foreign office, affiliate, or subsidiary that seeks to open an account.²⁸

II. Customer Identification Programs

The CIP is considered part of a financial institution's BSA compliance program and should be part of the institution's formal anti-money laundering program ("AML program").²⁹ AML programs must be in writing, approved by the institution's board, and noted in the board's minutes.³⁰ The addition of a CIP, or the alteration of existing "know your customer" ("KYC") programs to meet the CIP requirements, is considered to be a "material change" to the institution's AML program, and must be approved by the institution's board of directors.³¹

Treasury considers compliance with Section 326 to be part of the board's "conventional supervisory BSA compliance responsibilities" and, therefore, oversight

²⁶ 31 C.F.R. § 103.121(a)(3)(ii)(A)-(B).

²⁷ 68 Fed. Reg. 25,094 (May 9, 2003).

²⁸ *Id.*

²⁹ 31 C.F.R. § 103.121(b)(1); *see also* 31 U.S.C. § 5318(h) (statutory requirement for anti-money laundering programs).

³⁰ 68 Fed. Reg. 25,095 (May 9, 2003).

³¹ *Id.*

responsibility for the CIP cannot be delegated to management.³² The board must examine the CIP in sufficient detail to determine that (i) the CIP meets the minimum requirements of the final rule and (ii) the CIP allows the financial institution to form a reasonable belief that it knows the true identity of the customer.³³ After the board makes this inquiry, responsibility for the development, implementation, and administration of the CIP may be delegated to management.³⁴

A. Minimal Requirements

At a minimum, a CIP must (i) “implement reasonable procedures to verify the identity of any person seeking to open an account”; (ii) “maintain records of the information used to verify the person’s identity”; and (iii) “determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any [federal] government agency.”³⁵

1. Identity Verification Procedures

A financial institution “must have a CIP that includes procedures for verifying the identity of each customer, to the extent reasonable and practicable, based on the [financial institution’s] assessment of certain risks.”³⁶ Identity verification procedures should be “based upon relevant risks, including those presented by the types of accounts

³² 68 Fed. Reg. 25,095-96 (May 9, 2003).

³³ 68 Fed. Reg. 25,096 (May 9, 2003).

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*; see also 31 C.F.R. § 103.121(b)(2).

maintained” by the institution, “the various methods of opening accounts” provided by the institution, and “the types of identifying information available.”³⁷ In setting its procedures, a financial institution “should take into account the [institution’s] size, location, and type of business or customer base....”³⁸ Special treatment may not be given to persons known to financial institution personnel.³⁹

a) Information to be Collected

At a minimum, a financial institution must obtain four types of information from a customer seeking to open an account: (i) name; (ii) address; (iii) date of birth for individuals;⁴⁰ and (iv) an identification number.⁴¹ This information is not exclusive -- based upon its assessment of risks, a financial institution may require additional information before opening an account.⁴²

A financial institution is required to obtain at least one address for a customer.⁴³ For individuals, that address generally will be a residential or business street

³⁷ 31 C.F.R. § 103.121(b)(2).

³⁸ 68 Fed. Reg. 25,096 (May 9, 2003); *see also* 31 C.F.R. § 103.121(b)(2).

³⁹ *Id.*

⁴⁰ Collection of date of birth information does not relieve a financial institution from its obligations to comply with anti-discrimination laws or regulations. 68 Fed. Reg. 25,097 (May 9, 2003).

⁴¹ 31 C.F.R. § 103.121(b)(2)(i)(A)(1)-(4). The bank final rule contains an exception for credit card accounts; a bank issuing a credit card to a customer may obtain the required identifying information from a third party, such a credit bureau. § 103.121(b)(2)(i)(C).

⁴² 68 Fed. Reg. 25,098 (May 9, 2003).

⁴³ 68 Fed. Reg. 25,097 (May 9, 2003).

address -- the rules strongly favor addresses with physical locations rather than post office boxes or similar addresses.⁴⁴ If an individual does not have a physical address, he or she may provide the residential or business address of a contact individual.⁴⁵ For customers other than individuals (e.g., businesses), a financial institution may use the principal place of business, a local office, or another physical location.⁴⁶

For U.S. customers, an “identification number” is a “taxpayer identification number”: a social security number, an individual taxpayer identification number, or an employer identification number.⁴⁷ If a customer has applied for, but not yet received, a taxpayer identification number, a financial institution may satisfy this requirement by confirming that the application was filed before opening the account (through reviewing the application or other reliable documents) and obtaining the taxpayer identification number within a reasonable period of time after the account is opened.⁴⁸

For a customer who is not a U.S. person, a financial institution must obtain at least one of the following: a taxpayer identification number, passport number and country of issuance, alien identification card number, or “number and country of issuance of any other

⁴⁴ 31 C.F.R. § 103.121(b)(2)(i)(A)(3)(i). The rules contain an exception for Army Post Office or Fleet Post Office box numbers. 31 C.F.R. § 103.121(b)(2)(i)(A)(3)(ii).

⁴⁵ *Id.* Of course, the individual’s inability to provide a physical address should be considered when the institution determines whether it has a reasonable belief that it knows the customer’s true identity.

⁴⁶ 31 C.F.R. § 103.121(b)(2)(i)(A)(3)(iii).

⁴⁷ 31 C.F.R. § 103.121(b)(2)(i)(A)(4)(i); *see also* § 103.121(a)(6) (referencing 26 U.S.C. § 6109).

⁴⁸ 31 C.F.R. § 103.121(b)(2)(i)(B).

government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.”⁴⁹ Foreign businesses or enterprises also may present alternative government-issued documents certifying their existence as a business or enterprise.⁵⁰ The rules neither endorse nor prohibit relying on any particular type of foreign identification documents -- the financial institution “must decide for itself, based upon appropriate risk factors ... whether the information presented by a customer is reliable.”⁵¹

b) Verification Procedures

A CIP must contain procedures for verifying the information collected from the customer.⁵² A financial institution “need not establish the accuracy of every element of identifying information obtained but must do so for enough information to form a reasonable belief that it knows the true identity of the customer.”⁵³ A financial institution is not required to verify the information before opening the account -- the information may be verified “within a reasonable time after the account is opened.”⁵⁴ In verifying a customer’s identity, a financial institution may rely on documentary and/or non-documentary methods.

⁴⁹ 31 C.F.R. § 103.121(b)(2)(i)(A)(4)(ii). The financial institution need not determine that a customer is or is not a U.S. citizen. If the customer cannot provide a U.S. taxpayer identification number, then the institution may proceed with the non-U.S. procedures. 68 Fed. Reg. 25,095 (May 9, 2003).

⁵⁰ *Id.*

⁵¹ 68 Fed. Reg. 25,098 (May 9, 2003).

⁵² 31 C.F.R. § 103.121(b)(2)(ii).

⁵³ 68 Fed. Reg. 25,099 (May 9, 2003).

⁵⁴ 31 C.F.R. § 103.121(b)(2)(ii). Among the factors that should be considered in determining a reasonable time for verification are the type of account opened, whether the (continued...)

(1) Documentary Verification

In considering documents, financial institutions are not required to verify the authenticity of a document; however, if a document shows “obvious indications of fraud,” the institution must consider that factor in determining whether it has a reasonable belief that it knows the customer’s true identity.⁵⁵ The final rules stress that due to identity theft and other document fraud, “the value of documentary verification is enhanced by redundancy.”⁵⁶ The rules encourage, but do not require, institutions to obtain and consider more than one type of documentary verification.⁵⁷

The CIP must state which documents will be used in verification. This determination will require each financial institution “to conduct its own risk-based analysis of the types of documents it believes will enable it to know the true identity of its customers.”⁵⁸

customer opened the account in person, and the type of identifying information that is available. 68 Fed. Reg. 25,117-18 (May 9, 2003) (broker-dealer final rule). Financial institutions also should consider their duties to verify certain information prior to opening an account under other statutory and regulatory regimes, such as the regulations promulgated by Treasury’s Office of Foreign Assets Control (“OFAC”).

⁵⁵ 68 Fed. Reg. 25,099 (May 9, 2003).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ 68 Fed. Reg. 25,100 (May 9, 2003); *see also* 31 C.F.R. § 103.121(b)(2)(ii)(A).

(2) Non-Documentary Verification

In addition to documentary verification, a CIP must state what non-documentary methods the financial institution will employ to verify customers' identity.⁵⁹ Due to identity theft and document fraud, the final rules encourage the use of such non-documentary verification even when the institution also employs documentary verification.⁶⁰ The final rules list examples of non-documentary methods: contacting a customer; use of a consumer reporting agency, public database, or other source; checking references with other financial institutions; and obtaining a financial statement.⁶¹

c) Verification Contingencies

A CIP must contain verification procedures to be used when a customer opens an account without appearing in person at the financial institution.⁶² The CIP also must address situations where the financial institution otherwise is presented "with circumstances that increase the risk that the [financial institution] will be unable to verify the true identity of a customer through documents."⁶³

In addition, certain types of accounts that bear significant risk -- such as accounts opened in the name of a corporation, partnership, or trust created in or conducting

⁵⁹ 31 C.F.R. § 103.121(b)(2)(ii)(B).

⁶⁰ 68 Fed. Reg. 25,100 (May 9, 2003). The broker-dealer final rule also suggests that financial institutions "analyze whether there is logical consistency [among] the identifying information provided...." 68 Fed. Reg. 25,120 (May 9, 2003).

⁶¹ 31 C.F.R. § 103.121(b)(2)(ii)(B)(1).

⁶² 31 C.F.R. § 103.121(b)(2)(ii)(B)(2).

⁶³ *Id.*

business through a jurisdiction that has been designated by Treasury as a “primary money laundering concern” or has been designated as non-cooperative by an international anti-money laundering organization⁶⁴ -- may require additional verification beyond a financial institution’s usual methods.⁶⁵ A CIP should list criteria for designating such customers and provide additional verification procedures before accounts may be opened for them.

A CIP also should address how the institution will handle situations where a customer’s identity cannot be verified through its normal documentary and non-documentary efforts⁶⁶ and should discuss when, in the case of non-natural persons, based on the financial institution’s risk assessment, the institution will obtain information about individuals with authority or control over the account in order to verify the customer’s identity.⁶⁷ These contingency provisions also should describe the circumstances under

⁶⁴ See 31 U.S.C. § 5318A(c) (mechanism and criteria for designation of a “primary money laundering concern”). The only country currently designated a “primary money laundering concern” is Nauru. The chief international anti-money laundering organization is the Financial Action Task Force on Money Laundering (“FATF”). FATF designates certain states as “non-cooperative countries and territories” (“NCCTs”). The list of NCCTS currently comprises: the Cook Islands, Egypt, Guatemala, Indonesia, Myanmar, Nauru, Nigeria, the Phillipines, St. Vincent and the Grenadines, and Ukraine. A current list of NCCTS may be found at http://www.fatf-gafi.org/NCCT_en.htm.

⁶⁵ 31 C.F.R. § 103.121(b)(2)(ii)(C).

⁶⁶ 31 C.F.R. § 103.121(b)(2)(iii); *see also* 68 Fed. Reg. 25,120 (May 9, 2003) (broker-dealer final rule) (listing complicating circumstances to be addressed in CIP).

⁶⁷ 31 C.F.R. § 103.121(b)(2)(ii)(C).

which the institution will file a Suspicious Activity Report based on identity verification difficulties.⁶⁸

The final rules do not require financial institutions to close the accounts of customers whose identity cannot be verified, but leave this decision to the discretion of the institution.⁶⁹ The institution must close the account, however, if it does not have a reasonable belief that it knows the true identity of the customer.⁷⁰

2. Recordkeeping

A CIP must include procedures for making and maintaining a record of all information obtained from a customer during the identity verification process.⁷¹ Where the proposed rules required financial institutions to retain copies of documents submitted by a customer, the final rules merely require that an institution retain a description “of any document upon which the [financial institution] has relied in order to verify the identity of the customer, noting the type of document, any identification number contained in the document, the place of issuance, and, if any, the date of issuance and expiration date.”⁷² A CIP also must include procedures for making and maintaining a record of all measures used to verify the identity of a customer and the resolution of any “substantive discrepancy”

⁶⁸ 31 C.F.R. § 103.121(b)(2)(iii)(D).

⁶⁹ 68 Fed. Reg. 25,101 (May 9, 2003).

⁷⁰ *See generally* 31 C.F.R. § 103.121(b)(2); *but see* 68 Fed. Reg. 25,101 (May 9, 2003) (final rules do not specifically require that account be closed if identity cannot be verified).

⁷¹ 31 C.F.R. § 103.121(b)(3)(i)(A).

⁷² 68 Fed. Reg. 25,102 (May 9, 2003); *see also* 31 C.F.R. § 103.121(b)(3)(i)(B).

uncovered during the verification process.⁷³ Financial institutions may use electronic records to satisfy these requirements, so long as the records are accurate and accessible in accordance with 31 C.F.R. § 103.38(d).⁷⁴

Financial institutions must retain records of information obtained from a customer for five years after the account is closed or, in the case of credit card accounts, five years after the account is closed or becomes dormant.⁷⁵ Financial institutions must retain records of information used to verify a customer's identity for five years after the record is made.⁷⁶

3. Comparison with Government Lists

A CIP must include procedures for determining whether a customer appears on any federal government lists of known or suspected terrorists or terrorist organizations.⁷⁷ A financial institution does not have an "affirmative duty" to seek out such government lists; rather, a comparison must be made only against lists issued by a federal governmental agency and designated for this purpose by Treasury.⁷⁸ Treasury has not yet designated any

⁷³ 31 C.F.R. § 103.121(b)(3)(i)(C) and (D).

⁷⁴ 68 Fed. Reg. 25,102 (May 9, 2003).

⁷⁵ 31 C.F.R. § 103.121(b)(3)(ii).

⁷⁶ *Id.*

⁷⁷ 31 C.F.R. § 103.121(b)(4).

⁷⁸ 68 Fed. Reg. 25,103 (May 9, 2003).

such lists, but when it does so financial institutions will receive notice through separate guidance.⁷⁹

Determinations of whether a customer appears on a designated government list must be made “within a reasonable period of time” after the account is opened or earlier, if required by another statute or regulation or by guidance accompanying the list.⁸⁰ A CIP also must contain procedures requiring the institution to follow all federal directives issued in connection with the designation of government lists.⁸¹

B. Customer Notice

A CIP must include procedures for providing the financial institution’s customers with adequate notice that the institution is requesting information to verify their identity.⁸² “Notice is adequate if the [financial institution] generally describes the identification requirements of the [final rules] and provides the notice in a manner reasonably designed to ensure that a customer views the notice, or is otherwise given notice, before opening an account.”⁸³ A notice may be posted in the institution’s lobby, on its website, on account applications, or in any other effective manner.⁸⁴

⁷⁹ *Id.*

⁸⁰ 31 C.F.R. § 103.121(b)(4).

⁸¹ *Id.*

⁸² 31 C.F.R. § 103.121(b)(5)(i).

⁸³ 31 C.F.R. § 103.121(b)(5)(ii). The final rules contain a sample notice at 31 C.F.R. § 103.121(b)(5)(iii).

⁸⁴ *Id.*

C. Reliance on Another Financial Institution

A CIP “may include procedures specifying when the [financial institution] will rely on the performance by another financial institution (including an affiliate) of any procedures of the [financial institution’s] CIP” and thereby satisfy the institution’s obligations under the final rules.⁸⁵ Reliance is allowed only where the customer is opening, or has opened, an account or has “established a similar banking or business relationship” with the other financial institution.⁸⁶ Reliance must be “reasonable under the circumstances” and the other financial institution must be required to maintain an AML program and be regulated by a federal functional regulator.⁸⁷ The financial institutions also must enter into a contract, whereby the other financial institution certifies annually that it has implemented its AML program and will perform the specified requirements of the institution’s CIP.⁸⁸

From its own records, the financial institution must be able to determine when it is relying on another institution to perform aspects of its CIP for a particular account.⁸⁹ The financial institution will not be responsible if the other institution fails to

⁸⁵ 31 C.F.R. § 103.121(b)(6).

⁸⁶ *Id.*

⁸⁷ 31 C.F.R. § 103.121(b)(6)(i) and (ii).

⁸⁸ 31 C.F.R. § 103.121(b)(6)(iii).

⁸⁹ 68 Fed. Reg. 25,104 (May 9, 2003).

fulfill the CIP responsibilities, so long as its reliance is reasonable and it has complied with the rules' reliance provisions.⁹⁰

This provision of the final rules does not affect a financial institution's authority to contract for third party services under its CIP.⁹¹ A financial institution may outsource certain aspects of its CIP without acting under the reliance provision.⁹² In such situations, however, the financial institution remains ultimately responsible for compliance with the final rules.⁹³

III. Impact on other Regulations

With implementation of the Section 326 final rules, certain existing regulations that have KYC components are no longer necessary and are being repealed on October 1, 2003, when financial institutions are required to have compliant CIPs.⁹⁴ These regulations required banks, savings associations, credit unions, and broker-dealers to secure and maintain a record of the taxpayer identification number of a customer within 30 days of the opening of certain deposit accounts and broker-dealer accounts.

* * *

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ The regulations being so repealed are 31 C.F.R. §§ 103.34(a) and 103.35(a). 68 Fed. Reg. 25,104-05 (May 9, 2003).

This summary of the final rules implementing Section 326 is intended to highlight those provisions we believe to be of general interest. Each financial institution will, of course, need to consider the specific details of these final rules, as well as certain other anti-money laundering statutory and regulatory provisions, to determine the likely impact on its particular business activities.

If you have any questions about Section 326 compliance or other aspects of federal anti-money laundering regulation and enforcement, please contact the authors or any of the following lawyers: Stuart E. Eizenstat, (202) 662-5519; Mark A. Weiss, (202) 662-5308; Stuart C. Stock, (202) 662-5384; John C. Dugan, (202) 662-5415; or Peter L. Flanagan, (202) 662-5163.

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