

The substantive requirements of this joint final rule are being codified as part of Treasury's BSA regulations located in 31 CFR part 103. In addition, each of the Agencies is concurrently publishing a provision in its own regulations<sup>5</sup> to cross-reference this final rule in order to clarify the applicability of the final rule to the banks subject to its jurisdiction.

Regulations governing the applicability of section 326 to certain financial institutions that are regulated by the SEC and the CFTC are the subject of separate rulemakings. Treasury, the Agencies, the SEC, and the CFTC consulted extensively in the development of all joint rules implementing section 326 of the Act. All of the participating agencies intend the effect of the rules to be uniform throughout the financial services industry. Treasury intends to issue separate rules under section 326 for certain non-bank financial institutions that are not regulated by one of the Federal functional regulators.

The Secretary has determined that the records required to be kept by section 326 of the Act have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, to protect against international terrorism.

In addition, Treasury, under its own authority, is issuing conforming amendments to 31 CFR 103.34, which imposes requirements concerning the identification of bank customers.

#### *D. Compliance Date*

Nearly all commenters on the proposed rule requested that banks be given adequate time to develop and implement the requirements of any final rule implementing section 326 of the Act. These commenters stated that if the proposed rule were implemented, banks would be required, among other things, to revise existing account opening policies and procedures, obtain board approval, train staff, update forms, purchase new or updated software for customer verification and checking of government lists, and purchase new equipment for copying or scanning and storing records. Commenters requested a delayed effective or compliance date, but, given the variety of banks that would be covered by the final rule, there was no consensus regarding the amount of time that would be necessary to comply with the final rule. The transition periods suggested by commenters ranged from 60 days to two

years from the date a final rule is published.

The final rule modifies various aspects of the proposal and eliminates some of the requirements that commenters identified as being most burdensome. Nonetheless, Treasury and the Agencies recognize that some banks will need time to develop a CIP, obtain board approval, and implement the CIP, which will include various measures, such as training of staff, reprinting forms, and developing new software. Accordingly, although this final rule will be effective 30 days after publication, banks are provided with a transition period to implement the rule. Treasury and the Agencies have determined that each bank must fully implement its CIP by October 1, 2003.

## **II. Section-by-Section Analysis of Final Rule Implementing Section 326**

### *Section 103.121(a) Definitions*

*Section 103.121(a)(1) Account.* The proposed rule defined "account" as each formal banking or business relationship established to provide ongoing services, dealings, or other financial transactions and stated that a deposit account, transaction or asset account, and a credit account or other extension of credit would each constitute an "account."<sup>6</sup> The proposal also explained that the term "account" was limited to formal banking and business relationships established to provide "ongoing" services, dealings, or other financial transactions to make clear that this term is not intended to cover infrequent transactions such as the occasional purchase of a money order or a wire transfer.

Treasury and the Agencies received a large number of comments on this proposed definition. Some commenters agreed with the proposed definition though others thought the definition of "account" was either too broad or needed clarification. Some commenters suggested that the definition of "account" be narrowed to include only those relationships that are financial in nature. A number of commenters urged that the definition be limited to high-risk relationships that experts have identified as actually used by money launderers and terrorists. Some of these commenters suggested that particular types of accounts, especially those established as part of employee benefit plans, be excluded from the definition of "account."

Most commenters requested that the final rule provide additional examples

of the relationships that would constitute an "account." Many commenters requested that the rule clarify the meaning of "ongoing services." These commenters asked whether a person who repeatedly and regularly purchased a money order, requested a wire transfer, or cashed a check on a weekly basis, without any other relationship with a bank, would be considered to have an "account." Many other commenters asked that the exclusion for transfers of accounts between banks described in the preamble for the proposal—which commenters characterized as the "transfer exception"—be stated expressly in the regulation and expanded to cover all loans originated by a third party and purchased by a bank, such as mortgages purchased from non-bank lenders and vehicle loans purchased from car dealers.

The final rule contains a number of changes prompted by these comments. First, the reference to the term "business relationship" has been deleted from the definition of "account." This change is made to clarify that the regulation applies to the bank's provision of financial products and services, as opposed to general "business" dealings, such as those in connection with the bank's own operations or premises. Second, the definition now contains additional, but non-exclusive, examples of products and services, such as safety deposit box and other safekeeping services, cash management, and custodian and trust services, that constitute an "account."

The definition of "account" also has been changed to include a list of products and services that will not be deemed an "account." The preamble for the proposed rule had used the term "ongoing services" to define accounts covered by the final rule, and had referred to the exclusion of "occasional" transactions and "infrequent" purchases (which arguably would require a bank to monitor all transactions for repetitive contacts). By contrast, the final rule clarifies that "account" excludes products and services where a *formal banking relationship* is not established with a person, such as check cashing, wire transfer, or the sale of a check or money order.<sup>7</sup> Treasury and the

<sup>5</sup> 12 CFR 21.21 (OCC); 12 CFR 208.63, 211.5, and 211.24 (FRB); 12 CFR 326.8 (FDIC); 12 CFR 563.177 (OTS); and 12 CFR 748.2 (NCUA).

<sup>6</sup> The definition of "account" in the proposed rule was based on the statutory definition of "account" that is used in section 311 of the Act.

<sup>7</sup> This exclusion is consistent with legislative history indicating that by referencing the term "customers," Congress intended "that the regulations prescribed by Treasury take an approach similar to that of regulations promulgated under title V of the Gramm-Leach-Bliley Act of 1999, where the Federal functional regulators defined "customers" and "customer relationship" for purposes of the financial privacy rules." H.R. Rep. No. 107-250, pt. 1, at 62 (2001). The definitions of "customer" and "customer