

Agencies note that part 103 already requires verification of identity in connection with many of these products and services. *See, e.g.*, 31 CFR 103.29 (purchases of bank checks and drafts, cashier's checks, money orders, and traveler's checks for \$3000 or more); 31 CFR 103.33 (funds transfers of \$3000 or more).

In addition, the final rule codifies and clarifies the "transfer exception." Under the final rule, the definition of "account" excludes accounts that a bank acquires through an acquisition, merger, purchase of assets, or assumption of liabilities from any third party.<sup>8</sup> Treasury and the Agencies note that the Act provides that the regulations shall require reasonable procedures for "verifying the identity of any person seeking to open an account." Because these transfers are not initiated by customers, these accounts do not fall within the scope of section 326.<sup>9</sup>

Treasury and the Agencies generally agree with the view expressed by commenters who suggested that a bank's limited resources be focused on relationships that pose a higher risk of money laundering and terrorism. Accordingly, the Agencies have included an exception to the definition of "account" for accounts opened for the purpose of participating in an employee benefit plan established pursuant to the Employee Retirement Income Security Act of 1974. These accounts are less susceptible to use for the financing of terrorism and money laundering, because, among other reasons, they are funded through payroll deductions in connection with employment plans that must comply with Federal regulations which impose various requirements regarding the funding and withdrawal of funds from

such accounts, including low contribution limits and strict distribution requirements.

**Section 103.121(a)(2) Bank.** The proposal jointly issued by Treasury and the Agencies applied to any financial institution defined as a "bank" in 31 CFR 103.11(c) and subject to regulation by one of the Agencies, including banks, savings associations, credit unions, Edge Act and Agreement corporations, and branches and agencies of foreign banks. The proposed definition also included "any foreign branch of an insured bank" to make clear that the procedures required by the rule would have to be implemented throughout the bank, no matter where its offices are located. The preamble for the proposal explained that the rule would apply to bank subsidiaries to the same extent as existing regulations requiring banks to have BSA compliance programs.<sup>10</sup> As described above, a second proposal issued simultaneously by Treasury applied to certain other financial institutions defined as a "bank" in 31 CFR 103.11(c), namely, those credit unions, private banks, and trust companies that do not have a Federal functional regulator.

Under the final rule, "bank" includes all financial institutions covered by both of the proposals described above, except that "bank" does not include any foreign branch of an insured U.S. bank. Several commenters explained that the proposal to cover foreign branches might conflict with local laws applicable to branches of insured banks operating outside of the United States and might place U.S. institutions at a competitive disadvantage. Consistent with the approach taken with respect to final regulations implementing other sections of the Act,<sup>11</sup> Treasury and the

Agencies have determined that foreign branches of insured U.S. banks are not covered by the final rule. Nevertheless, Treasury and the Agencies encourage each bank to implement an effective CIP, as required by this final rule, throughout its organization, including in its foreign branches, except to the extent that the requirements of the rule would conflict with local law.

As noted in the preamble for the proposal, the CIP must be a part of a bank's BSA compliance program. Therefore, it will apply throughout such a bank's U.S. operations (including subsidiaries) in the same way as the BSA compliance program requirement. However, all subsidiaries that are in compliance with a separately applicable, industry-specific rule implementing section 326 of the Act will be deemed to be in compliance with this final rule.

**Section 103.121(a)(3) Customer.** The proposal defined "customer" to mean any person<sup>12</sup> seeking to open a new account. In addition, the proposal defined a "customer" to include any signatory on an account. The preamble for the proposal explained that the term "customer" included a person that applied to open an account, but not someone seeking information about an account, such as rates charged or interest paid on an account, if the person did not apply to open an account. The preamble also stated that any person seeking to open an account at a bank, on or after the effective date of the final rule, would be a "customer," regardless of whether that person already had an account at the bank.

This proposed definition prompted a large number of comments. First, nearly all commenters recommended that the Agencies clarify in the text of the final rule that "customer" does not include a person who does not receive banking services, such as a person whose deposit or loan application is denied. Some of these commenters suggested that the rule for banks define "customer" to mean "a person who opens a new account," as did the proposed rules for broker-dealers, mutual funds, futures commission merchants and introducing brokers.

Foreign Banks' implementing sections 313 and 319(b) of the Act).

<sup>12</sup>The proposed rule defined "person" by reference to § 103.11(z). This definition includes individuals, corporations, partnerships, trusts, estates, joint stock companies, associations, syndicates, joint ventures, other unincorporated organizations or groups, certain Indian Tribes, and all entities cognizable as legal personalities. Treasury and the Agencies agree that it is not necessary to repeat this definition. Therefore, it is omitted from the final rule.

relationship" in the financial privacy rules apply only to a consumer who has a "continuing relationship" with a bank, for example, in the form of a deposit or investment account, or a loan. *See* .3(h) and (i) of 12 CFR part 40 (OCC); 12 CFR part 216 (Board); 12 CFR part 332 (FDIC); 12 CFR part 573 (OTS); and 12 CFR part 716 (NCUA).

<sup>8</sup>In many cases, these third parties are themselves "financial institutions" for purposes of the BSA. Treasury anticipates that these third parties ultimately will be subject to their own customer identification rules implementing section 326 of the Act in the event that they are not presently covered by such a rule.

<sup>9</sup>Nevertheless, there may be situations involving the transfer of accounts where it would be appropriate for a bank, as part of the customer due diligence procedures required under existing regulations requiring banks to have compliance programs implementing the BSA (BSA compliance programs), to verify the identity of customers associated with accounts that it acquires from another financial institution. Treasury and the Agencies expect financial institutions to implement reasonable procedures to detect money laundering in any account, however acquired.

<sup>10</sup>All insured depository institutions currently must have a BSA compliance program. *See* 12 CFR 21.21 (OCC); 12 CFR 208.63 (Board); 12 CFR 326.8 (FDIC); 12 CFR 563.177 (OTS); and 12 CFR 748.2 (NCUA). In addition, all financial institutions are required by section 352 of the Act, 31 U.S.C. 5318(h), to develop and implement an anti-money laundering program. Treasury issued a regulation implementing section 352 providing that a financial institution regulated by a Federal functional regulator is deemed to satisfy the requirements of section 5318(h)(1) if it implements and maintains an anti-money laundering program that complies with the regulation of its Federal functional regulator, *i.e.*, the requirement to implement a BSA compliance program. *See* 31 CFR 103.120(b); 67 FR 2113 (April 29, 2002). However, Treasury temporarily deferred subjecting certain non-Federally regulated banks to the anti-money laundering program requirements in section 352. *See* 67 FR 67547 (November 6, 2002) (corrected 67 FR 68935 (November 14, 2002)).

<sup>11</sup>*See, e.g.*, 67 FR 60562, 60565 (Sept. 26, 2002) (FinCEN's regulation titled "Anti-Money Laundering Requirements "Correspondent Accounts for Foreign Shell Banks: Recordkeeping and Termination of Correspondent Accounts for