

Treasury and the Agencies agree with the view expressed by some commenters that the statute should be construed to ensure that banks design procedures to determine the identity of only those persons who open accounts. Accordingly, the final rule defines a "customer" as "a person that opens a new account."<sup>13</sup> For example, in the case of a trust account, the "customer" would be the trust. For purposes of this rule, a bank will not be required to look through trust, escrow, or similar accounts to verify the identities of beneficiaries and instead will only be required to verify the identity of the named accountholder.<sup>14</sup> In the case of brokered deposits, the "customer" will be the broker that opens the deposit account. A bank will not need to look through the deposit broker's account to determine the identity of each individual sub-account holder; it need only verify the identity of the named accountholder.

Many commenters requested that the final rule clarify whether "customer" includes a minor child or an informal group with a common interest, such as a club account, where there is no legal entity. The final rule addresses these comments by providing that "customer" means "an individual who opens a new account for (1) an individual who lacks legal capacity, such as a minor; or (2) an entity that is not a legal person, such as a civic club."

A few banks stated that defining "customer" to include a signatory was consistent with their current practice of verifying the identity of the named accountholder and any signatory on the account. However, most commenters strenuously objected to the inclusion of a signatory as a customer whose identity must be verified, and asserted that this proposed requirement would deviate significantly from their current business practices. These commenters stated that requiring banks to verify signatories on an account would be enormously burdensome to the financial institutions and signatories themselves—many of whom simply work as employees for firms with corporate accounts—and

would outweigh any benefit.<sup>15</sup> One commenter asserted that inclusion of signatories as customers went beyond the scope of section 326 of the Act. Although some commenters advocated that any requirement regarding a signatory should be omitted altogether, these commenters generally advocated a risk-based approach that would give banks the discretion to determine when a signatory's identity should be verified.

Credit card banks, in particular, were critical of the signatory requirement because the proposed provision, as drafted, encompassed all authorized users of credit cards. These banks characterized the signatory requirement as unnecessary in the case of credit card companies, which, they explained, already use sophisticated fraud filters to detect fraud and abnormal use. These banks also noted that a person need not be a signatory to use another person's credit card, especially when purchasing products by telephone or over the Internet. Therefore, the signatory requirement would not necessarily ensure that banks would be able to verify the identity of those using a credit card account.

After revisiting the issue of whether a signatory should be a "customer," Treasury and the Agencies have determined that requiring a bank to expend its limited resources on verifying the identity of all signatories on accounts could interfere with the bank's ability to focus on identifying customers and accounts that present a higher risk of not being properly identified. Accordingly, the proposed provision defining "customer" to include a signatory on an account is deleted. Instead, the final rule, at § 103.121(b)(2)(ii)(C), requires a bank's CIP to address situations when the bank

will take additional steps to verify the identity of a customer that is not an individual by seeking information about individuals with authority or control over the account, including signatories, in order to verify the customer's identity.

In addition to defining who is a "customer," the final rule contains a list of entities that will not be deemed "customers." Many commenters questioned why a bank should be required to verify the identity of a government agency or instrumentality opening a new account, or of a publicly-traded company that is subject to SEC reporting requirements. Consistent with these and other comments urging that the final rule focus on requiring verification of the identity of customers that present a higher risk of not being properly identified, the final rule excludes from the definition of "customer" the following readily identifiable entities: a financial institution regulated by a Federal functional regulator; a bank regulated by a state bank regulator; and governmental agencies and instrumentalities, and companies that are publicly traded described in § 103.22(d)(2)(ii)–(iv).<sup>16</sup> Section 103.22(d)(2)(iv) exempts such companies only to the extent of their domestic operations. Accordingly, a bank's CIP will apply to any foreign offices, affiliates, or subsidiaries of such entities that open new accounts.

A great many commenters also objected to the requirement in § 103.121(b)(2)(ii) of the proposed rule that a bank verify the identity of an existing customer seeking to open a new account unless the bank previously verified the customer's identity in accordance with procedures consistent with the proposed rule and continues to have a reasonable belief that it knows the true identity of the customer. These commenters asserted that such a requirement would be burdensome for the bank and would upset existing customers. Some commenters recommended that the rule apply prospectively to new customers who previously had no account with the bank. Many commenters suggested that the final rule contain a risk-based approach where verification would not be required for an existing customer who opens a new account if the bank has a reasonable belief that it knows the identity of the customer, regardless of the procedures the bank followed to form this belief.

<sup>13</sup> Therefore, each person named on a joint account is a "customer" under this final rule unless otherwise provided.

<sup>14</sup> However, based on a bank's risk assessment of a new account opened by a customer that is not an individual, a bank may need to take additional steps to verify the identity of the customer by seeking information about individuals with ownership or control over the account in order to identify the customer, as described in § 103.121(b)(2)(ii)(C), or may need to look through the account in connection with the customer due diligence procedures required under other provisions of its BSA compliance program.

<sup>15</sup> Commenters contended that banks and individuals would confront numerous practical problems. Some commenters noted, for example, that the identification and verification of signatories could be burdensome for banks because business accounts might have many signatories and those signatories would change over time. Some commenters explained that collecting detailed information about an employee who is a signatory would raise privacy concerns for those employees who would be required to disclose personal information to their employer's financial institutions. Other commenters stated that a signatory rarely is present at the time of account opening and, consequently, a bank would encounter substantial obstacles when attempting to verify the signatory's identity using any of the most common methods described in the proposal, including by examining documents or by obtaining a credit report. (Under the Fair Credit Reporting Act (FCRA), a consumer reporting agency generally may furnish a consumer report in connection with transactions involving the consumer and no other. See 15 U.S.C. 1681b. Thus, for example, a bank would be prohibited from obtaining a credit report to verify the identity of an authorized user of a customer's credit card.)

<sup>16</sup> Treasury previously determined that banks should be exempted from having to file reports of transactions in currency in connection with these entities. See 31 CFR 103.22(d)(1).