

is a part of a board's conventional supervisory BSA compliance responsibilities that cannot be delegated to bank management. Therefore, a bank's board of directors must be responsible for approving a CIP described in detail sufficient for the board to determine that (1) the bank's CIP contains the minimum requirements of this final rule; and (2) the bank's identity verification procedures are designed to enable the bank to form a reasonable belief that it knows the true identity of the customer. Nevertheless, responsibility for the development, implementation, and day-to-day administration of the CIP may be delegated to bank management.

The final rule will apply to some non-Federally regulated banks that are not yet subject to an anti-money laundering compliance program requirement.<sup>20</sup> Therefore, the final rule only requires that the CIP be a part of a bank's anti-money laundering program once a bank becomes subject to an anti-money laundering compliance program requirement.<sup>21</sup>

**Section 103.121(b)(2) Identity Verification Procedures.** The proposed rule provided that each bank must have a CIP that includes procedures for verifying the identity of each customer, to the extent reasonable and practicable, based on the bank's assessment of certain risks. The proposed rule stated that these procedures must enable the bank to form a reasonable belief that it knows the true identity of the customer.

Some commenters recommended that the identity verification requirement be waived for new customers that are well known to a senior officer of the bank. Some of these commenters endorsed such a waiver provided that a bank employee could provide "an affidavit of identity" on behalf of the customer.

One commenter criticized the standard requiring a bank to have identity verification procedures "that enable the bank to form a reasonable belief that it knows the true identity of the customer" as too subjective. This commenter suggested that a better standard would be lack of affirmative notice of deficiency in the identity process. Another commenter suggested that the rule make clear that a bank is only required to verify a customer's identity, to the extent reasonable and practical, in order to establish that it has a reasonable basis for knowing the true identity of its customer.

The final rule provides that a bank's CIP must include risk-based procedures for verifying the identity of each customer<sup>22</sup> to the extent reasonable and practicable. The final rule also states that the procedures must enable the bank to form a reasonable belief that it knows the true identity of the customer. As section 326 of the Act states, a bank's affirmative obligation to verify the identity of its customer applies to "any person" rather than only to a person whose identity is suspect, as suggested by one commenter. Furthermore, Treasury and the Agencies have determined that the statutory obligation to "verify the identity of any person" requires the bank to implement and follow procedures that allow the bank to have a reasonable belief that it knows the true identity of the customer.

Given the flexibility built into the final rule, Treasury and the Agencies believe that it is not appropriate to provide special treatment for new customers known to bank personnel. In addition, permitting reliance on bank personnel to attest to the identity of a customer may be subject to manipulation. Accordingly, the final rule does not establish different rules for customers who are known to bank personnel.

The final rule requires the identity verification procedures to be based upon relevant risks, including those presented by the types of accounts maintained by the bank, the various methods of opening accounts provided by the bank, and the types of identifying information available. In addition to these risk factors, which are specifically identified in section 326, the final rule states that the procedures should take into account the bank's size, location, and type of business or customer base, additional factors mentioned in the Act's legislative history.<sup>23</sup>

**Section 103.121(b)(2)(i) Customer Information Required.** The proposed rule required that a bank's CIP must contain procedures that specify the identifying information the bank must obtain from a customer. It stated that, at a minimum, a bank must obtain from each customer the following information prior to opening an account: (1) Name; (2) address (a residential and mailing address for individuals, and principal place of business and mailing address for a person other than an individual); (3)

date of birth for individuals; and (4) an identification number.

Treasury and the Agencies received a variety of comments criticizing the requirement that a bank obtain certain minimum identifying information prior to opening an account. Some commenters, including a trade association representing large financial institutions, recommended that a bank be permitted to open an account for a customer who lacks some of the minimum identifying information, provided that the bank has formed a reasonable belief that it knows the true identity of the customer. Credit card banks explained that the minimum information requirement would create problems for retailers that offer credit cards at the point of sale. These commenters stated that retailers were not likely to have the means to record identifying information other than what is currently collected. They suggested that when there are systems in place to identify customers and detect suspicious transactions, the rule should require only the collection of information that the credit card bank or card issuer deems necessary and appropriate to identify the customer.

Other commenters stated that the rule should not require a bank to obtain the minimum identifying information prior to account opening in every instance. Some of these commenters suggested that a bank be permitted to obtain the required information within a reasonable time after the account is opened. Some commenters suggested that the rule permit banks to obtain identifying information from a party other than the customer. This would arise, for example, when a bank offers a credit card based on information obtained from a credit reporting agency. Other commenters suggested that a bank also be required to obtain information about a customer's occupation, profession or business, as this information is needed by a bank that intends to file a report of transactions in currency or a suspicious activities report on the customer.

Consistent with the proposal, the final rule provides that a bank's CIP must contain procedures that specify the identifying information that the bank must obtain from each customer prior to opening an account. In addition, the rule specifies the four basic categories of information that a bank must obtain from the customer prior to opening an account. Treasury and the Agencies believe that requiring banks to gather these standard forms of information prior to opening an account is not overly burdensome because such identifying information is routinely

<sup>20</sup> See footnote 10, *supra*.

<sup>21</sup> The final rule therefore provides that until such time as credit unions, private banks, and trust companies without a Federal functional regulator are subject to such a program, their CIPs must be approved by their boards of directors.

<sup>22</sup> Other elements of the bank's CIP, such as procedures for recordkeeping or checking of government lists, are requirements that may not vary depending on risk factors.

<sup>23</sup> H.R. Rep. No. 107-250, pt. 1, at 62 and 63 (2001).