

be centralized, issued by a single designated government agency, and provided to financial institutions in a commonly used electronic format. Some of these commenters suggested that instead of providing multiple lists, the government set up a single Web site that would permit a bank to search for a name alphabetically, similar to the OFAC list. Other commenters asked Treasury and the Agencies to clarify what action a bank should take when a customer appears on a list.

Commenters also asked for guidance regarding the timing of when the comparison must be performed and asked whether the lists could be checked after an account is opened. Some commenters stated that there is no practical way for a financial institution to check lists prior to opening an account.

The final rule states that a bank's CIP must include procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations issued by any Federal government agency and designated as such by Treasury in consultation with the Federal functional regulators. Because Treasury and the Federal functional regulators have not yet designated any such lists, the final rule cannot be more specific with respect to the lists banks must check in order to comply with this provision. However, banks will not have an affirmative duty under this regulation to seek out all lists of known or suspected terrorists or terrorist organizations compiled by the Federal government. Instead, banks will receive notification by way of separate guidance regarding the lists that must be consulted for purposes of this provision.

Treasury and the Agencies have modified this provision to give guidance as to when a bank must consult a list of known or suspected terrorists or terrorist organizations. The final rule states that the CIP's procedures must require the bank to make a determination regarding whether a customer appears on a list "within a reasonable period of time" after the account is opened, or earlier if required by another Federal law or regulation or by a Federal directive issued in connection with the applicable list.

The final rule provides that a bank's CIP must contain procedures requiring the bank to follow all Federal directives issued in connection with such lists. Again, because there are no lists that have been designated under this provision as yet, the final rule cannot provide more guidance in this area.

*Section 103.121(b)(5) Customer Notice.* The proposed rule would have

required a bank's CIP to include procedures for providing bank customers with adequate notice that the bank is requesting information to verify their identity. The preamble for the proposal stated that a bank could satisfy that notice requirement by generally notifying its customers about the procedures the bank must comply with to verify their identities. It stated that the bank could post a notice in its lobby or on its Internet website, or provide customers with any other form of written or oral notice.

Treasury and the Agencies received a large number of comments on this provision. Some commenters did not agree that section 326 of the Act requires notice to bank customers. Some of these commenters suggested that a bank's request for identifying information should be considered adequate notice. Other commenters did not question this requirement and stated that they appreciated the flexibility of this provision. However, a great many commenters asked for additional guidance on the content and timing of the notice and specifically requested that the final rule provide model language so that all institutions represent the requirements of section 326 in the same manner and the adequacy of notice is not left to the interpretation of individual examiners.

Section 326 provides that the regulations issued "shall, at a minimum, require financial institutions to implement, and customers (after being given adequate notice) to comply with reasonable procedures" that satisfy the statute. Based upon this statutory requirement, the final rule requires a bank's CIP to include procedures for providing bank customers with adequate notice that the bank is requesting information to verify their identities. However, the final rule provides additional guidance regarding what constitutes adequate notice and the timing of the notice requirement.

The final rule states that notice is adequate if the bank generally describes the identification requirements of the final rule and provides notice in a manner reasonably designed to ensure that a customer views the notice, or is otherwise given notice, before opening an account. The final rule also states that depending upon the manner in which an account is opened, a bank may post a notice in the lobby or on its website, include the notice on its account applications, or use any other form of oral or written notice. In addition, the final rule includes sample language that, if appropriate, will be deemed adequate notice to a bank's

customers when provided in accordance with the requirements of this final rule.

*Section 103.121(b)(6) Reliance on Another Financial Institution.* Many commenters urged that the final rule permit a bank to rely on a third party to perform elements of the bank's CIP. For example, some commenters asked that the final rule clarify that a bank may use a third party service provider to perform tasks and keep records. Other commenters recommended that the rule should permit a third party to verify the identity of the bank's customer in indirect lending arrangements, for example, where a car dealer acting as agent of the bank extends a loan to a customer or where a mortgage broker acts on a bank's behalf. Some commenters urged that the final rule be modified to more broadly permit financial institutions to share customer identification and verification duties with other financial institutions so as to avoid each institution having to undertake duplicative customer identification efforts. Some of these commenters suggested that a bank be permitted to allocate its responsibility to verify the customer's identity by contract with another financial institution as permitted in the proposed rule for broker-dealers.

Other commenters requested that the final rule permit the CIP obligations to be performed initially by only one financial institution if a customer has different accounts with different affiliates. These commenters noted that it is common for a customer to maintain several different accounts with a financial institution and its affiliates. The same customer, for example, may have a credit card account with one affiliate, a home mortgage with another affiliate, and a brokerage account with a broker-dealer affiliate. The commenters urged that a bank be permitted to rely on customer identification and verification performed by an affiliate because it would be superfluous and unnecessarily burdensome to subject the same customer to substantially similar customer identification and verification procedures on multiple occasions. Furthermore, those commenters urged Treasury and the Agencies to allow a bank to rely on an affiliate in order to reduce the substantial costs of maintaining duplicative records regarding identity verification under the recordkeeping provisions of the rule.

Treasury and the Agencies recognize that there may be circumstances where a bank should be able to rely on the performance by another financial institution of some or all of the elements of the bank's CIP. Therefore, the final rule provides that a bank's CIP may