

include procedures specifying when the bank will rely on the performance by another financial institution (including an affiliate) of any procedures of the bank's CIP and thereby satisfy the bank's obligations under the rule. Reliance is permitted if a customer of the bank is opening, or has opened, an account or has established a similar banking or business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions.

In order for a bank to rely on the other financial institution, such reliance must be reasonable under the circumstances, and the other financial institution must be subject to a rule implementing the anti-money laundering compliance program requirements of 31 U.S.C. 5318(h) and be regulated by a Federal functional regulator. The other financial institution also must enter into a contract requiring it to certify annually to the bank that it has implemented its anti-money laundering program and that it will perform (or its agent will perform) the specified requirements of the bank's CIP. The contract and certification will provide a standard means for a bank to demonstrate the extent to which it is relying on another institution to perform its CIP, and that the institution has in fact agreed to perform those functions. If it is not clear from these documents, a bank must be able to otherwise demonstrate when it is relying on another institution to perform its CIP with respect to a particular customer.

The bank will not be held responsible for the failure of the other financial institution to adequately fulfill the bank's CIP responsibilities, provided the bank can establish that its reliance was reasonable and that it has obtained the requisite contracts and certifications. Treasury and the Agencies emphasize that the bank and the other financial institution upon which it relies must satisfy all of these conditions set forth in the rule. If they do not, then the bank remains solely responsible for applying its own CIP to each customer in accordance with this regulation.

All of the Federal functional regulators are adopting comparable provisions in their respective regulations to permit such reliance. Furthermore, the Federal functional regulators expect to share information and to cooperate with each other to determine whether the institutions subject to their jurisdiction are in compliance with the conditions of the reliance provision of this final rule.

The final rule issued here does not affect a bank's authority to contract for services to be performed by a third party

either on or off the bank's premises. Thus, for example, a bank may contract with a third party service provider to keep its records even when the bank does not act under the reliance provision set forth in the regulation. However, Treasury and the Agencies note that the performance of these services for Federally regulated banks<sup>33</sup> will be subject to regulation and examination by the Agencies under other applicable laws and regulations. See, e.g., 12 U.S.C. 1867.

The final rule also does not alter a bank's authority to use an agent to perform services on its behalf. Therefore, a bank is permitted to arrange for a car dealer or mortgage broker, acting as its agent in connection with a loan, to verify the identity of its customer. However, as with any other responsibility performed by an agent, and in contrast to the reliance provision in the rule, the bank ultimately is responsible for that agent's compliance with the requirements of this final rule.

**Section 103.121(c) Exemptions.** The proposed rule provided that the appropriate Federal functional regulator, with the concurrence of Treasury, may by order or regulation exempt any bank or type of account from the requirements of this section. The proposal stated that, in issuing such exemptions, the Federal functional regulator and Treasury shall consider whether the exemption is consistent with the purposes of the BSA, consistent with safe and sound banking, and in the public interest. The proposal stated that the Federal functional regulator and Treasury also may consider other necessary and appropriate factors.

There were a number of comments suggesting that various types of accounts be exempted from the final rule. For example, several commenters suggested that accounts of Federal, state, and local governmental entities, public companies, and correspondent banks be exempted from the final rule. One commenter suggested that student loan programs be exempted from the rule because current safeguards are sufficient to verify the identity of student loan borrowers. Another commenter suggested that small trust companies and limited purpose banks that provide trust services be exempted from the rule, because such entities are more local in operation, would be burdened

by the rule, and have fewer employees to ensure compliance. Yet another commenter suggested that the NCUA exempt credit unions from the CIP requirements.

Any suggested exemptions that Treasury and the Agencies have determined to be appropriate are incorporated into the definitions of "account" and "customer" for the reasons described above. The exemption provision of the final rule is essentially adopted as proposed with respect to banks that have a Federal functional regulator. Because the final rule will also apply to certain banks that do not have a Federal functional regulator, a new provision has been added to make clear that Treasury alone will make all determinations regarding exemptions for these institutions.

**Section 103.121(d) Other Information Requirements Unaffected.** The proposal provided that nothing in § 103.121 shall be construed to relieve a bank of its obligations to obtain, verify, or maintain information in connection with an account or transaction that is required by another provision in part 103. For example, if an account is opened with a deposit of more than \$10,000 in cash, the bank opening the account must comply with the customer identification requirements in § 103.121, as well as with the provisions of § 103.22, which require that certain information concerning the transaction be reported by filing a Currency Transaction Report (CTR). There were no comments on this provision. Therefore, Treasury and the Agencies have adopted this provision generally as proposed, except that it has been clarified to provide that nothing in § 103.121 should be construed to relieve a bank of any of its obligations, including its obligations to obtain, verify, or maintain information in connection with an account or transaction that is required by another provision in part 103.

### III. Conforming Amendments to 31 CFR 103.34

Section 103.34(a) sets forth customer identification requirements when certain types of deposit accounts are opened. Together with the proposed rule implementing section 326, Treasury, on its own authority, proposed deleting 31 CFR 103.34(a) for the following reasons.

First, the preamble for the proposal explained that Treasury regards the requirements of §§ 103.34(a)(1) and (2) as inconsistent with the intent and purpose of section 326 of the Act and incompatible with proposed section 103.121. Generally §§ 103.34(a)(1) and (2) require a bank, within 30 days after

<sup>33</sup> Because it lacks the specific statutory authority to regulate and examine service providers, NCUA, as a matter of safety and soundness, will require credit unions to document that their service providers fully comply with this regulation and with the credit union's customer identification program.