

certain deposit accounts are opened, to secure and maintain a record of the taxpayer identification number of the customer involved. If the bank is unable to obtain the taxpayer identification number within 30 days (or a longer time if the person has applied for a taxpayer identification number), it need take no further action under § 103.34 concerning the account if it maintains a list of the names, addresses, and account numbers of the persons for which it was unable to secure taxpayer identification numbers, and provides that information to Treasury upon request. In the case of a non-resident alien, the bank is required to record the person's passport number or a description of some other government document used to determine identification. These requirements conflicted with those in proposed § 103.121 which required a bank to obtain the name, address, date of birth and an identification number from any person seeking to open a new account.

Second, § 103.34(a)(3) currently provides that a bank need not obtain a taxpayer identification number with respect to specified categories of persons³⁴ opening certain deposit accounts. Proposed § 103.121 did not exempt any persons from the CIP requirements. Treasury requested comment on whether any of the exemptions in § 103.34(a)(3) should apply in light of the intent and purpose of section 326 of the Act and the requirements of proposed § 103.121.

Third, § 103.34(a)(4) also provides that IRS rules shall determine whose number shall be obtained in the case of multiple account holders. In the preamble that accompanied its proposal, Treasury stated that this provision is

inconsistent with section 326 of the Act, which requires that banks verify the identity of "any" person seeking to open an account.

In addition, Treasury proposed deleting § 103.34(b)(1) which requires a bank to keep "any notations, if such are normally made, of specific identifying information verifying the identity of the signer [who has signature authority over an account] (such as a driver's license number or credit card number)." Treasury stated that the quoted language in § 103.34(b)(1) is inconsistent with the proposed requirements of § 103.121. For this reason, Treasury, under its own authority, proposed to delete the quoted language.

Few comments were received regarding the proposed deletion of these provisions. Some commenters agreed that § 103.34(a) should be deleted if proposed § 103.121 were adopted. One commenter suggested that § 103.34(a) should be revised to achieve the objectives of the section 326 of the Act. One commenter representing a military bank requested continuance of the exemption for agencies and instrumentalities of the Federal government that will permit exemption of commissaries, exchanges and various military organizations. Another commenter requested maintenance of the exemption for government entities, court funds, unincorporated units of tax-exempt organizations, and school thrift programs.

Treasury has determined that given the more comprehensive requirements of the final version of § 103.121, there is no longer a need for § 103.34 (a). A number of the exemptions formerly in § 103.34(a) have now been added to § 103.121. Other exemptions conflict with the language and intent of section 326 of the Act and thus were not adopted in the final rule. While § 103.34(a) will no longer be needed once the final rule is fully effective, withdrawing the provision before October 1, 2003, would create a gap period during which banks would not be subject to a rule under the BSA requiring a customer to be identified when opening an account. Because Treasury and the Agencies do not believe such a gap period would be appropriate, the final rule—rather than withdrawing § 103.34(a)—amends the section to cut off its applicability on October 1, 2003, when § 103.121 becomes fully effective.³⁵

³⁵ Appropriate conforming amendments are made to §§ 103.34(b)(11) and (12) to add a cross-reference to the Internal Revenue Code regarding the rules for determining what constitutes a taxpayer identification number.

By contrast, Treasury no longer believes that it is necessary to delete the quoted language in § 103.34(b), which requires a bank to keep "any notations, if such are normally made, of specific identifying information verifying the identity of [a person with signature authority over an account] (such as a driver's license number or credit card number)." The definition of "customer" in the final version of § 103.121 no longer includes a signatory on an account. Therefore, § 103.121 and § 103.34(b)(1) are not inconsistent and the records required to be kept in accordance with § 103.34(b)(1) will still have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, and to protect against international terrorism. Therefore, the proposal to delete the quoted language in § 103.34(b)(1) is not adopted as proposed.

IV. Technical Amendment to 31 CFR 103.11(j)

Section 103.11(j), which defines the term "deposit account," contains an obsolete reference to the definition of "transaction account," which is defined in § 103.11(hh). Under its own authority, Treasury proposed to correct this reference. There were no comments on this proposed technical correction. Therefore, it is adopted as proposed.

V. Regulatory Analysis

A. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), an agency must either prepare a Final Regulatory Flexibility Analysis (FRFA) for a final rule or certify that the final rule will not have a significant economic impact on a substantial number of small entities.³⁶ See 5 U.S.C. 604 and 605(b).

Treasury and the Agencies have reviewed the impact of this final rule on small banks. Treasury and the Agencies certify that the final rule will not have a significant economic impact on a substantial number of small entities.

First, Treasury and the Agencies believe that banks already have implemented prudential business practices and anti-money laundering

³⁶ The RFA defines the term "small entity" in 5 U.S.C. 601 by reference to the definitions published by the Small Business Administration (SBA). The SBA has defined a "small entity" for banking purposes as a bank or savings institution with less than \$150 million in assets. See 13 CFR 121.201. The NCUA defines "small credit union" as those under \$1 million in assets. Interpretive Ruling and Policy Statement No. 87-2, Developing and Reviewing Government Regulations (52 FR 35231, September 18, 1987).

³⁴ The exemption applies to (i) agencies and instrumentalities of Federal, State, local, or foreign governments; (ii) judges, public officials, or clerks of courts of record as custodians of funds in controversy or under the control of the court; (iii) aliens who are ambassadors; ministers; career diplomatic or consular officers; naval, military, or other attaches of foreign embassies and legations; and members of their immediate families; (iv) aliens who are accredited representatives of certain international organizations, and their immediate families; (v) aliens temporarily residing in the United States for a period not to exceed 180 days; (vi) aliens not engaged in a trade or business in the United States who are attending a recognized college or university, or any training program supervised or conducted by an agency of the Federal Government; (vii) unincorporated subordinate units of a tax exempt central organization that are covered by a group exemption letter; (viii) a person under 18 years of age, with respect to an account opened as part of a school thrift savings program, provided the annual interest is less than \$10; (ix) a person opening a Christmas club, vacation club, or similar installment savings program, provided the annual interest is less than \$10; and (x) non-resident aliens who are not engaged in a trade or business in the United States.