

programs that include most of the procedures that a CIP must contain under this final rule. Banks generally undertake extensive measures to verify the identity of their customers as a matter of good business practice. In addition, Federally regulated banks already must have anti-money laundering programs that include procedures for identification, verification, and documentation of customer information.³⁷

Second, although the final rule contains several requirements that will be new to banks we anticipate that the costs of implementing these requirements will not be economically significant. For example, the recordkeeping requirements in the final rule may impose some costs on banks to the extent that the information that must be maintained is not already collected and retained.³⁸ Treasury and the Agencies believe that the compliance burden is minimized for banks, including small banks, because the final rule vests a bank with the discretion to design and implement appropriate recordkeeping procedures, including allowing banks to maintain electronic records in lieu of (or in combination with) paper records.

The section of the final rule that requires banks to check lists of known and suspected terrorists and terrorist organizations and to follow Federal agency directives in connection with the lists is also a new requirement that will impose nominal burden, once Treasury and the Agencies publish lists that banks must consult. However, no such lists have been issued to date. Moreover, banks already must have procedures to satisfy other similar requirements. For instance, banks already have to ensure that they do not engage in transactions involving designated foreign countries, foreign nationals, and other entities prohibited under OFAC rules. See 31 CFR part 500. We also understand that many banks, including small banks, use electronic search tools to check lists³⁹ and already use identity verification software, both as part of their customer due diligence obligations under existing

BSA compliance program requirements and to detect fraud.

The notice provisions of the rule also are new. However, they are very flexible and, as written, should impose only minimal costs. The final rule permits a bank to satisfy the notice requirement by choosing from a variety of low-cost measures, such as posting a sign in the lobby or on its website, by adding it to an account statement, or using any other form of written or oral notice. In addition, the amount of time that a bank will need to develop its notices will be minimal as the final rule now contains a sample notice.

Treasury and the Agencies believe that the flexibility incorporated into the final rule will permit each bank to tailor its CIP to fit its own size and needs. In this regard, Treasury and the Agencies believe that expenditures associated with establishing and implementing a CIP will be commensurate with the size of a bank. If a bank is small, the burden to comply with the proposed rule should be *de minimis*.

Most commenters on the proposed rule stated that Treasury and the Agencies had underestimated the burden imposed by the proposed rule. They highlighted aspects of the proposal that they maintained would have imposed excessive burdens and would have required banks to alter their current practices. Most comments focused on the proposed provisions requiring banks to verify the identity of signatories on accounts, to keep copies of documents used to verify a customer's identity, and to retain identity verification records for five years after an account is closed.

In drafting the final rule, Treasury and the Agencies have either eliminated or minimized the most significant burdens identified by commenters. In response to commenters, for example, the final rule eliminates signatories from the definition of "customer," no longer requires a bank to keep copies of documents used to verify a customer's identity, and reduces the universe of records that must be kept for five years after an account is closed. Treasury and the Agencies have taken other steps that significantly reduce the scope of the rule and burdens of the rule. Many of these burden-reducing actions are described in the Paperwork Reduction Act discussion below.⁴⁰ As a result of

these changes, the final rule is far more flexible and less burdensome than the proposed rule while still fulfilling the statutory mandates enumerated in section 326 of the Act.

Finally, Treasury and the Agencies did consider whether it would be appropriate to exempt small banks from the requirements of the rule. We do not believe that an exemption for small banks is appropriate, given the flexibility built into the rule to account for, among other things, the differing sizes and resources of banks, as well as the importance of the statutory goals and mandate of section 326. Money laundering can occur in small banks as well as large banks.

B. Paperwork Reduction Act

Certain provisions of the final rule contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. Treasury submitted the final rule to the OMB for review in accordance with 44 U.S.C. 3507(d). The OMB has approved the collection of information requirements in today's rule under control number 1506-0026.

that a bank must obtain a physical and a mailing address from a customer opening an account. Under the final rule, the bank is only required to obtain a physical address.

- A new provision that permits a bank to rely on another financial institution to perform its CIP under certain conditions. This provision allows financial institutions that share a customer to share customer identification and verification obligations and to reduce the cost of maintaining duplicative records required by the recordkeeping provisions of the final rule.

- A revised provision that extends to customers who are individuals the exception that permits a bank to open an account for a customer that has applied for, but has not received, a taxpayer identification number.

- A new exemption for credit card accounts from the requirement that a bank obtain identifying information from the customer prior to opening an account. In connection with credit card accounts, a bank is permitted to obtain identifying information from a third party source prior to extending credit.

- A clarification stating that the government will provide lists of known or suspected terrorists and terrorist organizations to banks. Banks will not be required to seek out this information. In addition, the rule now states that the bank may determine whether a customer appears on the list within a reasonable time after the account is opened, unless it is required to do so earlier by another Federal law, regulation, or directive.

- A transition period that permits banks a period of several months to comply with the final rule.

³⁷ See footnote 10.

³⁸ See, e.g., identification and verification of customers in connection with each share or deposit account opened (31 CFR 103.34).

³⁹ We believe that most banks will use technology rather than manual methods to check lists. OFAC lists are generally incorporated into bank software and, in response to bank inquiries, Treasury and the Agencies have made clear that banks are permitted to share the lists they receive pursuant to section 314 of the Act with their service providers. We expect that any lists provided under section 326 of the Act will also be provided under the same conditions.

⁴⁰ In addition to the burden-reducing measures discussed in the Paperwork Reduction Act discussion, other changes include:

- A clarification that a bank must verify the customer's identity using the identifying information obtained. The proposed rule would have required the bank to verify all identifying information. The elimination of the requirement