

Collection of Information Under the Proposed Rule

The proposed rule applied only to a financial institution that is a “bank” as defined in 31 CFR 103.11(c),⁴¹ and any foreign branch of an insured bank. The proposed rule required each bank to establish a written CIP that must include recordkeeping procedures (proposed § 103.121(b)(3)) and procedures for providing customers with notice that the bank is requesting information to verify their identity (proposed § 103.121(b)(5)).

The proposed rule required a bank to maintain a record of (1) the identifying information provided by the customer, the type of identification document(s) reviewed, if any, the identification number of the document(s), and a copy of the identification document(s); (2) the means and results of any additional measures undertaken to verify the identity of the customer; and (3) the resolution of any discrepancy in the identifying information obtained. It also required these records to be maintained at the bank for five years after the date the account is closed (proposed § 103.121(b)(3)).

The proposed rule also required a bank to give its customers “adequate notice” of the identity verification procedures (proposed § 103.121(b)(5)). The proposed rule stated that a bank could satisfy the notice requirement by posting a sign in the lobby or providing customers with any other form of written or oral notice.

Collection of Information Under the Final Rule

The final rule, like the proposed rule, requires banks to implement reasonable procedures to (1) maintain records of the information used to verify a customer's identity, and (2) provide notice of these procedures to customers. These recordkeeping and disclosure requirements are required under section 326 of the Act. However, the final rule greatly reduces the paperwork burden attributable to these requirements, as described below.

The final rule also contains a new recordkeeping provision permitting a bank to rely on another financial institution to perform some or all its CIP, under certain circumstances. Among other things, the other financial institution must provide the bank with 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.

Response to Comments Received

We received approximately 500 comments on the proposed rule. Most of the commenters specifically mentioned the recordkeeping burden associated with the proposed rule. Some commenters also asked Treasury and the Agencies to clarify the meaning of “adequate notice” and requested that a sample notice be provided in the final rule.

Only a few commenters provided burden estimates of additional burden hours that would result from the proposed rule. However, these burden estimates did not necessarily focus on the recordkeeping and disclosure requirements in the proposal and ranged from 200 extra hours per year to 9,000 additional hours. Treasury and the Agencies believe that the final rule substantially addresses the concerns of the commenters. Specific concerns about paperwork burden have been addressed as follows:

First, the recordkeeping and disclosure burden are minimized in the final rule because Treasury and the Agencies reduced the entire scope of the final rule, by:

- Narrowing and clarifying the scope of “account.” The final rule specifically excludes accounts that (1) a bank acquires through an acquisition, merger, purchase of assets, or assumption of liabilities from a third party, and (2) accounts opened for the purpose of participating in an employee benefit plan established pursuant to the Employee Retirement Income Security Act of 1974. It also specifically excludes wire transfers, check cashing, and the sale of travelers checks, and any other product or service that does not lead to a “formal banking relationship” from the scope of the rule;

- Narrowing the definition of “bank” covered by the rule to exclude a bank's foreign branches; and

- Limiting and clarifying who is a “customer” for purposes of the final rule. The final rule now defines “customer” as “a person that opens a new account” making clear that a person who does not receive banking services, such as a person whose deposit or loan application is denied, is not a customer. The definition of customer also excludes signatories from the definition of “customer.” Moreover, the final rule excludes from the definition of “customer” the following readily-identifiable entities: A financial institution regulated by a Federal functional regulator; a bank regulated by a state bank regulator; and governmental

agencies and instrumentalities and companies that are publicly traded (*i.e.*, entities described in § 103.22(d)(2)(ii)–(iv)). The final rule also excludes existing customers of the bank, provided that the bank has a reasonable belief that it knows the true identity of the person.⁴²

Second, recordkeeping burden was further reduced by:

- Eliminating the requirement that a bank keep copies of any document that it relied upon in order to verify the identity of the customer and substituting a requirement that a bank's records need only include “a description” of any document that it relied upon in order to verify the identity of the customer. The final rule also clarifies that the records need only include “a description” of the methods and results of any measure undertaken to verify the identity of the customer, and of the resolution of any substantive discrepancy discovered when verifying the identifying information obtained, rather than any documents generated in connection with these measures; and

- Reducing the length of time that records must be kept. The final rule requires that identifying information be kept for five years after the date the account is closed (or for credit card accounts, five years after the account is closed or becomes dormant). All other records may be kept for five years after the account is opened.

Third, disclosure burden was reduced by providing sample language that, if appropriate and properly provided, will be deemed adequate notice to a bank's customer. Disclosure burden also was reduced by clarifying the term “adequate notice.”

Treasury and the Agencies believe that little additional burden is imposed as a result of the recordkeeping requirements outlined in section 103.121(b)(3), because the type of recordkeeping required by the final rule is a usual and customary business practice. In addition, banks already must keep similar records to comply with existing regulations in 31 CFR part 103 (*see, e.g.*, 31 CFR 103.34, requiring certain records for each deposit or share account opened).

Treasury and the Agencies believe that nominal burden is associated with the disclosure requirement outlined in § 103.121(b)(5). This section contains a sample notice that if appropriate and

⁴¹ This definition includes banks, thrifts, and credit unions.

⁴² The proposed rule stated that the identity of an existing customer would not need to be verified if the bank (1) had previously verified the customer's identity in accordance with procedures consistent with the proposed rule, and (2) continues to have a reasonable belief that it knows the true identity of the customer.