

Section 103.131(b)(2)(i) Customer Information Required

The proposed rule would have required a mutual fund's CIP to require the fund to obtain certain identifying information about each customer, including, at a minimum: (1) Names; (2) dates of birth, for natural persons; (3) certain addresses;⁴⁸ and (4) certain identification numbers.⁴⁹ The proposed rule further stated that in certain circumstances a mutual fund should obtain additional identifying information, and that the CIP should set forth guidelines regarding those circumstances and the additional information that should be obtained.⁵⁰

Commenters expressed some concerns about this aspect of the proposal. Two commenters objected to the proposed requirement to obtain more than one address from a customer. Two commenters pointed out that a non-U.S. person may not have any of the specified identification numbers. One commenter recommended that the rule permit a mutual fund to obtain the foreign equivalent of a taxpayer identification number from non-U.S. persons, or a number and country of issuance of any government-issued document evidencing nationality or residence, without the requirement of a photograph or similar safeguard, from non-U.S. entities. Two commenters argued that the final rule should provide financial institutions with flexibility to determine what information to obtain, using a risk-based approach.

We are adopting the customer information provisions substantially as proposed, with changes to accommodate individuals who may not have physical addresses. Prior to opening an account, a mutual fund must obtain, at a minimum, a customer's (1) name; (2) date of birth, for an individual; (3) address; and (4) identification number.⁵¹ The address must be (1) for an individual, a residential or business street address, or for an individual who does not have a residential or business street address, an Army Post Office or

Fleet Post Office box number, or the residential or business street address of next of kin or another contact individual; or (2) for a person other than an individual, a principal place of business, local office or other physical location.⁵²

We are adopting the identification number requirement substantially as proposed. For a customer that is a U.S. person, the identification number is a taxpayer identification number (social security number, individual taxpayer identification number, or employer identification number). For a customer that is not a U.S. person, the identification number is one or more of the following: a taxpayer identification number, passport number and country of issuance, alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.⁵³ This provision provides a mutual fund with some flexibility to choose among a variety of identification numbers that it may accept from a non-U.S. person.⁵⁴ However, the identifying information the mutual fund accepts must permit the fund to establish a reasonable belief that it knows the identity of the customer.⁵⁵

The proposed rule included an exception from the requirement to obtain a taxpayer identification number from a customer opening a new account. The exception would have allowed a mutual fund to open an account for a person that has applied for, but has not yet received, an employer identification number (EIN).⁵⁶ We are adopting an

expanded version of this exception in the final rule. As proposed, the exception was limited to persons that are not natural persons.⁵⁷ On further consideration, we have determined that it is appropriate to expand the exception to include natural persons who have applied for, but have not received, a taxpayer identification number.⁵⁸ We have also modified the exception to reduce the recordkeeping burden for mutual funds. The proposed rule would have required the mutual fund to retain a copy of the customer's application for a taxpayer identification number. The final rule permits the fund to exercise discretion to determine how to confirm that a customer has filed an application.⁵⁹

Section 103.131(b)(2)(ii) Customer Verification

We proposed to require that a mutual fund's CIP include procedures for verifying the identity of customers, to the extent reasonable and practicable, using the information obtained under the rule.⁶⁰ We also proposed to require such verification to occur within a reasonable time before or after the customer's account is opened or the customer is granted authority to effect transactions with respect to an account.⁶¹ The proposed rule stated that a mutual fund need not verify each piece of identifying information if it is able to form a reasonable belief that it knows the customer's identity after verifying only certain of the information.⁶² The proposed rule also stated that the flexibility to undertake verification within a reasonable time must be exercised in a reasonable manner, that verifications too far in advance may become stale and verifications too long after the fact may provide opportunities to launder money while verification is pending, and that the appropriate amount of time may depend on the type of account opened, whether the customer opens the account

⁵² Section 103.131(b)(2)(i)(A)(3).

⁵³ Section 103.131(b)(2)(i)(A)(4).

⁵⁴ The rule provides this flexibility because there is no uniform identification number that non-U.S. persons would be able to provide to a mutual fund. See Treasury Department, "A Report to Congress in Accordance with Section 326(b) of the USA PATRIOT Act," October 21, 2002.

⁵⁵ We emphasize that the rule neither endorses nor prohibits a mutual fund from accepting information from particular types of identification documents issued by foreign governments. The mutual fund must determine, based upon appropriate risk factors, including those discussed above, whether the information presented by a customer is reliable. We recognize that a foreign business or enterprise may not have a taxpayer identification number or any other number from a government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard. Therefore the final rule notes that when opening an account for such a customer, the mutual fund must request alternative government-issued documentation certifying the existence of the business or enterprise.

⁵⁶ Proposed § 103.131(c)(2). This position is analogous to that in regulations issued by the Internal Revenue Service (IRS) concerning "awaiting-TIN [taxpayer identification number] certificates." The IRS permits a taxpayer to furnish

an "awaiting-TIN certificate" in lieu of a taxpayer identification number to exempt the taxpayer from the withholding of taxes owed on reportable payments (*i.e.* interest and dividends) on certain accounts. See 26 CFR 31.3406(g)-3.

⁵⁷ In the proposed rule, we explained that the exception was for businesses that may need to open a mutual fund account before they receive an EIN from the Internal Revenue Service. Proposed rule, *supra* note 1, Section II.C.

⁵⁸ Section 103.131(b)(2)(i)(B).

⁵⁹ The mutual fund's CIP must include procedures to confirm that the application was filed before the person opens the account and obtain the taxpayer identification number within a reasonable period of time after the account is opened. Section 103.131(b)(2)(i)(B).

⁶⁰ Proposed § 103.131(d).

⁶¹ *Id.*

⁶² Proposed rule, *supra* note 1, Section II.D.

⁴⁸ Proposed § 103.131(c)(1)(iii). We proposed to require funds to obtain residence and mailing addresses (if different) for a natural person, or principal place of business and mailing address (if different) for a person other than a natural person.

⁴⁹ Proposed § 103.131(c)(1)(iv). We proposed to require funds to obtain: (1) for a customer that is a U.S. person, a taxpayer identification number, or (2) for a customer that is not a U.S. person, a taxpayer identification number, passport number and country of issuance, alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

⁵⁰ Proposed rule, *supra* note 1, Section II.C.

⁵¹ Section 103.131(b)(2)(i)(A).