

representatives of the mutual fund industry, that this recordkeeping requirement will cost \$13.3 million annually.¹³⁶

IV. Final Regulatory Flexibility Analysis

Treasury and the Commission are sensitive to the impact our rules may impose on small entities. Congress enacted the Regulatory Flexibility Act¹³⁷ to address concerns related to the effects of agency rules on small entities. Treasury and the Commission believed that the proposed rule likely would not have a "significant economic impact on a substantial number of small entities."¹³⁸ First, the economic impact on small entities should not be significant because most small entities are likely to have a relatively small number of accounts, and thus compliance should not impose a significant economic impact. Second, the economic impact on mutual funds, including small entities, is imposed by the statute itself, and not by the rule. Treasury and the Commission sought comment on whether the proposed rule would have a significant economic impact on a substantial number of small entities and whether the costs are imposed by the statute itself and not the proposed rule. Treasury and the Commission did not receive any comments in response to this request.

While Treasury and the Commission believed that the proposed rule likely would not have a significant economic impact on a substantial number of small entities, we prepared an Initial Regulatory Flexibility Analysis that was published in the proposed rule. Therefore, a Final Regulatory Flexibility Analysis has been prepared for this final rule in accordance with 5 U.S.C. 604.

A. Need for and Objectives of the Rule

Section 326 requires Treasury and the Commission jointly to issue a regulation setting forth minimum standards for mutual funds and their customers regarding the identities of customers that will apply in connection with the opening of an account at a mutual fund.¹³⁹

The purpose of section 326, and the regulations promulgated thereunder, is to make it easier to prevent, detect, and prosecute money laundering and the financing of terrorism. In issuing the final rule, Treasury and the Commission are seeking to fulfill their statutorily mandated responsibilities under section 326 and to achieve its important purpose.

The objective of the final rule is to make it easier to prevent, detect, and prosecute money laundering and the financing of terrorism. The rule seeks to achieve this goal by specifying the information mutual funds must obtain from or about customers that can be used to verify the identity of the customers. This will make it more difficult for persons to use false identities to establish customer relationships with mutual funds for the purposes of laundering money or moving funds to effectuate illegal activities, such as financing terrorism.

B. Significant Issues Raised by Public Comment

In the proposed rule, Treasury and the Commission specifically requested public comments on any aspect of the IRFA, as well as the number of small entities that might be affected by the proposed rule. The agencies received no comments on the IRFA.

C. Small Entities Subject to the Rule

A small business or organization (collectively, "small entity") for purposes of the Regulatory Flexibility Act, is a small entity if the fund, together with other funds in the same group of related funds, has net assets of \$50 million or less as of the end of its most recent fiscal year.¹⁴⁰ Of approximately 3,060 registered mutual funds, approximately 158 are small entities. These 158 small entities are divided into approximately 154 fund families.¹⁴¹ As discussed above in Section III, in most cases, a single customer identification program will be

developed and used by all of the mutual funds in a family of funds.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The rule requires a mutual fund to adopt a written CIP that, at a minimum, includes each of the following: (1) Risk-based procedures for verifying the identity of each customer, to the extent reasonable and practicable;¹⁴² (2) procedures for maintaining records of all information obtained under its customer identity verification procedures, (3) procedures for determining whether a customer appears on any list of known or suspected terrorists or terrorist organizations issued by the federal government and designated by Treasury, and (4) procedures for providing notice to customers.

As noted above, the rule is not expected to have a significant economic impact on a substantial number of small entities. Commission staff estimates that developing a CIP will require approximately 50 hours of each fund or fund family developing a CIP, at a cost of approximately \$3,810,¹⁴³ and that systems modification will entail approximately 655 hours at a cost of \$40,610 to each fund or fund family.¹⁴⁴

Although small entities will also incur ongoing costs, the Commission expects that they will not have a significant economic impact. For each new account, a fund will require what we estimate to be 1–4 minutes for collecting customer information, 5–10 minutes for verifying customer information, 1–4 minutes for resolution of discrepancies in customer information, half a minute for comparison to government lists, and 2 minutes for record retention, each at a cost of approximately \$25 per hour. Small entities are likely to have a relatively small number of accounts; therefore, they will incur the ongoing costs of individual customer identifications relatively infrequently.

E. Agency Action To Minimize Effect on Small Entities

Treasury and the Commission considered significant alternatives to the proposed rule that would accomplish the stated objective, while minimizing any significant adverse impact on small

¹³⁶ The staff estimates that it will take a data entry clerk approximately two minutes per customer to maintain the records required by the rule. The staff assumes that for most mutual fund accounts performance of this requirement will be automated. The staff estimates that the cost of this requirement will be \$.83 per customer ($\frac{1}{30}$ hour \times \$25 per hour (estimated cost per hour of data entry)). We estimate the aggregate annual cost of this requirement to be \$13.3 million (\$.83 per customer \times 16 million new accounts per year).

¹³⁷ 5 U.S.C. 601 *et seq.*

¹³⁸ 5 U.S.C. 605(b).

¹³⁹ As discussed previously, section 326 provides that such regulations, at a minimum, must require

mutual funds to implement, and customers to comply with, reasonable procedures for—(1) verifying the identity of any person seeking to open an account to the extent reasonable and practicable; (2) maintaining records of the information used to verify a person's identity, including name, address, and other identifying information; and (3) consulting lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency to determine whether a person seeking to open an account appears on any such list.

¹⁴⁰ Rule 0–10 [17 CFR 27.0–10].

¹⁴¹ The estimates of the number of registered mutual funds that are small entities and of the number of fund families are based on figures compiled by the Commission staff from outside databases.

¹⁴² These procedures must specify the identifying information that the mutual fund will obtain with respect to each customer, such information to include, at a minimum, name, date of birth (for an individual), street address, and identification number.

¹⁴³ See note 131 *supra* regarding the cost of developing a CIP.

¹⁴⁴ See note 132 *supra* regarding the cost of systems modifications.