

entities. In connection with the proposed rule, we considered the following alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources of small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

The final rule provides for substantial flexibility in how each mutual fund may meet its requirements. This flexibility is designed to account for differences between mutual funds, including size. Nonetheless, Treasury and the Commission did consider the alternatives described above. Treasury and the Commission believe that the alternative approaches to minimize the adverse impact of the rule on small entities are not consistent with the statutory mandate of section 326. In addition, Treasury and the Commission do not believe that an exemption for small mutual funds is appropriate, given the flexibility built into the rule to account for, among other things, the differing sizes and resources of mutual funds, as well as the importance of the statutory goals and mandate of section 326. Money laundering can occur in small firms as well as large firms.

V. Paperwork Reduction Act

Certain provisions of the final rule contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995.¹⁴⁵ An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Treasury submitted the final rule to the Office of Management and Budget ("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 1506-0033.

In the proposed rule Treasury and the Commission estimated the paperwork burden that would be imposed by the rule and sought comments on the estimates. None of the commenters specifically addressed the paperwork burden associated with the rule.

A. Collection of Information Under the Final Rule

The final rule contains recordkeeping and disclosure requirements that are subject to the Paperwork Reduction Act

of 1995. Like the proposed rule, the final rule requires mutual funds to (1) maintain records of the information used to verify customers' identities and (2) provide notice to customers that information they supply may be used to verify their identities. These recordkeeping and disclosure requirements are required under section 326 of the Act. The final rule also contains a new recordkeeping provision—a mutual fund that relies on another financial institution to perform some or all of the elements of its CIP must obtain and retain an annual certification from the financial institution that it has implemented its anti-money laundering program, and that it will perform (or its agent will perform) the specified requirements of the mutual fund's CIP.

B. Proposed Use of the Information

Section 326 of the Act requires Treasury and the Commission jointly to issue a regulation setting forth minimum standards for mutual funds to verify the identities of their customers. Furthermore, section 326 provides that the regulations must, at a minimum, require mutual funds to implement 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 the person's identity, including name, address, and other identifying information; and (3) determining whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency.

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 final rule requires each mutual fund to establish a written CIP that must include recordkeeping procedures and procedures for providing customers with notice that the mutual fund is requesting information to verify their identity. The final rule requires a mutual fund to maintain a record of (1) the identifying information provided by the customer, the type of identification document(s) reviewed, if any, and the identification number of the 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.

The final rule also requires each mutual fund to give customers "adequate notice" of the identity verification procedures. Depending on how an account is opened, a mutual fund may satisfy this disclosure requirement by providing customers with any form of written or oral notice. Accordingly, a mutual fund may choose among a variety of methods of providing adequate notice and may select the least burdensome method, given the circumstances under which customers seek to open new accounts.

The final rule permits a mutual fund to rely on performance of elements of its CIP by other financial institutions. The required contract and certification will provide mutual fund examiners with a standard means of ascertaining that the other financial institution has agreed to undertake the mutual fund's CIP requirements.

C. Respondents

The final rule will apply to approximately 3,060 mutual fund companies that are registered with the Commission.¹⁴⁶

D. Total Annual Reporting and Recordkeeping Burden

1. Recordkeeping

The requirement to make and maintain records related to the CIP will be an annual burden. As adopted, the rule differs from the proposed rule in its requirements for the retention of records of information obtained under customer identification procedures. Whereas the proposed rule required that such records be retained until five years after the date the account of a customer is closed or the grant of authority to effect transactions with respect to an account is revoked, the final rule has two different times for the start of the five-year period for record retention: (1) The date the account is closed, for identifying information about the customer, and (2) the date the record is made, for descriptions of any documents relied on for verification of identity, of the methods and results of any measures undertaken to verify customer identity and of the resolution of any substantive discrepancy discovered when verifying identifying information.

We believe that most mutual funds already retain certain of the records required by the new rule as a matter of good business practice, but that the

¹⁴⁵ 44 U.S.C. 3501 *et seq.*

¹⁴⁶ This estimate is based on figures compiled by the Commission staff from Commission filings.