

ACT) Act of 2001 (Pub. L. 107–56) (the Act). Title III of the Act made a number of amendments to the anti-money laundering provisions of the Bank Secrecy Act (BSA), which are codified in subchapter II of chapter 53 of title 31, United States Code.<sup>1</sup> These amendments are intended to promote the prevention, detection, and prosecution of money laundering and the financing of terrorism.

Section 326 of the Act added a new subsection (l) to 31 U.S.C. 5318 of the BSA that requires the Secretary of the Treasury (Secretary) to prescribe regulations “setting forth the minimum standards for financial institutions and their customers regarding the identity of the customer that shall apply in connection with the opening of an account at a financial institution.” For any financial institution engaged in financial activities described in section 4(k) of the Bank Holding Company Act of 1956 (section 4(k) institutions), the Secretary is required to prescribe the regulations issued under section 326 jointly with the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, the Securities and Exchange Commission, and the Commodity Futures Trading Commission (collectively, the federal functional regulators).

Section 326 of the Act provides that the regulations must require, at a minimum, financial institutions 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. In prescribing these regulations, section 326 of the Act directs the Secretary to take into consideration the various types of accounts maintained by various types of financial institutions, the various methods of opening accounts, and the various types of identifying information available.

<sup>1</sup> Regulations implementing the BSA appear at 31 CFR part 103. The authority of the Secretary of the Treasury to administer the BSA and its implementing regulations has been delegated to the Director of the Financial Crimes Enforcement Network (FinCEN).

On May 9, 2003, the Department of the Treasury (Treasury), through the Financial Crimes Enforcement Network (FinCEN), together with the federal functional regulators, published final rules implementing section 326.<sup>2</sup> These regulations require Federally regulated banks, securities broker-dealers, mutual funds, and futures commission merchants and introducing brokers to establish reasonable procedures for the identification and verification of new account holders. Although separate rules were issued for the various types of financial institutions, the substantive requirements of the rules are intended to be the same.

The final rules require financial institutions to develop a customer identification program (“CIP”) that includes risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable. Among other things, the CIP must enable the financial institution to form a reasonable belief that it knows the true identity of the customer. Financial institutions must develop their CIP to minimize the relevant risks, including those presented by the types of accounts maintained by the institution, the various methods of opening accounts, the types of identifying information available, as well as the financial institution’s size, location, and type of business or customer base.

The rules implementing section 326 became effective on June 9, 2003, although financial institutions have until October 1, 2003 to come into compliance.

## II. Request for Comments

The CIP implemented pursuant to the section 326 final rules will form an integral part of a financial institution’s efforts to detect and prevent money laundering and the financing of terrorism. Moreover, the information collected and maintained by financial institutions is designed to provide an effective audit trail should an investigation be conducted. Since publishing the final regulations, concerns have been raised about two provisions relating to recordkeeping and the acceptance of certain forms of identification. As a result of these concerns, and as part of Treasury’s continuing efforts to ensure that BSA regulations strike the appropriate balance between the burdens imposed on the financial system and the prevention of money laundering and the

financing of terrorism, Treasury seeks additional input on the two provisions.

### A. Recordkeeping Requirement

The final rules implementing section 326 permit financial institutions to verify customer identity through both documentary and non-documentary means. In proposed rules issued in July of 2002, Treasury and the federal functional regulators included a new requirement that, when a financial institution relies on a document—such as an identification card—to verify identity, the financial institution must make and maintain a photocopy of that document.<sup>3</sup> Virtually all of the substantial number of comments relating to this provision were critical of the requirement.<sup>4</sup> In light of these comments and the terms of section 326 of the Act, Treasury and the federal functional regulators eliminated the photocopy requirement in the final rule, instead requiring financial institutions to make and maintain a record of the description of any document upon which the financial institution relies to verify customer identity. The description must include the type of document, any identification number contained in the document, the place of issuance, and, if any, the date of issuance and expiration date. While financial institutions are not required to maintain photocopies of identification documents relied upon in all cases, Treasury has noted publicly that, so long as it is consistent with any applicable laws, financial institutions may want to retain a photocopy of identification documents in instances where risk factors are present.

Treasury seeks additional comment on whether and under what circumstances financial institutions should be required to make and maintain photocopies of identification

<sup>3</sup> See, e.g., 67 FR 48290, 48299 (proposed section 103.121(b)(3)(B)).

<sup>4</sup> Commenters raised several arguments against the photocopy requirement, including: (1) The difficulty and burden of storing and retrieving copies of documents; (2) the fact that many kinds of identification documents, particularly some new driver’s licenses, have security features that prevent them from being copied legibly; (3) the difficulty of safeguarding copies, which could facilitate identity theft; (4) the fact that this requirement would substantially deviate from current banking practice and would violate certain state laws; (5) the difficulty for banks offering credit card accounts through retailers, which require the customer to provide identifying documents at the point of sale, in complying with such a requirement, especially given the reduced risks of money-laundering and the financing of terrorism through retail store credit cards; and (6) the potential for claims of unlawful discrimination, especially since the banking regulators have discouraged the practice of retaining photocopies when extending credit.

<sup>2</sup> See 68 FR 25089–25162. In addition to the joint rules, FinCEN also issued separately a rule applicable to various state-chartered banks lacking a federal functional regulator.