

ACTION: Disposition of comments and termination of inquiry.

SUMMARY: The Department of the Treasury is announcing the results of its July 1, 2003, Notice of Inquiry that sought comment on two aspects of the final rules issued pursuant to section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (the Act). Following a review of comments and a careful analysis of the issues, Treasury has determined that no changes to the final rules are warranted.

FOR FURTHER INFORMATION CONTACT: Office of the General Counsel, (202) 622-1927.

SUPPLEMENTARY INFORMATION:

I. Background

On May 9, 2003, the Department of the Treasury (Treasury), through the Financial Crimes Enforcement Network (FinCEN), together with the federal functional regulators, jointly issued final rules implementing section 326 of the Act.¹ The final rules require 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. These rules became effective on June 9, 2003, although financial institutions have until October 1, 2003 to come into compliance.

On July 1, 2003, Treasury published a Notice of Inquiry seeking additional comment on two discrete aspects of the final rules: (i) Whether and under what circumstances financial institutions should be required to retain photocopies of identification documents relied on to verify customer identity; and (ii) whether there are situations when the regulations should preclude reliance on certain forms of foreign government-issued identification to verify customer identity.²

II. Summary of Comments

Treasury received over 34,000 comments in response to the Notice of

Inquiry.³ All comments have been reviewed. Treasury received comments from a wide variety of individuals and entities, including members of Congress, the Department of Justice, representatives and officials of State and local governments, the financial services industry (including the banking, securities, mutual fund, and insurance industries), faith-based organizations, advocacy groups, and interested citizens.

The Photocopy Issue: Treasury received approximately 10,700 comments relating to the question of whether the final rules should require financial institutions to make and retain photocopies of identification documents relied upon to verify identity. As issued, the final regulations do not require financial institutions to photocopy identification documents. Although it is not dispositive of the issue, Treasury notes that the great majority of those submitting comments, nearly 90 percent, did not believe that the rules should be amended to require financial institutions to make and retain photocopies of identification documents.

The Foreign Identification Documents Issue: Treasury received approximately 24,000 comments relating to the question of whether the final rules should preclude financial institutions from relying on certain forms of identification issued by a foreign government. As issued, the final rules neither endorse nor preclude reliance on particular forms of foreign government issued identification. Virtually all comments were directed toward encouraging Treasury either to allow financial institutions to accept, or to preclude them from accepting, the Mexican consular identification document, the *Matricula Consular*. Indeed, many of the comments addressed questions of immigration policy, rather than the security of such documents. Again, although not dispositive of the issue, the vast majority of those submitting comments, nearly 83 percent, did not believe that the final rules should be changed to preclude reliance on certain forms of identification issued by a foreign government.

III. Resolution

Treasury issued the Notice of Inquiry to enhance the administrative record with respect to the two issues outlined above. The addition of over 34,000

comments has done precisely that. Despite the volume of comments received, the comments presented no new arguments or information relative to the requirements of the final rules that Treasury and the financial regulators did not already consider in developing the final rules.

Treasury remains persuaded, as it was at the conclusion of the rulemaking process, that requiring photocopies of identification documents is not an appropriate requirement to impose. While individual financial institutions may well determine that it is prudent to photocopy identification documents in some instances, an across-the-board requirement is inconsistent with the risk-based approach of the final rules and is not warranted.

The divergence of opinion concerning the relative security of consular identification cards demonstrates the difficulties associated with drafting a rule that would purport to specify "unacceptable" documents. And, given the wide array of identity documents available, the security and reliability of which is constantly changing, it makes little sense from a regulatory perspective to specify individual types of documents that cannot be used within the regulation itself. Any such list would inevitably be quickly out of date and may provide financial institutions with an unwarranted sense of security about documents that are not prohibited. Treasury is committed to protecting the financial system from abuse by those seeking to finance terrorism or commit financial crimes. This commitment includes providing financial institutions with information relating to the security and reliability of identification cards. Treasury will use appropriate methods, both formal and informal, to ensure that such information is collected and shared with the financial community to assist them in verifying the identity of their customers.

IV. Compliance Deadline

Numerous commenters from the financial community requested that Treasury extend the October 1, 2003 deadline for complying with the customer identification regulations in light of the Notice of Inquiry. The implementation deadline will not be extended. Treasury expects all financial institutions covered by the customer identification regulations to have their customer identification program drafted and approved by October 1, 2003.

¹ See 68 FR 25089-25162. The Federal functional regulators include 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. In addition to the joint rules, FinCEN also issued separately a rule applicable to various state chartered institutions lacking a Federal functional regulator.

² 68 FR 39039.

³ Treasury received over 27,000 comment letters, e-mails, and web postings. Many of the comment letters offered separate opinions on the two issues, thus raising the total number of comments received on the two issues to over 34,000.