



Federal Register

Friday,
May 9, 2003

Part II

Department of the Treasury

31 CFR Part 103

Office of the Comptroller of the
Currency

12 CFR Part 21

Office of Thrift Supervision

12 CFR Part 563

Federal Reserve System

12 CFR Parts 208 and 211

Federal Deposit Insurance Corporation

12 CFR Part 326

National Credit Union Administration

12 CFR Part 748

Commodity Futures Trading Commission

17 CFR Parts 1 and 42

Securities and Exchange Commission

17 CFR Part 270 and 31 CFR Part 103

Transactions and Customer Identification
Programs; Final Rules and Proposed Rule

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563

[Docket No. 2003-16]

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 748

RIN 3133

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506-AA31

Customer Identification Programs for Banks, Savings Associations, Credit Unions and Certain Non-Federally Regulated Banks

AGENCIES: The Financial Crimes Enforcement Network, Treasury; Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Office of Thrift Supervision, Treasury; National Credit Union Administration.

ACTION: Joint final rule.

SUMMARY: The Department of the Treasury, through the Financial Crimes Enforcement Network (FinCEN), together with the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA) (collectively, the Agencies), have jointly adopted a final rule to implement section 326 of the Uniting and Strengthening America by Providing Appropriate Tools

This final regulation applies to banks, savings associations, credit unions, private banks, and trust companies.

DATES: *Effective Date:* This rule is effective June 9, 2003.

Compliance Date: Each bank must comply with this final rule by October 1, 2003.

FOR FURTHER INFORMATION CONTACT:

OCC: Office of the Chief Counsel at (202) 874-3295.

Board: Enforcement and Special Investigations Sections at (202) 452-5235, (202) 728-5829, or (202) 452-2961.

FDIC: Special Activities Section, Division of Supervision and Consumer Protection, and Legal Division at (202) 898-3671.

OTS: Compliance Policy Division at (202) 906-6012.

NCUA: Office of General Counsel at (703) 518-6540; or Office of Examination and Insurance at (703) 518-6360.

Treasury: Office of the Chief Counsel (FinCEN) at (703) 905-3590; Office of the General Counsel (Treasury) at (202) 622-1927; or the Office of the Assistant General Counsel for Banking & Finance (Treasury) at (202) 622-0480.

SUPPLEMENTARY INFORMATION:

I. Background

A. Section 326 of the USA PATRIOT Act

On October 26, 2001, President Bush signed into law the USA PATRIOT Act, Pub. L. 107-56. Title III of the Act, captioned "International Money Laundering Abatement and Anti-terrorist Financing Act of 2001," adds several new provisions to the Bank Secrecy Act (BSA), 31 U.S.C. 5311 *et seq.* These provisions are intended to facilitate the prevention, detection, and prosecution of international money laundering and the financing of terrorism.

companies, travel agents, pawnbrokers, dealers in precious metals, check-cashers, casinos, and telegraph companies, among many others. See 31 U.S.C. 5312(a)(2) and (c)(1)(A).

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 each of the Agencies, the SEC, and the CFTC (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, the Secretary is directed 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.

B. Overview of Comments Received

On July 23, 2002, Treasury and the Agencies published a joint notice of proposed rulemaking in the **Federal Register** (67 FR 48290) applicable to (a) any financial institution defined as a "bank" in 31 CFR 103.11(c)¹ and

¹ This definition includes banks, savings associations, credit unions, Edge Act and Agreement corporations, and branches and agencies of foreign banks.

Here is the information regarding why government employees (aka: treasurers) are not obligated to provide their personal social security numbers and drivers license numbers when opening township/county/city accounts, along with the very lengthy full documents and details (below is an excerpt):

This problem usually occurs with small local banks and credit unions that do not fully understand the Customer Identification Program requirements under section 326 of the USA Patriot Act. Their specific problem comes with identifying the customer. The treasurer is not the customer, the township/county/city is.

The final rules issued jointly by Dept of Treasury, Federal Reserve System, FDIC, and the NCUA specifically exempt governmental entities from the definition of customers. The final rules state:

In addition to defining who is a "customer," the final rule contains a list of entities that will not be deemed "customers." Many commenters questioned why a bank should be required to verify the identity of a government agency or instrumentality opening a new account, or of a publicly-traded company that is subject to SEC reporting requirements. Consistent with these and other comments urging that the final rule focus on requiring verification of the identity of customers that present a higher risk of not being properly identified, the final rule excludes from the definition of "customer" the following readily identifiable entities: a financial institution regulated by a Federal functional regulator; a bank regulated by a state bank regulator; and governmental agencies and instrumentalities, and companies that are publicly traded described in § 103.22(d)(2)(ii)-(iv)

§ 103.121 of the law states:

(ii) Customer does not include:

(A) A financial institution regulated by a Federal functional regulator or a bank regulated by a state bank regulator;

(B) A person described in §103.22(d)(2)(ii) through (iv); or

(C) A person that has an existing account with the bank, provided that the bank has a reasonable belief that it knows the true identity of the person.

§103.22(d)(2)(ii) through (iv);

(ii) A department or agency of the United States, of any State, or of any political subdivision of any State;

(iii) Any entity established under the laws of the United States, of any State, or of any political subdivision of any State, or under an interstate compact between two or more States, that exercises governmental authority on behalf of the United States or any such State or political subdivision;

(iv) Any entity, other than a bank, whose common stock or analogous equity interests are listed on the New York Stock Exchange or the American Stock Exchange or whose common stock or analogous equity interests have been designated as a Nasdaq National Market Security listed on the Nasdaq Stock Market (except stock or interests listed under the separate "Nasdaq Small-Cap Issues" heading), provided that, for purposes of this paragraph (d)(2)(iv), a person that is a financial institution, other than a bank, is an exempt person only to the extent of its domestic operations;