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# Financial Institutions Group Newsletter

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## Treasury to Re-examine Final Customer Identification Rules Under Section 326 of the USA Patriot Act

**O**n July 1, 2003, the Treasury Department issued a “notice of inquiry” soliciting comments on certain provisions of the final Customer Identification Program (“CIP”) rules, issued in May 2003 under Section 326 of the USA Patriot Act. Treasury has decided – even though the CIP rules are “final” – to solicit comments on two discrete customer identification issues:

- whether and under what circumstances financial institutions should be required to retain photocopies of identification documents relied on to verify customer identity; and
- whether there are situations when the rules should preclude reliance on certain forms of foreign government issued identification to verify a customer’s identity.

Treasury’s unusual decision to solicit comments after publication of final rules reportedly is a result of comments from House Judiciary Committee Chairman F. James Sensenbrenner, Jr. (R-WI). Chairman Sensenbrenner has expressed concern regarding the final CIP rules’ treatment of the two issues addressed by Treasury’s notice.

Treasury’s notice states that comments must be submitted on or before July 31, 2003, after which time Treasury will determine whether amendments to the final rules are warranted. The notice also states

that, notwithstanding the notice of inquiry, financial institutions must be in compliance with the final CIP rules by the previously announced October 1, 2003 compliance deadline.

### Background

Section 326 of the Patriot Act directed Treasury to issue rules requiring financial institutions to implement “reasonable procedures” to: (i) verify the identity of a person seeking to open an account, “to the extent reasonable and practicable”; (ii) maintain records of the information used to verify a person’s identity; and (iii) consult lists of terrorists provided by the government to determine whether a person seeking to open an account appears on any such list.

Pursuant to Section 326’s mandate, in July 2002, Treasury – with the relevant federal functional regulators – issued a set of parallel proposed CIP rules that apply to banks and other depository institutions, broker-dealers, mutual funds, and certain futures related businesses. Many aspects of the proposed rules drew industry opposition as being overly burdensome, significant departures from current industry practice, and unnecessary in the fight against money laundering and terrorist financing.

Treasury significantly revised the rules to address the industry’s concerns. In many regards,

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Treasury's final rules give financial institutions discretion to fashion risk-based identification programs to determine the identity of each customer who opens an account. Under the final rules, financial institutions must: (i) collect certain minimum customer identification information from each customer; (ii) utilize risk-based measures to verify each customer's identity; (iii) record customer identification information and the verification methods and results; (iv) provide notice to customers that the financial institution will seek identification information; and (v) compare customer identification information with government provided lists (not yet created) of suspected terrorists.<sup>1</sup>

### **Recordkeeping Requirement**

In July 2002, when Treasury originally proposed CIP rules, the agency sought to require financial institutions to retain a copy of any document relied on to verify a customer's identity. Industry objected and, in the final CIP rules, Treasury eliminated the photocopy requirement.

Treasury's final CIP rule requires banks and other financial institutions relying on documents to verify a customer's identity to maintain a record describing the document on which it relies. That record must include the type of document, any identification number contained in it, the place of issuance and, if any, the dates of issuance and expiration.

In a letter to the Office of Homeland Security, House Judiciary Chairman James Sensenbrenner objected to this change, arguing that the lack of photocopied documents will "eliminate a critical path of evidence essential to successful investigation and prosecution of . . . crimes."<sup>2</sup> Chairman Sensenbrenner went further to state that the elimination of the photocopy requirement "is contrary to the intent of the [Patriot Act]."

In apparent response to Chairman Sensenbrenner's objection, Treasury has re-opened the issue of retaining photocopies of identification documents. Specifically, the agency is soliciting comment on the following issues:

- Should the CIP rules require financial institutions to make and maintain a photocopy of identification documents on which a financial institution relies to verify identity in all cases?
- Should the rules identify specific instances in which photocopies of documents relied on must be made and maintained?
- Should the regulations provide guidance to financial institutions concerning risk factors indicating when photocopying identification documents relied on may be appropriate?

### **Identification Numbers for Foreign Individuals**

The CIP rules require financial institutions to obtain identification numbers from their customers. For U.S. persons and entities, that number is a social security number or tax identification number.

The final rules give financial institutions authority to accept, for non-U.S. persons, a number that may be: (1) a U.S. taxpayer identification number; (2) a passport number and country of issuance; (3) an alien identification card number; or (4) a number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard. Any of the four is adequate so long as the identification information obtained is sufficient for the financial institution to form a reasonable belief that it knows the true identity of the non-U.S. customer.

Chairman Sensenbrenner raised concerns about these requirements for non-U.S. persons. Specifically, he argued that non-U.S. persons should be required to present a passport and noted that other foreign government-issued documentation lack the safeguards that exist for passports. Of greatest concern to the Chairman are "consular identification cards," a controversial form of identification issued by foreign governments to their nationals residing in the United States.

<sup>1</sup> For a more complete discussion of the customer identification rules, see the [WCP Financial Institutions Group Newsletter dated May 23, 2003](#).

<sup>2</sup> Letter from F. James Sensenbrenner, Jr., Chairman, House Judiciary Committee, to Dr. Richard Falkenrath, Assistant Director, the Homeland Security Council (May 23, 2003).

In response, Treasury has sought comments on whether there are situations in which the CIP rules should preclude banks and other financial institutions from using certain forms of foreign government-issued identification for customer identification purposes. Treasury seeks comments on a series of questions:

- Should the regulations preclude financial institutions' reliance on certain forms of identification issued by certain foreign governments?
- Should the regulations require financial institutions to obtain a passport number from all customers who are non-U.S. citizens?
- What are the anticipated effects on non-U.S. citizens in the United States who are not required to have a passport?
- What are the anticipated effects on non-U.S. citizens who open accounts from abroad and, thus, are not required to have a passport?
- Is there sufficient empirical information to enable Treasury to assess the utility of the various forms of foreign-issued identification for purposes of accurately identifying the holder?

Financial institutions covered by the CIP rules are, and should be, concerned with these issues. Chairman Sensenbrenner has indicated that, in the absence of regulatory action, he will introduce legislation requiring the additional recordkeeping requirements and prohibiting financial institutions from relying on certain types of identification documents.

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