



## Compliance Related CIP Threads from Bankers Online.com

### CIP Hits Home

I thought I would share this story with you, a little personal experience on what we are all in for as CIP takes final effect.

My younger sister is single and lives in an apartment with 2 other roommates. Because of problems she had with past roommates, my sister has all of her mail going to a P.O. Box - her bank statement, credit card bills, etc. Since she is renting the apartment, there are no utilities in her name.

My sister is also "profoundly" deaf, and has been working a temp agency job for the last 18 months. Her old car became unreliable, and being a single young woman, she wanted something more dependable.

She did her research and found a good deal on a new economy car at a local dealership with 1.9% financing. She went in, negotiated the deal, signed the contract, and drove the car home. The dealership took a copy of my sister's drivers license.

HOWEVER, the dealership is now contacting my sister to tell her that the bank requires a second form of ID to verify her address - i.e. utility bill, bank statement, etc.

Okay - so her bank statements, etc., show a P.O. Box. There are no utility bills in her name. There is really nothing else that shows her name and the street address EXCEPT for the Drivers License. The Bank insists. It must have a second document to verify her address.

She's already sold her old car, and now she's afraid the dealer will reposses her new car unless she can come up with this second piece of paper.

Thank you John Ashcroft. My sister feels so much safer now.

I'll step off my soapbox. And of course, I'll help my sister anyway I can.

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Bonnie, does she have a lease with her name on it? Or magazines she receives? Anything at all that comes to her in the mail? Doctor's bills, etc.?

This is an example of what we will all be faced with.

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How about ordering a copy of her own credit report (my last one showed my last three addresses) and having it mailed to the apartment? Alternatively, ask the bank to mail her a letter at the apartment requesting the second piece of address verification and she can bring the letter back and hand it to them. (Yes, that does make the bank look stupid, but a lot of banks are going to look stupid to their customers over this.)

Does she have a voter registration card? Is there an organization she could join, from AAA to the library, that would send her a membership card?

[Boler's, please post any ideas you have. It would be nice to help Bonnie's sister and, as Kaybee notes, this is a preview of things to come. If this thread becomes a collaborative list of alternatives, it could be helpful to you too.]

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I just thought of another document that would help if this occurred where I live. In my "township", there is an occupancy tax. It is only \$14.50 a year, but every resident over the age of 18 is taxed and receives a bill in their name, including recent high school graduates! The local gov't knows the names of everyone who moves into local apartment complexes, home owners, etc. and gets you into their list. Something like this should certainly be acceptable as proof of your existence and address. Obviously they miss some people (like those who move in with someone else and are not listed officially anywhere) but for those officially recorded, you are in the records and can provide a copy of this tax bill as proof of residence.

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"Unintended consequences". Perhaps for the future a state issued ID would be in order. In some states they may not issue both an ID and a DL, but it may be some additional protection against a recurrence of this problem.

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These are all good ideas. Does she have a renters insurance policy? Could the Office Manager write a letter verifying that she is a resident? Has she requested maintenance whereby the maintenance man would leave a report of the service requested, the name of the person who requested it, the address of the unit and the work that was performed? I guess some of this might not be considered an acceptable "document" by the Bank's standards, but I'll keep thinking.

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### **Minors to Age of Majority**

Suppose a minor opens a savings account and the bank collects and verifies the information of the minor's parent. When the minor becomes an adult and opens a checking account, does the bank have to verify the minor's identity or can it exempt the minor as an existing customer? I think the bank should verify the minor's identity, but I do not see anything in the reg that specifically addresses this issue.

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The Reg is only triggered by a new account or service. Finally being old enough to vote (and buy beer in some states) doesn't trigger the Reg at all.

It's still a good practice to get a "legal" signature from the now-adult on any account agreements, but CIP doesn't require it.

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When the minor turns 18, we require him or the adult on the account to close the account & open a new account. If this is not your practice, then you could request the customer provide ID etc and if he did not - close the account. You would want at least minimal info on the minor, now adult individual. (you would probably only have a social for him, may not have a current address, would not have his signature on file and would not have a driver's license/state ID number on file)

Banks not wanting to CIP each new account are looking for ways to indicate on the system which has been CIP'd. This question would prompt the need to indicate who was CIP'd and allow the CSR to get a new ID some years later, if you were required to check that customer.

This is a hole but I agree that CIP doesn't require it and it is a hole of minimal risk. Add that CIP doesn't replace KYC/EDD and you should still be weary of transaction changes that would call alarm to the account later on.

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I think you would have to do the CIP routine when the minor=>major customer opens the new account unless you have already formed a reasonable belief as to his/her identity. You didn't do that when you opened the minor's account, you ID'd the parent. Just turning 18 would not trigger this but the opening of a new account COULD (unless you have that reasonable belief, etc.)

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I think you can easily call the minor/now adult an existing customer if you have had an account with them for some time. You have been sending statements to them. Contacting a customer is a type of non-documentary verification. That would satisfy it in most cases.

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### **Non-US Citizens and TINs**

I think I have confused myself on the requirements for a TIN for a non-US citizen.

What does your CIP require for or instead of a TIN/EIN for a non-US citizen?

The IRS states that an ITIN (individual taxpayer identification number) is not to be used for identification but only for tax filing purposes.

Is it okay per Sec 326 to open an account for a non-US citizen without a TIN or SS number?

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If they have any kind of a TIN (SSN, ITIN, EIN), use that as your required piece of information. If they don't have one of those, you can get (from 103.121(b)(i)(4)(i)) "...passport number and country of issuance; alien identification card number; or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard."

Now, you don't have to accept that "other government-issued document" or even the passport or green card as your documentary verification - you just need to get a "number" from one of those documents if you don't get a Taxpayer Identification Number.

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A couple of points -

- 1) The rules don't revolve around US Citizens they revolve around US Persons which is anyone that HAS a TIN (EIN, SSN, ITIN or TIN that has been applied for). Therefore if you're non-US person (your non-US citizen) doesn't have an ITIN you don't have to get one.
- 2) You DO have to get enough documentary evidence that you have a 'reasonable belief of the true identity (RBOTI) of the person. What that is will vary depending on your CIP and the specifics

of the situation. The reg's suggest that you use foreign government ID but I don't believe that is a requirement if the RBOTI is met.

Of course I don't know anything about this stuff... I'm just a security guy... but I have been known to play a lawyer on TV. Well.. ok... home video....

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Quote:  
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they revolve around US Persons which is anyone that HAS a TIN (EIN, SSN, ITIN or TIN that has been applied for)

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If you are talking about CIP for an individual, the definition of a U.S. person turns wholly on citizenship:

(7) U.S. person means:

(i) A United States citizen; or

(ii) A person other than an individual (such as a corporation, partnership, or trust), that is established or organized under the laws of a State or the United States.

As TISA's quote from the regulation clearly indicates, a non U.S. person may have a U.S. issued TIN including an ITIN or an SSN; having a U.S. issued number does not make an individual a U.S. person.

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You know, this really is an awkward issue. Under 103.121(a)(6), the definition of Taxpayer Identification Number refers to Sec. 6109 of the Internal Revenue Code (26 USC 6109). A close study of this section reveals only the mention of a Social Security Number (SSN) and an Employer Identification Number (EIN). Nowhere in this section is an Individual Taxpayer Identification Number (ITIN) mentioned.

What is odd is that the ITIN is available to those individuals who are not eligible for a SSN or an EIN. Those eligible for an ITIN would include persons such as a visiting professor engaging in a lecture series or perhaps an author who is a non-U.S. person that resides in a foreign company but publishes his works in the U.S. The purpose of their obtaining an ITIN would, of course, be to fulfill their U.S. income tax obligations.

However, the primary recipients of the ITIN are persons illegally residing in the U.S. Now, I don't want to get into the whole illegal immigration issue as this is not my point. My point is, though, that by accepting an ITIN it becomes very difficult to form a "reasonable belief" that you know the customer's true identity. The reason being that individuals here legally, whether from Mexico, Poland, Pakistan, Saudi Arabia or the Netherlands, have a vested interest in clouding their identity in the event their immigration status is discovered and they are subsequently deported because of the penalties they may receive for illegal re-entry.

This really does become even a more complicated issue with Treasury seemingly pushing foreign-issued ID while Congress is complaining that Treasury is not following their legislative mandate. It all becomes even more complicated with the FBI's announcement that certain foreign issued ID is prone to fraud and serves as breeder documents to obtain driver's licenses and purchase firearms.

What I really wish is that Congress or Treasury would come out and take a firm stand and be precise in what types of ID and tax ID numbers are acceptable. For the tax ID numbers anyway, it's not like there's a big selection of different types to decide on. As it stands now, we financial institutions bear the risk for accepting documents based on Treasury's imprecise descriptions in the final CIP rules.

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You are right, it is far more confusing than it needed to be. The CIP draftsmen acknowledged that several commenters had encouraged them to use the longstanding IRS definition of a "U.S. Person," but, citing wholly irrelevant factors, they decided to create this one.

The report which PATRIOT required of Treasury in connection with obtaining identification from non U.S. residents did no more than say it was a very confusing subject, but not their problem to resolve. The issue has been delegated to the banks to solve on a case by case basis.

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Quote:

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However, the primary recipients of the ITIN are persons illegally residing in the U.S.

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I don't understand how you come to that conclusion....

We have several customers who are spouses of people who are here legally on temporary work visas (H-1B, etc). Spouses who do not have work visas cannot get a SSN, but they are here legally on, for instance, H-4 visas, as dependents of the worker.

The spouses need an ITIN to be able to file their "married filing jointly" tax returns. We use ITINs frequently on accounts for the spouses in these cases.

And I'm sure there are probably other instances when someone who is here legally cannot get a SSN but can get an ITIN. Don't discount someone's identity just because they have an ITIN instead of a SSN.

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Ouch...here came a stinging reply! I must have hit a politically incorrect nerve. Perhaps I should provide a kinder, gentler clarification?

Quote:

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I don't understand how you come to that conclusion....

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Research, research, research...for starters, see: <http://www.cis.org/articles/2002/back1202.html>

Actually, there is so much out there on this topic that a person can spend hours and hours reading until they're sick of it.

Quote:

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Don't discount someone's identity just because they have an ITIN instead of a SSN.  
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Ouch again!

I think it is important to note that the very thing we should do, especially in relation to CIP and in forming the basis of a person's identity is to indeed discount the value of an ITIN as an identity document.

Contrary to the personal opinion of Ms. Tisa, this is specifically evidenced in the IRS's warning against using an ITIN as an identity document "outside of taxpayer purposes". In fact they offer the following two FAQ's, which uncoincidentally are on-point to this very subject:

What is the purpose of an ITIN?

IRS issues ITINs for tax processing only. ITINs are not intended to serve any other purpose.

ITINs:

Are not valid for identification outside the tax system.

Do not entitle the holder to Social Security benefits or the Earned Income Tax Credit (EITC).

Do not establish immigration status.

Do not grant the right to work in the U.S. Any individual who is eligible for legal employment in the U.S. must have an SSN.

Why are ITINs invalid for identification?

Since ITINs are strictly for tax processing, we do not need to apply the same standards as agencies that provide genuine identity certification. ITIN applicants are not required to apply in person; third parties can apply on their behalf; and we do not conduct background checks or further validate the authenticity of identity documents. ITINs do not prove identity outside the tax system, and should not be offered or accepted as identification for non-tax purposes.

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I've read Tisa's response a couple times and don't find where she suggested acceptance of the ITIN as an identity document. She challenged you directly on a point you made that was clearly overbroad and misleading, one that I should not have let pass.

Disagreements are productive only if they stay on topic.

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My comment wasn't meant as a "stinging reply". I'm sorry if it came across that way. It was only intended to relay an observation that the majority of ITINs that I see are from people who are here legally.

We don't use ITIN documents for identification - we don't accept SSA cards as ID for that matter, either - just for tax reporting. And now for the "required piece of information" under CIP.

The people we accept ITINs from also provide us with a current foreign passport, US entrance visa and unexpired I-94 Departure Record. (And yes, I know all about the "prevalence" of counterfeit entrance visas, so please don't start up that whole topic again...)

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Not trying to be completely contrary , but I disagree the statement was overly broad and misleading as it was made based on personal experience. We see an overwhelming number of ITINs without the supporting ID, such as the green cards or H1B's and the H2B's, etc. Subsequently, we have to turn these individuals away. It's probably a given that there will be more H1B's in, say, Silicon Valley or any other high tech areas than what you will have in Birmingham, Alabama, and you'll probably have more ITINs in both of those places than you will in Jeffersonville, Indiana. Perhaps this issue is all a matter of regional experience? In discussing this very issue with compliance peers in our market who accept the Matricula card to establish account relationships, I have been told the primary form of TIN that it used is an ITIN. In addition, I think it is important to point out that the U.S. issues about 300,000 H1B Visas annually and there are approximately 10,000,000 illegals in the country and for the illegals who are excellent planners an ITIN is a way to prove residency when it comes time for the declaration of amnesty.

In any event, Tisa's comment regarding non-working spouses of H1B workers and ITINs is very valid and should not be overlooked in formulating our CIP documentation requirements.

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### **Board Minutes reflecting approval of CIP**

When the Board approves my banks CIP this month, is it sufficient to just list something like "Baord approved CIP as proposed"... or do the minutes have to be more detailed.

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That's all we did, I gave it to them one week and the next week asked if there were any corrections, additions or deletions. It was recorded as approved as written. Gee I hope we are OK????

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### **Penalties for Failure to Comply with CIP Rules**

Our CIP policy went to the committee today in the first hurdle toward being presented to the BOD. One of the questions was what if we don't comply? I found provisions for penalties Under 31CFR103.57. Would failure to comply with CIP fall in this same area of (f) willful violation after 10/27/86 which is \$100,000 to \$25,000?

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CIP is part of BSA - so any BSA penalties can be applied toward CIP failures.

Also, consider that the adequacy of your Anti-Money Laundering program will be considered when you file an application to acquire or merge with another institution. CIP is part of the overall AML.

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I wanted to bring this back up to post another question. Has anyone had management balk at the CIP requirements? (I'm sure some have at least initially.) If so, does anyone have any materials

that they wouldn't mind sharing or posting that brought home the gravity of the situation. Just gathering information just in case. Thanks in advance for anything you can provide.

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We actually included this at the end of our BSA Policy that's going to the board:

Quote:

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- Violations of BSA requirements may hold civil and / or criminal penalties, such as:
- Failure to maintain compliance procedures may cause the imposition of civil penalties of up to a maximum of \$1000 per day for each day of noncompliance.
  - A penalty of not more than \$500 per violation can be imposed if the bank violates the recordkeeping or reporting requirements of the BSA.
  - Willful violations of the reporting and recordkeeping requirements may cause the imposition of civil penalties in an amount equivalent to that of the transaction (up to \$100,000) or \$25,000, whichever is greater.
  - The Money Laundering Control Act of 1986 has expanded this penalty to allow additional civil money penalties of up to \$50,000 if a financial institution engages in a pattern of negligent activity.
  - If a required CTR is not filed within 15 days, a \$10,000-per-day civil penalty may be imposed until it is filed.
  - Continued noncompliance can result in the issuance of a "Cease & Desist" order from the (insert your regulator here).
  - Any individual who willfully violates the structuring provisions may be fined not more than \$250,000 or imprisoned for not more than five (5) years, or both.
  - Any individual who willfully violates the structuring provisions while violating another federal law, or as part of a pattern of any illegal activity involving more than \$100,000 in a twelve-month period, may be fined not more than \$500,000 or imprisoned for not more than ten (10) years, or both.

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Kinda drives home the importance of complying with BSA...

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Thanks for the reply and the language. I may do something like this. That's the kind of "scared straight" language I was looking at.

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Our regulator (OCC) requested that we include the penalty language.

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### **CIP Preamble**

CIP Preamble - What is a "preamble" and where can I locate it on CIP? Any assistance or links provided is appreciated.

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The preamble is where the regulators go through a lengthy discussion of each section of the regulation, what was proposed, what commenters said, and what they eventually decided to do. It

proceeds the actual new rule. It can be extremely helpful in interpreting a regulation. Here's the Bank CIP. The preamble is everything up through page 75.

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Here's a link to the version of the final regulation originally published on the regulator's sites. Although it prints as 106 pages, the actual regulation does not begin until page 77. Most of what precedes it is the "preamble" or "supplementary information." It is basically a narrative explanation of what was in the proposed regulation, synopses of the comments received and a brief explanation of what the final reg says and why they chose that approach.

The preamble is neither law nor regulation, but it reflects the thinking of the people who actually wrote the regulation - in that respect, it is an invaluable resource.

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The "Preamble" is all the stuff before the actual Reg. The published section for CIP is about 25 pages long, but only about the last 5-6 pages are actual Reg language. The rest is all commentary and additional information.

For CIP, the entire reg can be found at BOL here:  
<http://www.bankersonline.com/topstory/fedreg/68FR25089.pdf>

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Thank you all for your responses. I had it all the time, and didn't even know it! I thought all the "Preamble" was just a bunch of whoey. Little did I realize how important it actually is.

Thank you again for the laymen's-language definition!

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## **ID Requirements**

Suppose the customer is appearing in person with two forms of primary ID,(i.e. a photo ID and Social Security Card) and has been living in our area for more than a year. Nothing seems out of the ordinary with this customer. In your opinion do we also need any non-documentary verification?

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My CIP would not require non-documentary verification in the instance you describe, however, it would also not preclude it. The reasoning for this is that the CIP rules require documentary, non-documentary or a combination of both. If, in your risk based procedures you believe that you know the customer's true identity based on the DL and SS card, or say by the DL and using a service such as ChexSystems then you've fulfilled your obligation under the rules. (By the way, accepting a DL and running the SSN through ChexSystems would be a combination of both the documentary and the non-documentary methods of ID verification.)

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You do not say whether or not you personally know the customer and, therefore, can validate the customer's identity. Otherwise, the FFIEC agencies' interpretation is that you "validate" the customer's (customers') identity (identities). When Muhammed Atta went through the airport, he had two forms of identification -- with pictures -- with a fraudulent social security number. The whole purpose in the Act's identification mandates is that institutions "validate" the information they are presented with by the prospective customer. The only way to really do this effectively is

to either conduct a credit check, which shows the name, SS# and address together; or to perform some type of LexisNexis type of search to reconcile the name, SS# and address. In your example, you've not conducted any type of meaningful validation processes -- at least that will hold up to the FDIC examiner who was most aggressive in making this point to our institution.

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What about the provision that we cannot give special treatment to new customers because we believe we know them? It says that "known to bank personnel" is subject to manipulation and therefore isn't good enough.

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The reference to Atta is a red herring. Yes, he apparently had bogus ID documents. But the CIP regulations do not require that you go beyond the documents presented if your risk-based CIP calls for a documentary verification. There is no requirement that your CIP include a non-documentary verification if ID documents appear in order and sufficiently support the ID information provided by the applicant. Given the apparently innocuous (at the time and without benefit of hindsight) nature of the accounts opened, non-documentary verification might not have been done. And there is definitely no requirement in the regulation to verify the authenticity of apparently authentic ID documents.

It's personal opinion, but I believe that most of the 9-11 terrorists would have passed current CIP procedures but for hindsight, and references to their bogus identities are convenient Monday-morning quarterbacking that fits nicely into the cheerleading (such as it is) for the §326 rules.

Might a non-documentary check have "flagged" Atta's bogus SSN? I don't know. An OFAC check would not have revealed anything at the time.

As for the "known to bank personnel" conundrum, it's true that we cannot waive any CIP requirement (such as documentary verification) based solely on an employee's knowledge of the customer. The manipulation thing is one reason; another is bank employee turnover. But a bank employee's knowledge of the customer's ID might (properly, I believe) weigh in a decision to go beyond documentary verification if it's optional in the bank's CIP.

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These CIP rules are nothing more than window dressing mandated by the federal government to make its citizens feel all cozy that they're doing something to prevent another 9/11. Fact is though that the CIP rules are a crock. If anything, they are barely more stringent than anything we all have had in place prior to 9/11! There are so many loopholes and exceptions that this program will only be effective for those persons (U.S. Citizens) who have established identities and credit reports and properties in the U.S. The Mohammed Atta's will continue to slip through. Heck, all they have to do is take their fake Matricula Consular card and a freakin ITIN to Bank of America, Wells Fargo, Chase, Citibank, etc. and they are in the system! How scary is that??? Even the FBI is warning that they can then go to those states that provide driver's licenses to Matricula Consular card holders and get themselves a dadgum driver's license. What do you think they can do with that??? Well what else, but buy firearms and ammo and camouflage, etc.

Like I said the CIP rules are nothing but a crock. The worst part is that certain banks, municipalities and states are paving the way for terrorist to establish a seemingly legitimate identity here and we the people are just going along like sheep. It is a certainty that there will be another attack. These people hate and despise us and they will hit us by taking advantage of our vulnerabilities and the CIP program is most likely at the top of their list!

(even if you don't agree with me, thanks for acknowledging my freedom of expression)

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From my comment letter on the Notice of Inquiry:

Only unbounded naiveté can support a belief that the current requirements of this regulation will be an impediment to those wanting to use the U.S. banking system for illegal purposes.

The proposed regulation was flawed, but had enough teeth to make a difference. The final regulation is no more than a nuisance to the financial institutions who must comply with it.

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### **Copying ID - Collaboration on Comments**

Please post any or all of your comment letter here so others can get ideas about what to say and how to say it. Feel free to cleanse identifying information and post anonymously if you think it appropriate, but remember your comment will be public information once it is filed.

Those using this resource should make their comments reflect their own perspective and analysis - please do not cut and paste verbiage developed by others into your comment. Communications that reflect the character of a form letter are justifiably given much less weight.

As a suggested point of etiquette, please preface any future BOL postings complaining about CIP with, "Hi, my name is [whatever] and I wrote a comment letter."

Background: Many regular BOL participants have expressed concern over Treasury's Notice of Inquiry and the potential that CIP regulations will be revised to require retaining copies of identification. Comments can be filed electronically on Treasury's web site , but must be filed prior to July 31.

Footnote 4 in the Notice of Inquiry notes the list of things financial institutions complained about in encouraging Treasury to eliminate the original requirement to copy identification. While it might seem pointless to raise them again, it appears to be necessary since the Notice of Inquiry indicates you should comment "...even if such views have been expressed previously in connection with the proposed rulemakings." Thus, do not hesitate to repeat criticisms you raised earlier.

Also, do not hesitate to add new criticisms. For example, Andy posted a letter from the American Association of Motor Vehicle Administrators in a recent thread that indicates currently existing security features would make some copies illegible. The expected proliferation of such security measures makes this a totally worthless exercise. Point that out.

On a personal note, I am not opposed to banks choosing to copy identification when they believe it is necessary and they have appropriate safeguards in place. I am opposed to forcing banks to do so when, in many cases, it will be of absolutely no value.

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### **Section 326 Notice of Inquiry: Recordkeeping**

This is a response to Treasury's Notice of Inquiry on requiring financial institutions to photocopy identification used to verify customer identity, thus revising final regulations issued under section 326 of the USA PATRIOT Act. As it appears the rulemaking process is being redirected by a single member of Congress, I am sending copies of this comment to my own representatives.

My perspective is that of an individual who has provided Bank Secrecy Act training to bankers and regulatory personnel since 1986. In the time since proposed regulations were issued under Section 326 of the USA PATRIOT Act, I have conducted dozens of live programs, telephone seminars and web casts on Customer Identification Programs (CIP's). They were attended by thousands of financial institution personnel. While noting that I spoke to them, it is more germane that I listened to them. Specifically, I listened to their comments on copying identification.

Under current regulations, financial institutions are not required to make copies of identification. They are only required to retain "a description" of any document used to verify customer identity.

Most of the approximately 500 comment letters on the proposed regulation voiced objections to copying identification. Those objections are cataloged in the Notice of Inquiry that requests relevant comments. There is no point in reiterating them here. Although those agencies holding subject matter expertise and charged by Congress with issuing interpretive regulations found them persuasive, those whose efforts generated this Notice of Inquiry clearly did not.

In any case, it is accurate to summarize those comments as indicating a requirement to keep copies of identification would impose significant operational burdens on many financial institutions. Requiring commenters to state their objections a second time or simply ignoring them altogether by revising the regulation reduces the comment process to a farce.

As the purpose of the regulation is the prevention of money laundering and terrorist financing in U.S. financial institutions, those encouraging this Inquiry must believe that "a copy" rather than "a description" of identification provides incremental value. There is no practical or logical basis for such a conclusion. Thus, I believe financial institutions should not be required to make photocopies of identification:

- at all times or
- in specific instances.

If a revised regulation tracks the third option mentioned, requiring financial institutions to evaluate copying as a risk based element of their CIP, it would imbed a logic fault. While copying identification is a preferred internal control for some financial institutions, there simply is no mitigation of risk of the bank's being used for illegal purposes attributable to the practice.

First, the current regulation does not require that financial institutions obtain any documentary evidence of identity. Depending on the type of account being opened and the method used to open it, customers are able to establish new accounts without providing documentary identification. A requirement to copy identification will not affect accounts opened in these circumstances – there is no identification to copy. So, the requirement will not affect all new accounts opened. (Just as water seeks the path of least resistance, if being required to keep copies of identification is seen as relatively burdensome, financial institutions will simply shift to alternative methods for verifying identity.)

Second, the identification requirements affect all "persons," individuals and non individuals. A requirement to copy identification cannot be issued in a vacuum on the assumption that it only applies to individuals. For example, a financial institution might obtain a driver's license from an individual. However, from a corporation, it might require a certified copy of articles of incorporation as evidence of identity. (In the case of the corporation, the regulation does not require financial institutions to obtain identification from account signatories; only the identity of the corporation must be verified.) Thus, a requirement that a financial institution retain copies of identification would apply to trust agreements, articles of incorporation, court orders, business licenses, etc. – virtually any document it accepts as proof of the customer's existence.

Third, the real issue is does a copy, as opposed to a description, add value to the process?

Presumably, verifying identity provides a means to locate those using financial institutions for illegal activity. Conversely, verifying identity also works as a deterrent. Knowing they will have to identify themselves, illegal actors will be reluctant to use U.S. financial institutions for illegal ends. Those observations are based on two assumptions 1) that individuals using financial institution accounts for illegal purposes use their real identities and 2) that business entities are readily traceable to the individuals involved. Neither assumption is supportable.

An individual can purchase false identification at venues ranging from a flea market to the Internet. Whether the individual's purpose is buying liquor while underage, writing bad checks or attacking the infrastructure of the United States, their total investment is probably less than \$75.

If an individual provides valid identification, it is the information, not the driver's license that provides a trail back to the perpetrator. A copy does not provide any additional information – it is surplusage.

Current regulations require the financial institution to retain information including the individual's:

- name,
- DOB,
- address and
- identifying number

as well as the "description" of the document, specifically the:

- type of document
- place of issuance,
- date of issuance and
- expiration date.

If an individual provides fraudulent identification, all of the above information is worthless. Even if it is retained in the financial institution's records, it provides no relevant information. Yet, if the financial institution had been required to make a photocopy as ingeniously considered here, the additional information the financial institution would have is the unknown person's:

- height,
- weight (I lied about mine and assume fraudsters would too),
- eye color and
- photograph about 3/4" square.

If the account is opened in person, that photograph supposedly matches the person's physical appearance at that time. If the account is not opened in person, it is unlikely that the photograph or physical characteristics recited on the fraudulent ID bear any physical resemblance to the person involved.

Even assuming that a photograph on the driver's license is of portrait quality and that the perpetrator did not alter his appearance prior to having it taken, is doubtful that law enforcement personnel can demonstrate that a black & white photocopy of a color photograph less than one inch square would be of measurable assistance to an investigation. (Those who believe otherwise should conduct some empirical research: ask your branch bank to make a copy of your driver's license and see if the resulting image is someone your mother would recognize.)

Even if copying did add value, financial institutions would be keeping thousands of copies on the outside chance that one of them might be requested by law enforcement. Of those copies requested, a minute percentage would be in connection with suspected money laundering or terrorist financing.

The true fallacy in using financial institutions for law enforcement purposes is that no cost justification is ever required – it is painless for regulators to mandate that financial institutions perform tasks law enforcement could never cost justify if the same activity were within their own budgeting process.

Those who would use a business entity for illegal purposes are not even put to the trouble of obtaining a false identity. They can establish a real entity much more easily. A corporation whose sole purpose is the conduct of illegal activity can be established in any state for a few hundred dollars. The original incorporators may have fraudulent individual identification, but it is certainly not necessary that they use it to set up the corporation – most corporations are established by mail. The corporation will be “real,” but its incorporators and principals will be unknown.

If the business is a “creature of statute;” e.g. corporation, LLC, limited partnership etc. and properly organized under state law, there is simply no reason for the financial institution to maintain copies. Documents for a bona fide corporation will be available at the Secretary of State’s Office in perpetuity. As the regulation does not require financial institutions to identify signatories on an entity’s accounts and states do not generally require identification from those establishing corporations, the “identity trail” ends at the Secretary of State’s office. A financial institution’s retention of a copy of the documents will not change that.

If identification offered is valid, a copy is simply not necessary. If identification offered is fraudulent, a copy simply does not provide any useful information.

Only unbounded naiveté can support a belief that the current requirements of this regulation will be an impediment to those wanting to use the U.S. banking system for illegal purposes. Requiring financial institutions to keep “a copy” rather than “a description” of the identification received is not cost justifiable and does not reduce deficiencies engrained in this statute and regulation.

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Is there some reason you are not commenting on the issue of foreign identification?  
This is actually more of an issue for us because of the tremendous political pressure being placed on banks in my area. I am commenting on both issues, but this foreign ID is a sticky situation, and I would like some input on how others are commenting on that. It seems as if we are caught between a rock and a hard place - if we don't say what we believe we may get stuck doing something that we so not believe is right, but if we do say something we are apt to have public interest groups with signage in the lobby of the main office demanding to see the president! (It is my understanding that these letters are a matter of public record - right?)  
Thanks,  
BC

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As you know, the Notice requires that comments on photocopying ID and acceptance of foreign identification be filed separately. I did file one on the latter, but am not certain it would be of much help to others - it did not focus on the Matricula. Basically, it says they left the banks an impossible task on accepting any foreign identification to verify identity. My tone in that one might be less than respectful, so I am a bit reluctant to offer it as a sample for others to follow. Yet, if anyone begins a separate thread for collaborating on those comments by posting their letter, I will post mine when I get back in town on Friday.

All comment letters become public information on receipt.

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Quote:

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The true fallacy in using financial institutions for law enforcement purposes is that no cost justification is ever required – it is

painless for regulators to mandate that financial institutions perform tasks law enforcement could never cost justify if the same activity were within their own budgeting process.

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I wrote a comment letter. I don't remember the exact wording but I commented on the fact that drivers license copies are not allowed in some states and that some state drivers license have security features that render a copy illegible, thus making the copies worthless.

---

Can I also say that the ABA e-mail this morning pointed out that only 150 financial institutions have responded to the call for comments. We've got to make our voices heard, as there is an organized campaign to get the regulation reopened.

This is the main part of our letter dealing with the copying of identification:

The Department of the Treasury has requested comment on three key questions regarding the retention of copies made of documents presented for identification, such as driver's licenses. We would like to take the opportunity to address the questions as they are set out in the publishing of the Notice of Inquiry.

"Should the regulations require financial institutions to make and maintain a photocopy of identification documents upon which the financial institution relies to verify identity in all cases?"

The regulations should not be amended to include this requirement. Several states prohibit the copying of driver's licenses and other states have included security measures in such documents to preclude useable copies being made. We are also extremely concerned that the retention of such documents will give rise to an increase in identity theft.

If the regulation were modified to include this requirement, an institution our size would be faced with two monumental challenges, significant increases in expenses and record storage. Accounts aren't always initiated in a bank lobby. For example, in most of our markets the Trust Administrator goes to the customer to set up the account. This is especially true when dealing with the elderly who do not drive, have limited movement capabilities or live in a rural community that would be some distance from a branch. To require the photocopying of identification documents would necessitate providing some type of portable copy machine or fax for each Trust Administrator. The alternatives would be to make arrangements for the individual to be transported to the nearest branch location to complete the account set up process, or simply not pursue these individuals as clients. Any of these scenarios would have an impact on the Trust Department's fee revenue and expenses.

Storing copies of these records was a major concern expressed in the initial comment period for the regulation, and it is still very valid. We have grave concerns about obtaining and maintaining such copies and realize that such a requirement will mean a substantial increase in our cost of doing business. In addition, we would need clarification about how examiners will view the maintenance of such copies in light of the Equal Credit Opportunity Act, and what will be required for remote applications, such as credit card accounts. These are customers that are rarely, if ever, seen in person, and requiring them to submit a copy of their driver's license is fairly impractical.

"Should the regulations identify specific instances in which photocopies of documents relied upon must be made and maintained?"

The regulation as printed on May 9, 2003, gave the financial institutions the opportunity to make decisions about their Customer Identification Program based on risk. To specify instances in

which photocopies must be made and maintained, the business decision has instead been pulled away from the business it ultimately affects. By nature, financial institutions are extremely aware of risk and conduct their business in a way to minimize it. We already apply many customer identification safeguards to protect our customers as well as our stability. In this light, we feel it unnecessary to issue specific instances in which photocopies must be made and maintained.

“Should the regulations provide guidance to financial institutions concerning risk factors indicating when photocopying identification documents relied upon may be appropriate?”

It is always helpful to receive guidance from the regulators. We only ask that if this approach is adopted, that it be viewed as guidance only and not as a requirement. If such guidance ever became a requirement, we would ask that notification be published in the Federal Register so we can assure compliance.

Thank you for the opportunity to comment on this issue.

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Midwest- You have excellent points. Can you estimate costs? This kind of input can be very persuasive. I always tried to guesstimate startup costs plus annual recurring costs. Our trade associations can take these numbers and scale them up to to represent the whole industry.

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That's a good point. We have not estimated costs, because just the idea of our \$13 billion dollar shop having to accommodate such a change is pretty overwhelming. I'll have to see what we can come up with, but I don't know if I'll have time to add it to the letter I wrote or not.

-----

We submitted our comments today, and I did add, on the issue of photocopying identification, we also included the point that if the photocopier breaks down, are we required to discontinue opening accounts until it's fixed or we get another one? This should be a concern even if your shop currently copies identification. If Uncle Sam now requires such action and your small branch with only one copier goes down, what will you do? Do you really want to turn someone away because your copier is broken, especially when they're likely to just hop down to another bank?

I didn't add this to our letter, so if someone wants to take it and submit it, that would be great. Some states allow for driver's license renewals in six year intervals. (Missouri is one of those states.) Will our customers look like the pictures? Highly unlikely, especially if you consider a young driver, getting her license at 16 and doesn't have to renew until she's 22, or people who change their appearance for reasons other than fraud, like weight gain or loss, those who are more "folically challenged" than they were when their license was initially obtained, etc.

Don't forget to get those comments submitted!

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We just filed our comment letters today, I think that a lot of banks have been trying to figure out what to say differently then what they said the first time. Here is our comment on the Matricula card - short and sweet.....

The Bank generally supports the final customer identification rule, as it permits each bank to tailor its customer identification program to the specific risks posed to the institution. The rule allows each institution to determine which forms of foreign issued identification documents it will accept. We support this flexible approach and encourage Treasury to continue to let individual banks

determine which documents will be acceptable. For example, the Bank will only accept the Matricula consular card when it is presented with an IRS issued ITIN number.

Critics of the Matricula consular and other foreign issued identification cards argue that bank personnel will have no way to discern or guarantee that an ID is legitimate, un-tampered with, or free from fraud. We would point out that these same weaknesses are prevalent in federal and state identification documents issued in the United States. Counterfeit drivers' licenses and fraudulent "breeder documents" such as birth certificates and social security cards are readily available over the Internet and on the underground market.

We believe that each institution should evaluate the various forms of foreign issued identification documents and should decide whether to accept those documents based on the types of accounts opened by the bank, the various methods of opening accounts, the other types of identifying information available, and the bank's size, location, and customer base. We strongly urge Treasury to leave the rule unchanged.

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Just heard from a reliable source that 4000 comments have been received - 200 from the financial services industry and 3800(!) from special interest groups supporting the changes. UGH Has everybody commented? Deadline is July 31!

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The ABA is also asking that you copy your comments to:

Your regulator

Chairman Sensenbrenner - [sensenbrenner@mail.house.gov](mailto:sensenbrenner@mail.house.gov)

Chairman Oxley - <http://oxley.house.gov/contact.asp>

Attorney General Ashcroft - [AskDOJ@usdoj.gov](mailto:AskDOJ@usdoj.gov)

ABA, John Byrne - [AskDOJ@usdoj.gov](mailto:AskDOJ@usdoj.gov)">[AskDOJ@usdoj.gov](mailto:AskDOJ@usdoj.gov)

ABA, John Byrne -

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Who are the special interest groups and are they commenting on the recordkeeping portion? I would be interested to know exactly who wants us to photocopy ID documents.

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The correct e-mail for Congressman Sensenbrenner is [sensenbrenner@mail.house.gov](mailto:sensenbrenner@mail.house.gov). I just forwarded my comment letter to all on your list. Thanks.

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We sent our comment letter today. Just thought I would put it out here in case anyone needs more ideas of what to include in their letter.

I am writing this letter in response to the Treasury's "Notice of Inquiry" relating to the final regulations issued under Section 326 of the USA PATRIOT Act, which seeks comments on requiring financial institutions to photocopy identification used to verify customer identity.

#### Recordkeeping Requirements

We believe the retention of photocopies of identification documents relied upon to verify customer identity should remain at the Bank's discretion. Imposing such a requirement would be

burdensome for many financial institutions that do not have the ability to invest significant technology dollars to implement an efficient, electronic document storage system. The costs associated with maintaining a physical filing and storage system to ensure identification documents were retained for the required 5-year retention period would be a daunting task in and of itself. Financial institutions should be given the flexibility to make a risk-based decision as to whether photocopies of identification documents are necessary to validate their conclusions regarding customer identification.

In our opinion, the costs of retaining photocopies of identification documents outweighs the benefits that would be realized by having such information available. It is not certain that an actual "copy" of identification documents provides more valuable information than a "description" of the document used to verify a customer's identity. We would argue that the majority of these documents would never be looked at again once the original identity verification procedures have been performed. Requiring financial institutions to maintain copies of such identification documents does not ensure a sound customer identification program. It is the procedures and efforts of bank personnel to "know the customer" that provide the true value in this process.

It is also relevant to point out that maintaining photocopies of original documents does not always provide useful information if the copies are not legible. For example, photocopies of driver's licenses are often difficult to read and numerous states are adding additional security features that further render the copies illegible. In addition, if the documents provided were fake, as is the case in identity theft or fraud schemes, there would be no value in maintaining photocopies of the documents. Financial institutions would be keeping thousands of copies of identification documents that may not be useful or provide any relevant information in the event they would be requested by law enforcement for an investigation.

Requiring financial institutions to keep a photocopy of identification documents is not cost justifiable and does not provide substantially more value to law enforcement in achieving the underlying objectives of the USA PATRIOT Act, which is the prevention and detection of money laundering and terrorist financing activities.

Thank you for the opportunity to comment on this issue.

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Quote:

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Who are the special interest groups and are they commenting on the recordkeeping portion? I would be interested to know exactly who wants us to photocopy ID documents.  
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I don't know specifically who these persons or groups are. But I was at a Section 326 seminar yesterday where the speaker said the parties making the most numerous "click and send" comments are from both extremes of the political spectrum, including some pretty vocal anti-immigration folks. He said he hoped that Treasury would weigh not only the comments but the implied agenda of those folks when considering their decisions.

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Has anyone heard any news on this issue yet?

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The only rumor I heard was that this wouldn't be reviewed this year.

## Comparing Appearance on ID with Customer

When a new customer brings in their picture ID, are we required to document that we have compared the picture on the id with the person and they match. In other words, do we need a statement entered somewhere in the account opening process that states something like " I have compared the picture on the driver's license with the customer and certify they are one and the same."

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I don't think so. We do not plan on doing anything like that.

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I didn't read anything in the requirements as to that either.

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Quote:

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" I have compared the picture on the driver's license with the customer and certify they are one and the same."

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There is no way anyone can make that statement. I don't believe that a Notary Public can even "certify" something like that. What if the person has an identical twin? What if the person changed his/her hair style, hair color, gained or lost a significant amount of weight, or is wearing color change contact lenses?

You would not be able to state with absolute certainty that a person in front of you is the same as a person in a photograph. All you can do is have a "reasonable" expectation that the person in front of you is not dis-similar to the person in the photo.

I'm surprised every time I take out my license that someone doesn't say "Hey, this doesn't quite look like you." After all, the photo for my Driver's License was taken over 10 years ago!

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## Non-Documentary Verification

I am struggling with the amount of detail to put into our CIP Procedures for non-documentary verification. We are looking at third party vendors (Penley, TFP, Bankers Systems) and each vendor gives a laundry list of discrepancies from the information input for verification.

My question is how we should proceduralize those discrepancies? For instance, do we need to put into our procedures what needs to be performed for each of the possible 70 alerts? I really don't want to go there. If we try to do that, the number of variables would be astronomical and would give the examiners a blue print to hang us with.

Instead of trying to put every possible action into writing, can we just put in our procedures that the employee should be satisfied from the information provided by the vendor that they can "form a reasonable" belief as to the identity of the customer?

Any input would be appreciated.

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My CIP is actually part of our BSA board policy. The way I have structured the CIP in regard to non-documentary allows us to be flexible in our approach to performing the non-documentary method of verification. Specifically, in the CIP definitions section I placed the definition of "non-documentary verification". In the "customer information verification" section, I provided that documentary, non-documentary or a combo of both may be used to form a reasonable belief that we know the customer's true identity. Though, in describing non-documentary methods I did not want to limit us as to the methods we may employ. Therefore I stated that nondocumentary methods may include but are not limited to consumer reports, third party vendor ID services, public records, etc. etc. I think the important thing is to not box yourself in on the methods you employ. From a cost perspective it may not be feasible (nor necessary) to perform non-documentary verification on every single customer! Think about this...for any loan you do, your current procedures already include a combo of documentary and non-documentary methods! There is no way you could include all those little ID nuances you do for home loans (i.e. VOD's, VOE's, VOM's, pay stubs, tax returns etc.) in your CIP! If you did, you'd surely leave something out! My advice is to keep it short, but make it broad enough to encompass any form of non-documentary verification possible.

By the way - the Banker's Systems product you mentioned is actually the Lexis-Nexis Riskwise product, but is priced substantially higher...(what do you expect if you're buying from the middle man!) If you're interested in that product, I'd suggest you call Lexis-Nexis for pricing at 800-238-5853 x7396. I've looked at a lot of non-documentary ID verification packages and this is the one by far that that offered true verification (not just simple comparison!). Anyway, I don't work for them, but am just offering an honest opinion of their demo.

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### **CIP training**

As far as CIP training what is everyone doing? Training mandatory for all employees? Customer Service only? We have about 90 employees and I think the safe route would be mandatory training for everyone....I know perhaps not as feasible at a large bank but what does everyone think? Obviously we have a limited window to do the training (10/1 is approaching)

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We are training everyone. For our 25 branches, our loan dept & our admin dept, we are holding 2 1/2 hour sessions over a period of 8 days (2 sessions each day). We are using PowerPoint and handouts (This training will also include annual BPA, BSA & OFAC training).

The last 1/2 hour of each session will be instructions on recording and verifying ID. If I can be of help, PM me with your email address. You will need to register.

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### **CIP requirements?**

We are planning on using non-documentary procedures supported by a third party vendor for id verifications in addition to credit reports and ChexSystems. We currently obtain the four requirements (name, address, social (or other id), data of birth etc. at account opening but we do not record state of the drivers licenses or exp. date. It may sound like a little thing but with the large number of accounts we open it is. Is this a requirement, we will have reasonable belief from the vendor. Every time I read that law I get more confused??

-----

You need to record the specific information from the documentary verification you accepted:

(B) A description of any document that was relied on under paragraph (b)(2)(ii)(A) of this section noting 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;

The vendor is actually helping you to authenticate the drivers license. It has practical value, but the regulation does not require it.

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what about non-documentary procedures..

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the third party is helping us authenticate the identity of the customer using many sources, not just a drivers license and in some case for example our loans we most likely will not request it..

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The regulation states "The procedures must describe when the bank will use documents, non-documentary methods, or a combination of both methods". So non-documentary methods may be used by themselves. The record keeping requirements say only that you have to keep the place of issuance and expiration date of any document that you rely on for documentary verification. If you are relying on nondocumentary verification only, you will have to keep the methods and results of the nondocumentary verification.

-----

Anon,

Ted is clearly correct - you may rely wholly on nondocumentary methods of verification.

However, you mentioned the driver's license. Do you intend to rely on it as the source of information to supply to the vendor? Alternatively, do you just expect to use information supplied by the customer, either verbally or on the application, as the source of the information you verify through the vendor?

You are not required to see a photo ID. However, if you do, my answer will remain that you are using documentary verification and the record retention requirements would apply.

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No, in fact it may not even be provided to the third party vendor...we are going to request the required data, but if they are not present when the account is opened we will not look at a drivers lic.. The vendor is primarily verifying the required four pieces of information.

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### **Not-so-previous customer**

I remember reading while doing CIP research that if a customer had an account that had closed, then opened a new account, the customer had to be treated as a new customer for CIP purposes.

The question has come up regarding situations where a customer closes an account for some reason, then opens a new account shortly afterward - a week or a month, etc. How are others handling these situations? Are you doing the CIP process again when they open the new account? Are you instituting a time frame such as one week or one month wherein the CIP process isn't required if it has been done very recently?

I realize that the documentation obtained when CIP was previously applied would be available, but does the account officer still need to go through the documentation/verification process again (checklist, database verification, etc.)?

From a risk standpoint, this would be low risk since the customer's identity is known, yet technically, the customer is not an existing customer

-----

I believe that technicality of not having the open account at the time would disqualify the exemption. I know that it doesn't make a lot of sense but the exemption is for existing customer relationships. I think it would be dangerous to assume a break is OK without some regulatory guidance on that.

That said, you would have a lot of information on the customer already so it wouldn't be the same CIP as would be needed for the person off the street. That you could allow for as a risk based procedure.

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### **We just got examined on the CIP regulation!**

Currently we have the FDIC in performing their Safety & Soundness exam, which of course includes BSA. Yesterday we had our wrap up meeting and boy was I shocked. The examiner told me that she had a whole list of recommendations but would not divulge anything before the wrap up meeting.

Well we covered normal BSA stuff and then she had two pages of exceptions from applying CIP requirements to current account opening procedures! I was shocked for two reasons: first, why would you even perform test work on a regulation that is not in effect yet? next, we are sitting there in this meeting and she is telling us that she tested us on CIP requirements and I just wanted to scream at her that this was not in effect until October 1st! Our deposit/loan platform vendor had come out with a form for us to use to document our CIP efforts but they are in the process of modifying the document based on the final rule. Now some of our employees are using part of the document already, and the examiner was getting on us because it wasn't being fully completed! What?

Anyway, just a heads up for those of you getting ready to go through an exam. Of course they cannot cite a violation until after October 1st, but I thought it was in poor form to sit in front of the Chairman and President and say that we weren't performing the procedures required by CIP when it is not required yet.

-----

I am assuming you have not already adopted CIP at the board level. If you have, then depending on how it was worded, you are required to comply with your own policy whether the regulation is effective or not.

If you have not yet formally adopted your policy, I strongly encourage you to call the Field Office Supervisor and discuss this. If that does not take care of it, start working your way up the food chain at the FDIC. As you note, compliance is not mandatory until October 1. If they are offering you suggestions, that's great. However, if they intend to put anything in the written report of examination regarding the specifics of your compliance program you need to head that off at the pass.

The point is any repeat BSA violations generate enforcement actions. If the next time they visit you do have bona fide CIP problems, you will not be able to argue that the first criticisms were not bona fide because you did not challenge them at the time.

-----

We, too, just ended our S & S exam and our examiner attempted to site a CIP violation, that wasn't even required by CIP to begin with. We simply pointed out that 1) the regulation isn't effective until 10/1 and 2) what they wanted to site (not getting occupation) was not part of CIP. In addition, we were almost written up for (hold on to your hats compliance professionals), writing SARs for activity the examiner did not think was suspicious - even though it met all reporting criteria for dollar amounts. We're a fairly small institution that generally files less than 20 SARs a year - we have never heard of anything like that before.

-----

Actually our policy was approved by the board on Tuesday. Training is scheduled for September. We have ordered our lobby signs and we are waiting on our vendor to finalize the CIP verification form. So our program is wrapping up where we will certainly be ready to put this into affect by October, but there is still loose ends we are waiting for before we conduct the training.

They are not citing any violations, they just made the recommendations based on their test work. The issue is, the recommendations she made we have already addressed and incorporated into our new policy & procedures, we just have to train all of the staff. That is where I felt it was in bad taste to do that. Okay, maybe we weren't asking for copies of drivers license on a new CD account, but we will be. See what I mean?

-----

Yes, I do. The examiner either wanted:  
a) to impress the board of importance of CIP or  
b) it has become the standard exit interview speech and she did not want to have to come up with any new material.

-----

We too just had our FDIC S&S exam and our CIP policy was reviewed. Fortunately we were told that our procedures were adequate. The funny thing was that their report lists the effective date as October 31, 2003! OOPS!  
It's nice to know that even Examiners make mistakes.

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Oh yeah, one more thing that I found unusual. The examiners never even asked about FinCen's 314a list! I thought for sure they would want to see it to ensure we were in compliance with timely reviews of our records. Nope.

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During ours I had to sufficiently prove to them that we were working on CIP. The examiner discussed some of the stuff they expected during the exit exam and some of it even made it into the report and CIP was not even finalized at that time. Our responses made clear to them that we would comply with the FINAL CIP rules by the compliance deadline.....they weren't even due specific responses in my opinion. Some of the stuff they really dwelled on were not even made part of the final rules.

I will give the examiners one compliment.....they made sure to go over anything to be covered in the exit with me in detail. Your examiner was not playing fair and wanted to make you look bad in my opinion.

-----  
Our FDIC examiner found our CIP adequate during the S&S exam. I was also taken aback (posted in July 2003) that the examiner wanted the draft policy and training materials. Luckily, our CIP was adequate according to his checklist (which he wouldn't divulge - I asked). He did comment on the training - would be too long for the hour I set aside.

-----  
I am always amazed at the differing experiences with FDIC examiners, although having worked in other regions as a former examiner, I did see many differences first hand. My region emphasized that there should never be any surprises at the exit meeting. If something did come up unexpectedly, the examiner should have noted this before discussing it at the meeting. Just goes to show the weaknesses with OJT spread out among so many field offices. The FDIC has also now moved report review from regional offices to field offices (for smaller banks), so that'll lead to even more variations. I now work for a CU (I know, now I'm really the enemy) and NCUA examiners have asked for our PATRIOT Act policy/procedures for next week. It'll be interesting to see their approach given that compliance is not yet mandatory.

-----  
You wouldn't happen to be in So. California, would you? The BSA examiners here are very aggressive and difficult to work with. I'm just curious.....

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Sounds like, from what wavewatcher stated, the examiners now even want to tell us how long our training sessions have to be! They never cease to amaze me!

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Quote:

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Sounds like, from what wavewatcher stated, the examiners now even want to tell us how long our training sessions have to be! They never cease to amaze me!  
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Well, I get the impression that the examiner was merely commenting that wavewatcher had set aside an hour for training, but that in the examiner's opinion, wavewatcher would not be able to cover all the material in that one hour. But I guess wavewatcher will have to comment since he or she was there.

-----  
Our examiner's comments on the training - one hour was too short to cover all the slides. Some of the slides had only a few words or my contact info. I have used about 40 slides before for an hour presentation with other handouts, so I didn't think time constraint was a problem. I did take the comment under advisement, however, I have not deleted too many slides (just 2). On the favorable side, I'm believe the examiner wanted to comment on the type of training, if the info comported with the policy and procedures and how much detail would be provided to deposit personnel and loan personnel. By the way, he looked at all my other training materials and provided comments.  
Anyone else receive comments on training materials?

-----  
Just finished an OCC BSA exam. There was never a question raised about CIP, so I inquired about CIP during the pre-exit meeting.

The examiner said that the regulation does not become effective until 10/1/03, so it was not necessary to go over it in detail. However, the examiner did say that the extensive account opening procedures in existence would indicate that the transition to CIP should not be a problem.

Examiners! Go figure!

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Anonymous: Nope, not anywhere near California. too bad though.

I have been out a few days, but I thought I would post a follow up of the issues we did discuss regarding CIP (between us & the examiners). This might help solidify anyone's position if you are leaning one way or the other on procedural issues.

1. they definitely want some type of document in file to evidence the fact that you performed your CIP review.
2. No PO Boxes only. If this is all they have you have to obtain driving directions!
3. No variances by accounts. What I mean is if you request information for a DDA account it must apply to CDs as well.
4. She tried to recommend that we update our Just Approved CIP policy to actually include procedures for every department but I fought that one. I told her that if you create a document to cover every department and every scenario then you have a document that is so overbearing that no one will read it. She finally backed down when I told her that it was only meant to be a policy, that each department is responsible for procedures applicable to them.
5. Make sure that your policy includes Notification to Customers. How are you going to disclose to them?
6. Definitely evidence your OFAC verification.

I thought that it was weird that they never asked to see or verify that we were conducting out 314(a) information searches either. I really thought they would.

-----

Quote:

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3. No variances by accounts. What I mean is if you request information for a DDA account it must apply to CDs as well.

-----

That's a strange one if you ask me, since the regulations specifically refer to type of accounts offered as a risk factor.

-----

Quote:

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3. No variances by accounts. What I mean is if you request information for a DDA account it must apply to CDs as well.

-----

That's a strange one if you ask me, since the regulations specifically refer to type of accounts offered as a risk factor.

---

I agree. What's the point of all this risk analysis if we have to apply "cookie cutter" mentality to all of it. Our Loan CIP will be different than our Deposit CIP because we have a lot of additional "due diligence" that goes into a loan vs. a deposit account.

After all, applying all of this "CIP" would not have prevented the 9/11 terrorists from doing what they did, and I don't think it would have added anything to the investigation.

I sure hope we won't have examiners looking to make a name for themselves by individually creative and oppressive CIP exams!

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Quote:

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I sure hope we won't have examiners looking to make a name for themselves by individually creative and oppressive CIP exams!

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Only experience spawns that type of concern. Right now, examiners are in their consultative mode, working without formal training or examination procedures. Some are bound to be less prepared than others. MacKenzie's anecdotes are helpful and appreciated. If others follow her example after October 1, we will begin to see how this shapes up.

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### **Risk assessment**

We are having a difference of opinion on how to do our risk assessment and I hope someone can give us some guidance. We have decided not to go into a new account relationship unless all parties are present and we can verify identification. We have chosen to do this across the board so this includes loans, trusts, deposit accounts, and safety deposit boxes. Do we base our risk assessment on that decision or do we need to list all scenarios and assess a risk and then state that we have decided not to take that risk. Some feel we only need to assess the risk that we will be taking and some feel we need to assess the risk that we will not be taking. Help, we only want to do this once and do it correctly. Thanks in advance for all of your help

---

If it were me, I would probably briefly mention that due to the risks associated with not having all customers present (and enumerate some of the identified risks), XYZ bank has decided that it will only establish customer relationships with all account holders present. I wouldn't go into a detailed risk analysis for scenarios you aren't going to use.

However, if you will allow exceptions to that rule, then you probably should address it so you can indicate under what circumstances you will allow an exception and what additional procedures you will follow to off-set that added risk.

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### **CIP - banks we acquire**

If we acquire a bank in January 2004, for example, are we required to maintain the CIP records they created on their customers from October 1 to the time of the acquisition? I know that accounts obtained through an acquisition are exempt, but I am not sure what the requirements are regarding the CIP records of a bank we may acquire.

-----

If you are acquiring the bank, and those customers are going to be your customers, why would those records not just come along with all of the other customer records? Whether the bank remains an separate entity or is merged into your bank, those are customer records and must be retained, just as you would retain all of their old transactional records. Otherwise, you would have to "re-id" the customers.

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Your responsibility to retain the records would be the same as the bank you acquired. The transfer exception means that you are not required to do CIP on accounts purchased or assumed; it does not diminish any requirement to keep records of the fact that CIP was performed by your predecessor.

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What if the acquired bank has inadequate CIP procedures and records? What's the liability to the acquiring bank?

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### **Board Presentation on CIP**

As compliance with the final regulation is mandatory on October 1, 2003, many banks will take their CIP to the board for approval at its September meeting. Those making the presentation might be wise to mention briefly that, regardless of the regulation's protracted history, there may be near term changes to these policies and procedures.

To date, the only official guidance available has been the final regulation and the supplementary information that accompanied it. Only the OTS has published the "supplementary guidance" promised by Treasury and the agencies. (Link to OTS CEO Letter 175.) Also, there are no examination procedures, tools which banks customarily use as a control in evaluating compliance efforts. The supplementary guidance, in particular, could have a substantial impact. (If only they had published it in time for banks to use it!)

In addition, responses Treasury's Notice of Inquiry ([link](#)) may prompt an actual revision of the regulation and attendant revisions of the program you are instituting.

Don't "caveat" your efforts to comply, but don't present the package as a done deal either.

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I presented our CIP to the Board a couple of weeks ago, and found that they were already very well informed of the controversy and political issues surrounding this law. I had to keep reminding them that no matter what we thought was going to change in the near or far future, we still have to comply with the regulation as it stands by October 1st.

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### **AML Policies Not Intended To Protect Third Parties**

I want to include in our revised BSA/AML policy a statement that the policy is not intended to protect third parties. This was a recommendation from a CIP seminar. I believe reference was made to recent case law. Can anyone give the nutshell version of the case(s)? How was a bank liable to a third party because of something in its BSA/AML program, policy, or processes? I'm sure my Board will ask.

-----

I also heard this recommendation at a seminar, but no reference was made to a specific case.

You may want to include a statement in the policy itself that "this policy of xyz bank does not create rights or obligations to current or future customers. This policy is an internal document adopted to comply with federal mandates."

-----

What was pointed out at the seminar I attended is that the Customer Identification Program was created to fight money laundering and terrorism as per the USA PATRIOT Act.

The CIP regulation does not give a rat's rear about Identity Theft. This is an AML/anti-terrorist effort, and not an ID Theft prevention effort.

The problem is that the general public will perceive CIP to be about fighting Identity Theft. If someone's identity is stolen and used to open deposit and/or loan accounts at a bank, the victim may try to sue the bank, and use the bank's CIP policy against it.

-----

The most well publicized case is the one where insurance commissioners from several states sued two banks for failing to detect fraudulent activity involving insurance companies which had been looted by their owners. The complaint alleged that the banks, through their written "know your customer" programs should have detected the activity. The complaint was filed in state court and the defendants attempted to move the case to federal court, but there has been no trial. (It was reported on BOL.) A similar complaint involving land fraud, ultimately submitted to private arbitration, has been filed against a bank with operations in Texas.

Both cases pre-date CIP. They are based on the tenuous theory that a bank's attempts to detect illegal activity create a duty to a third party; i.e. if the bank fails to detect and report the illegal activity it becomes liable to those who are injured. But for the involvement of several states in the first law suit, it would be easy to label the claim as frivolous. A boilerplate reference to the real purpose of policies related to detecting suspicious activity may not prevent such a law suit. However, in the event a claim is made, having it is better than not having it.

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### **Subsidiary Requirements**

Is anyone aware of any CIP requirements for a bank's subsidiaries? Such as if the bank has an insurance/investment company and/or a mortgage company.

Does the bank need to incorporate their CIP into the subsidiaries?

thanks so much!

Questions are mine not my employers.

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My understanding is that CIP applies to a bank's subsidiaries in the same way as the BSA program requirements apply. Since insurance/investment companies and mortgage companies don't meet the definition of "bank" under the BSA, I don't think CIP technically applies. Having said that, these companies DO meet the definition of a "financial institution" under the USA PATRIOT Act, so all the other requirements would apply (e.g., AML, OFAC, SARs, etc.) Also, I think these other companies may eventually have their own CIP regulations from their own regulators, but so far (I think) only broker/dealers have their own reg.

-----

Yes. As I understand, subs must be covered by the bank's CIP. Affiliates are on their own for determination under applicable fed agencies CIP rules.

-----

The preamble to the regulations says at p. 15-16: "As noted in the preamble for the proposal, the CIP must be a part of a bank's BSA compliance program. Therefore, it will apply throughout such a bank's U.S. operations (including subsidiaries) in the same way as the BSA compliance program requirement. However, all subsidiaries that are in compliance with a separately applicable, industry-specific rule implementing section 326 of the Act will be deemed to be in compliance with this final rule."

-----

We have a sub that does leasing and brokers mortgage loans. As attorney that I spoke to stated that while the act applied to "financial institutions" the regulations issued by the federal regulators do not apply to leasing companies and mortgage brokers. He does not believe that our sub is subject to the CIP regulations.

I will be calling our regulator to get clarification on this issue.

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Dolly: The attorney is right that the regulations do not apply to leasing companies and mortgage brokers generally. The issue is whether they are subject to CIP as a result of being a subsidiary of a depository institution under the language I quoted in my last post.

-----

So in your opinion they ARE subject to CIP only because they are a subsidiary?

-----

I was just sitting here reading the article in ABA Bank Compliance by John Byrne. He states:

"The financial institutions that will eventually be covered under Section 326 are extensive. Not all institutions, however, are obligated to comply with the rule at this time. For now, the rule covers only banks and trust companies, savings associations, credit unions, securities brokers and dealers, mutual funds, futures commission merchants, and futures-introducing brokers."

Sounds like for now our leasing and mortgage broker is not subject to the regulations.

-----

Ted has provided you with the correct language:, they are not subject because they are a leasing company or a mortgage broker. They are subject because they are a subsidiary of the bank - it does not make any difference what business the subsidiary is in, it's covered.

John Byrne's statement relates to what is a financial institution, he makes no reference to subsidiaries - there is no conflict between what John said and the language Ted quoted from the supplementary information.

-----

Ken, I was advised by an attorney that, since the CIP reg says that subsidiaries are covered "in the same way as the BSA program requirements apply," and since insurance companies, mortgage companies, etc. do not meet the definition of "bank" under the BSA reg, they are not technically covered by the CIP reg. They would still be subject to all the other aspects, e.g., AML, SARs, etc. What do you think?

-----

I think the attorney is torturing the language. A bank's subsidiaries have always been subject to BSA; CIP is just another paragraph of the same regulation.

-----

Remember that although subsidiaries are subject to CIP, some subsidiaries may not open "accounts" as defined in the regulation (depending on what business they are in).

-----

Well, I find this all very interesting so I will be asking my regulator what the answer is. I understand everyone's point of view, however, my question has not been answered.

I'll let you know what the FDIC says!

-----

With my understanding of this issue, all of the above answers are technically correct.

If the leasing company and/or mortgage broker were stand-alone companies they would not be subject to CIP (at this point in time), however, since they are a subsidiary of a financial institution that is subject to CIP then they are required to comply. Am I understanding correctly?

If this is correct, maybe the attorney or others understood the question to be whether those type of entities were required to comply w/o giving consideration to the fact that they are a subsidiary of a bank.

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Ted or Ken: I'd like to ask a related question. If the bank's holding company owns a mortgage broker company and is thus an affiliate of the bank, and the bank is not buying any of its brokered loans, would the mortgage broker company come under the BSA umbrella and CIP rules? And if you believe it still falls under the rules, since the broker is not what I would say technically opening accounts, would you rule out the CIP rules for it?

-----

As of right now, I don't see the CIP requirements applying to holding company affiliates, as opposed to subsidiaries of the financial institution. If and when CIP rules are issued for mortgage brokers, they would be covered by those rules. In any situation there will be the separate question of "Does this company open "accounts" as defined in the regulations?" Remember that's a "formal BANKING relationship". If you have a subsidiary that conducts operations unrelated to banking, it may not be an issue.

-----

Dolly -What did you find out from your regulator?

Ted (or anyone else) -

What if a Holding Company owns the banks and a leasing company? Based on Ted's above it quote, it doesn't appear that the CIP requirements apply to the BHC leasing company. Correct?

-----

OK, let me ask this (possibly stupid) question---it may be determined that a standalone mortgage broker is not subject to CIP. If that is the case, then is the bank subject to CIP on the loans it approves from that broker? I know the answer to that should be "yes", as the bank has opened a banking relationship with the borrower, but if the broker is not subject to CIP, that makes it difficult for the bank to get the necessary requirements to satisfy CIP.

-----

We're requiring our brokers to collect the CIP information on the applications they originate. We won't allow an application to go to underwriting without the CIP documentation.

-----

Yes, we're doing the same as you...requiring brokers to collect the necessary documents to satisfy CIP, combined with a credit report run on our end. It just seems funny that we are holding "CIP" over a broker's head, while they are not obligated to follow the same rules.

-----

Section 326 applies to all "financial institutions", which is defined in the BSA to include a loan or finance company and persons involved in real estate closings and settlements. Accordingly, Mortgage Brokers meet this definition of persons involved in real estate closings and settlements simply because they arrange financing. I believe it would be hard to argue that they do not operate as a loan company simply because funding occurs from the capital of others.

-----

I agree with Ted and Ken regarding applicability. As I recall, the regulatory agency regulations, 12CFR200/CFR300/ 12CFR400/ & 12CFR500 specify extension of their regulations to subsidiary organizations.

-----

I was wondering if you are requiring documentary evidence, for example driver's license information for mortgage lending, or depending solely on non-documentary verification and the notarization at loan closing? I want to make sure we are complying, but not adding more to the process than we need to.

-----  
If a broker closes a loan in the name of the bank, they are subject to CIP. Now here is a new one. Our bank is owned by a mortgage company that is not subject to CIP. We purchase loans from them. Since we are a sub. to them are they subject to this? FYI: I have them developing procedures since they already do everything but the notice.

-----  
I was in a similar situation previously and wonder if you are really a sub of the mortgage company or are you both subs of the same holding company? If you are a sub of the mortgage company they would be a bank holding company.

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### **CIP Policy**

Since there is no government list to check yet, are you still including that information in the policy that the board is going to approve?

-----  
Yes, the references to checking the list are preceded by the word "must" in the regulation. Keep your references broad; e.g. promise to "follow any government mandated procedures in effect at the time." There may never be such a list, but you need to acknowledge you are aware of the requirement.

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### **Recording Discrepancies**

For banks not using a separate customer account information sheet for record keeping purposes, where will you keep track of discrepancies? Also, where will keep record of any nondocumentary type of verification used. Am I trying to make this too difficult?

-----  
Quote:

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Am I trying to make this too difficult?  
-----

No, these are necessary parts of the record keeping requirement.

-----  
We are requiring that the new accounts personnel obtain a copy of the driver's license and ask that any discrepancies be noted on that photocopy. This will be kept on file with the signature card. We are a small bank and don't have many options for storing these records separately (limited space!) They will be kept for the length of time that we retain closed signature cards, which should more than meet the requirement to maintain such information for 5 years after the information is obtained.

-----  
Anon: The name, address, ID number and DOB need to be kept for five years after the account is closed, not just five years after they are obtained.

-----  
"Anon: The name, address, ID number and DOB need to be kept for five years after the account is closed, not just five years after they are obtained."

Yes, I know that - I should have been more specific in my reply. What I meant to say was that copy of the D/L will be kept with the file of closed signature cards. The D/L info only needs to be maintained for 5 years after the record is made, not after the account is closed. So by keeping the copy with the closed signature cards (that contain the 4 required pieces of info that must be obtained and retained 5 years after the account is closed) we will most certainly be retaining the record used to verify ID for the minimum amount of time required.

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### **Broker ID**

If your opening an account for a broker, am I correct in saying that we would not use documentary id methods since they are not a person?

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I do not believe you are correct. You would obtain documentary and non-documentary information (as defined in your CIP) and verify the identity of the broker.

Remember that the definition of a person includes not only natural persons, but also includes entities such as corporations, partnerships, foundations, trusts, etc.

-----  
Do you mean a deposit broker? If so, here is an excerpt from the preamble to the rule that addresses them:

"In the case of brokered deposits, the "customer" will be the broker that opens the deposit account. A bank will not need to look through the deposit broker's account to determine the identity of each individual sub-account holder; it need only verify the identity of the named accountholder."

-----  
Ok, I understand that the broker is the "customer", but the account is not in the brokers name it is in whoever the broker opened it for. Once the account is opened we deal strictly with the named account holder.

Who would we need to identify and verify then???

-----  
I am more confused. We do broker CD deposits. the broker calls or faxes us the information. the account is in the name of the individual or business (if a business). we are not going to ask for copies of documents in this case. we will probably SEND A THANK YOU LETTER AND MAYBE A REVERSE PHONE/ADDRESS.

-----  
OK! I'll give it a whirl. My suspicion is that this is a question that no one really knows the answer to, and won't until we get some official guidance that addresses this.

However, here is my best guess. I think this may be another example of how little the people who write these rules seem to know about the industry they regulate. What you describe, which is where the broker initiates the contact with the bank, but the individual customer is actually the account holder, is I think the norm. That is certainly the way it was done in the 3 different banks I've worked. I may be misunderstanding what is being described in the preamble to the rule, but I have never seen a scenario in which the bank holds an account for a deposit broker and the deposit broker has sub-accounts which identify the actual owners of the account. My experience is limited though, and so maybe that is a normal way to do it.

Anyway, here's my guess. If you have an account in the name of the broker, you have to identify the broker. If you have an account in the name of some other customer who happened to be brought to you by the broker, but who is now the individual with whom you communicate, that customer is your customer and you should identify the actual customer.

Now, it is possible that a deposit broker is covered by the rule somehow (I haven't researched that question) and if so, you may be able to rely on their CIP, but I'm guessing that you do have an obligation to identify the actual customer.

Anyone else agree / disagree?

-----  
I haven't researched this question in a lot of detail, but tend to agree with your comments, based on the way the Broker industry works. I believe under the recent regulatory guidance on Predatory/Abusive lending you would be required to do third party due diligence on the broker; and then any customers they bring to the bank as well for CIP.

-----  
There is one other type of deposit broker. They are usually major institutions such as Merrill Lynch, etc and they place deposits with the bank - usually several million dollars - made up of deposits from many different customers. I think that this is the scenario that the regulation is trying to cover.

We have both types of accounts - we will be IDing the Merrill's of the world and then requiring the other brokers to ID the customers and we will contractually rely on that ID and then run Chex Systems on them.

-----  
My view on this is quite different. According to 326, regulated financial institutions covered under the PATRIOT Act, such as brokers, would not have to be "CIP"ed as an entity. Now if these brokers are opening accounts on behalf of retail clients at your firm, and you have no contact whatsoever with their clients, in my opinion a third-party reliance agreement between your firm and the broker would suffice. The broker is required, under the Act, to adhere to the regs themselves, so they would have had to CIP them before bringing their client to your institution.

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### **CIP: Two Issues**

Under the FRB CIP "definitions" section 103.121 (a)(1)(ii) it reads: "Account does not include: (B) an account that the bank acquires through an acquisition, merger, purchase of assets, or assumption of liabilities;" Does this include participation loans? also: under Recordkeeping (6)Reliance on another financial institution. The CIP may include procedures specifying when a bank will rely on the performance by another financial institution (including an affiliate) . . . This "may include" means it is not required to be in the CIP. Is this correct? The Reliance on another financial institution does not need to be addressed in the CIP?

-----  
No, and No.

Participations would be product where you may wish to place reliance on another financial institution for the CIP process. I don't think the borrower would want to provide data for all the banks in its syndicate.

The "may include" you cite means that you do not have to have procedures to rely on the work of another financial institution. However, if you intend to rely on another institution, you must include that in your CIP.

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### **Professional Names**

A question came up in our CIP Training this morning regarding the use of professional names, particularly women using their maiden name professionally but their married name personally. Evidently we have this a lot in our area because of the number of female attorneys, business owners, etc. CIP states that we must collect the customer's legal name. If the customer's legal name differs from the name they use professionally, and they are establishing a non-personal account, how are any of you handling that?

-----  
I think it would all depend on who is opening the account relationship. You would need to determine if it is the business or the individual.

Look at if they providing a SS# or EIN?

I really didn't see anything mentioned in the regulation about this issue. Personally, I would just make sure that I have documentary/non-documentary information for the business or individual, and possibly keep a note in the central file.

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### **CIP-Drug Trafficking Areas**

I am putting the final touches on our CIP. We have three branches located in a HIDTA. One of the locations the terrorist in 9/11 flew out of.

what is anyone doing for extra controls for HIDTA areas? [

-----  
Here's some suggestions: Acknowledge the fact that you have branches located in those designated areas. Acknowledge the FinCEN list of businesses that are higher risk (not eligible for BSA exemptions) and that the bank may request identification and documentary/nondocumentary verification of signers to mitigate risk.

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### **CIP Training**

We have a difference of opinion at my bank. Who has to train for CIP. Everyone in the bank or just the employees that it will effect? Thanks

We're training the individuals being affected. That being said, we're also performing our annual BSA training in October bank-wide. We will touch on CIP issues with all of the employees at that time.

-----

Dedicated CIP training should be done to those in the trenches addressing these issues with the customers. That is in-depth, in my opinion. Other employees should have a good working knowledge of what and why it exists. Executives not directly over these folks should have a familiarity so they don't have that "deer in the headlights" look when examiners ask about it.

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### Exceptions

While putting together our CIP, I ran across an inconsistency in samples from vendors. One states plainly that there should not be provisions for exceptions to policy. Another recommends that the CIP allow for exceptions but at the discretion of a senior officer. I called the FDIC and they told me to not only to include language that allows the exceptions but to list specific exceptions. They also recommend the "to include but not limited to" line. (This seems to contradict the requirement for specifics.) How are people dealing with exceptions?  
Long-time listener, first-time caller. Is there any way to spell-check this thing?

-----

- 1) Do a search in these forums for "ieSpell" and you'll find a post from me for an Explorer add-in that allows spell checking. If you use Netscape or can't do any installs on your system, you are out of luck. The board itself doesn't have a spell checker.
- 2) There will be exceptions. Simply, there will be because there always are. So I would allow for them in the policy and in monitoring, ensure they do not become the rule.

Your policy can't allow for every situation and that is why you want some wiggle room, but with a sufficient authority allowing them. Also, some things can't be exempted and they should be noted as firm requirements

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### CIP-Insurance

Our subsidiary handles insurance. they act as agents for carriers who provide the insurance. I have eliminated them from my CIP program, does this make sense?

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The preamble to the regulations says:

"the CIP must be a part of a bank's BSA compliance program. Therefore, it will apply throughout such a bank's U.S. operations (including subsidiaries) in the same way as the BSA compliance program requirement."

In the case you mentioned, however, it may well be that they do not open "accounts" within the meaning of the regulations. Remember, an "account" for these purposes is a "formal banking relationship".

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Quote:

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In the case you mentioned, however, it may well be that they do not open "accounts" within the meaning of the regulations. Remember, an "account" for these purposes is a "formal banking relationship".  
-----

Just checking to see if my head is screwed on straight or not. Ted is your thinking that if we have an area that simply acts as an agent for another outlet, i.e. insurance, financial services, travel, where we simply act as an intermediary, these would not fall under CIP?

-----  
Actually, my comment was about the nature of the service provided. A subsidiary that is making a loan is involved in a formal banking relationship. In the case of the travel agency you mentioned, I don't believe that purchasing airline tickets is a formal banking relationship. So, the travel agency would not be opening "accounts" for CIP purposes.  
-----

So, I will be required to capture the name, address, SS#, DOB and use documentary or non documentary even though they only act as agent?

-----  
FYI - our Federal Regulator has opined (in writing) that although our subsidiary insurance agency is covered by our BSA policy, they are not covered by CIP. When the insurance industry CIP rules are implemented, we will have to revisit the issue. Until that time, we have excluded them. However, we have written into our CIP that any customers referred to the bank by the insurance agency cannot be considered as "existing" customers and must be fully identified in accordance with the bank's CIP.  
BC  
-----

You are obviously correct that the bank's CIP program applies to the its subsidiaries, regardless of their line of business. However, you make an excellent point in saying that coverage of a specific transaction turns on the idea that an account must be a formal banking relationship. For what it's worth, I agree with you that buying car insurance, booking a cruise, etc. are not the equivalent of opening a formal banking relationship. The regulation does not apply on basis of the service performed; the bank is not required to obtain the information, verify identity and retain records as required by CIP in connection with business contacts that are not formal banking relationships.  
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Quote:

-----  
So, I will be required to capture the name, address, ss#, DOB and use documentary or non documentary even though they only act as agent?  
-----

As I said before, and as BC and Ken have mentioned, you only have to do so if the subsidiary opens accounts that are "banking" relationships. You have to look at your subsidiary's operations to see if they open accounts for anything that is a "formal banking relationship".

-----  
Quote:

-----  
Actually, my comment was about the nature of the service provided. A subsidiary that is making a loan is involved in a formal banking relationship. In the case of the travel agency you mentioned, I don't believe that purchasing airline tickets is a formal banking relationship. So, the travel agency would not be opening "accounts" for CIP purposes.  
-----

I probably didn't make myself clear, Ted. I was talking about non-traditional services (insurance, travel, non-dep retail products) as opposed to a loan or deposit sub. Thanks for the answers, all. The more I look into this, the more confusing it gets.

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### **CIP-Banks Relying On Another FI For CIP**

re: Fed Register refers to entering into a contract that requires other FI to certify annually that it has complied with requirements of CIP.

What about participation loans sold to other financial institutions &/or large deposits. Does anyone have a form/contract already developed that they would share? Could the annual certification just be included with the form/contract sent to the FI? Thanks for any input.

-----  
I think participations fall under the transfer exception because the person opening the account did not seek to open an account with the participant. It applies to bank acquisitions, mergers, purchase of assets, or assumptions of liabilities from any third party. You do not need a contract in these instances because they are not considered accounts by definition.

Also here is a contract with the barest minimum. Of course you would have to tailor it to fit your institution. It's a start anyway.

\_\_\_\_\_ is regulated by the \_\_\_\_\_, and thus subject to the regulation implementing the anti-money laundering requirements.

This contract serves as certification that \_\_\_\_\_ has implemented an Anti-Money Laundering Program through Board approved policy. This policy sets forth Customer Identification Procedures in accordance with the USA PATRIOT Act. These procedures include:

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;
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.

(describe your reliance on third parties to perform CIP, for example: ) \_\_\_\_\_ has purchased software, and subscribes to third parties, such as credit bureaus for identification verifications, and for screening prospective customers against lists of known or suspected terrorist or terrorist organizations as designated by government agencies.

An independent audit of the Customer Identification Program will be completed annually. After completion of said audit, \_\_\_\_\_ will re-certify implementation.

I can see that a participating loan being purchased would fall under the exemption but if you are the originating bank and then selling a portion of the loan, you would have to be the bank that verifies identity of the customer. Right? Thanks for the reminder on the exemption, I was first thinking that a participation loan would require a contract with another FI.

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### **Non US Person**

We just had two Mexican individuals come into our bank to open an account. They had cards that looked like a form of ID. In fact it said "Legal Identification Card" at the bottom of the card. At the top it said "US Notary Public" and contained a local address (they are in Indiana working at a local golf course), date of birth, place of birth, and some sort of ID #, when the card was issued and when expired. Has anyone ever heard of this type of card Should everyone working and living in the US have a "green card" or passport? We have not had any experience with non-US customers.

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I take it they did not have a drivers license? I do not know of any ID issued by a Notary Public. If they are legal to work they should have a card issued by the US that allows them to work. Chances are they cannot provide that (illegal aliens).

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The US Dept of Justice publishes a booklet called "What Color is Your Green Card?" It's number M-396. It has pictures of the various forms of ID and states if the holder is eligible to work in the US. The driver's license ID guides also show available documents. I didn't see yours in there.

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There is a new card called the Matricula Consular that is issued by the counselate. We have seen these (we are in Los Angeles) I don't know of any collective acceptance from banks or any official edict saying they are acceptable for opening accounts.

-----

The ability to work legally isn't one of the criteria for opening an account. In fact it's easier to open an account for a Non-US person. The standard for Non-US persons is a reasonable belief of their true identity. From this perspective foreign governmental documents are generally the standard if US issued documents are unavailable. For Non-US persons we don't need Social Security #'s (TIN's) either. If they have applied for an ITIN (international taxpayer identification number) then they are classified as a US-person regardless of their citizenship or legal status. So in the case of these fellows you are probably right in thinking that the ID they provided isn't up to snuff but if they can provide you reasonable proof of their true identity using Mexican issued documents (like the MC) then you are probably in good shape.

-----

I think the ID you were offered is "commercially available" and absolutely meaningless. The function of a notary public is to verify identity by looking at identification and attest to a signature, not to provide identification. For a notary to have verified identity, he would have had to see some form of documentation and I doubt that these two people have any. If you made a copy of the cards and are curious, my guess is that you will find the notary's signature is completely illegible or that Indiana has no record of a notary with that name.

My assumption is that these two folks were sold the identification by someone who took advantage of them, not that they are attempting to take advantage of you.

-----  
Quote:

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If they have applied for an ITIN (international taxpayer identification number) then they are classified as a US-person regardless of their citizenship or legal status.  
-----

I disagree with this if you're talking about CIP. Subsection (a)(7) of the CIP reg defines a US person by saying:

"U.S. person means:  
(i) A United States citizen; or  
(ii) A person other than an individual (such as a corporation, partnership, or trust), that is established or organized under the laws of a State or the United States."  
-----

Quote:

-----  
If they have applied for an ITIN (international taxpayer identification number) then they are classified as a US-person regardless of their citizenship or legal status.  
-----

ITIN stands for Individual (not International) Taxpayer Identification Number.  
-----

Quote:

-----  
We just had two Mexican individuals come into our bank to open an account. They had cards that looked like a form of ID. In fact it said "Legal Identification Card" at the bottom of the card. At the top it said "US Notary Public" and contained a local address (they are in Indiana working at a local golf course), date of birth, place of birth, and some sort of ID #, when the card was issued and when expired. Has anyone ever heard of this type of card  
-----

Anyone can get one of these ID cards and even an International Drivers license ID card over the internet (I will not post the internet address for security reasons.) for about \$80.00. It includes a picture and a very "official" looking card. No questions asked. We have seen a number of these in eastern Massachusetts. I was able to trace a local issuer to an insurance and travel agency north of Boston. Needless to say we do not accept these as a form of ID.

---

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### **Adverse Action and CIP**

If we don't open an account because we are unable to verify the info for CIP, are we going to need to give notice of some sort? We may use our credit bureau's ID verification system, would a similar notice that we currently use for Chex records suffice, listing the credit bureau as the third party?  
-----

If the reason for adverse action is from the credit bureau, yes the FCRA notice is required.

-----

But, if the reason that you don't open the account has nothing to do with a credit bureau or Chex Systems report, no FCRA (or any other) adverse action notice is required.

-----

Your answers seems to contradict the Q & A, which says adverse action is required.

-----

I'm not certain what Q & A you believe Deena is contradicting, but no FCRA notice is required if you are not relying on information from a third party to deny the account. There is a recent Guru Thread that appears to address the issue from every angle.

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### **Retention Data**

I need verification. At a CIP seminar, we were told the data to be retained 5 years after the account is closed is the original information obtained at the time of opening the account. Not the information when the account closed. Ex: customer has moved several times in the 15 years the account was open. Must we retain the original or current address?

-----

My understanding is that we must retain the original information (name, address, SSN and DOB) obtained in account opening for 5 years after the account is closed. We are still working through this with our data processor, because they only retain the original address until move #2 - once the customer has moved twice the original information drops from they system. We are awaiting news of their "fix" for this problem.

---

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### **Primary or Secondary Document?**

Our document list is broken down into primary and secondary acceptable documents, as I'm sure many of yours are. As I understand a primary document should be govt issued, contain a photo or similar safeguard, contain an expiration date, and indicate the place of issuance. Based on this criteria could a fire arm permit be considered a primary document?

-----

I've heard it said that firearm permits are some of the hardest pieces of ID to come by - so I'm betting they are good ones to accept. As far as I know, they meet the qualifications you listed. I think it's up to your bank and it's CIP risk assessment as to whether you'll accept them as primary or secondary.

-----

Leslie G. is right - your bank must set up the parameters as to what you consider to be primary identification. I have recommended that the only primary id is a driver's license with photo from the state in which the bank is located. Every other government issued photo ID is secondary identification. My reasoning behind this is that you must design your CIP with the thought in mind that your weakest CSR is going to have to carry out the CIP. They are on the front lines. I don't

think I'm that sheltered up here in New Hampshire, but I don't have any idea what other states drivers license look like or military ids or passports. To me they are secondary in the sense that collaborating ID is required for acceptance as positive ID. If I don't know what neighboring states license look like I know a lot of good CSRs that don't either.

-----  
Quote:

-----  
If I don't know what neighboring states license look like I know a lot of good CSRs that don't either.  
-----

I'll bet you a lobster dinner that if you have branches in the "border towns" of Salem, Plaistow or Seabrook, those folks know what a Massachusetts drivers license looks like with all our folks slipping over to tax-free New Hampshire! Live Free or Die!

-----  
Clearly, a concealed carry or gun permit would be a good form of secondary identification. Elevating it to the level of primary identification should be a function of how difficult it is to obtain in that state. In both your home state and mine, it is considerably more difficult to obtain a gun permit than a drivers license; e.g. background checks and classroom instruction are required.

This web site contains links to information on the requirements for gun permits for all states.

-----  
You may have a point, Tom. However in the rest of NH, North of Concord it may be a different story. I'm not sure how many of the Mass minions come to banks on their trek North. The border towns may know Mass licenses or Vermont in some cases. My point is that primary ID can only be a document that is known to the person to whom it is presented.

-----  
I have a question.

Does the primary document have to have an expiration date? I know it has to be unexpired, but when the rule talks about recording information it says "For an individual, unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport".

Then later the rule says you have to keep "A description of any document that was relied on under paragraph (b)(2)(ii)(A) of this section noting 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".

Most carry permits and gun licenses don't have expiration dates, so I guess it makes a difference. I went to the site Ken so kindly provided and looked to make sure. But it seems awfully strange to say that a driver's license is more valid identification than a carry permit with a person's photograph and fingerprints, especially given that a background investigation is conducted on every applicant.

It's probably about the best documentary ID available from the viewpoint of really knowing who the person is. They probably are forged less, too!

-----  
Your answer seems to be in the language that says:

Quote:

-----  
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".  
-----

The "if any" language would seem to modify both "date of issuance" and "expiration date". The regulation specifically mentions as examples some types of documents that will not ordinarily have expiration dates, such as articles of incorporation or partnership agreements.

-----  
Funny how we all look at these things from a different perspective. We do consider both the military id and passport as primary ids in addition to our state's drivers license. If you want to talk about an id hard to get lets talk the military id! It involves enlisting for service or having a primary family member who is in the service. Although there can be fake passports we still find them to be a safe id and being in a metro area (Chicago) for a whole lot of years, I can say I have not (yet) seen a fake US Passport. Of course we won't take other country's passports nor will we take other state's driver's licenses.

As far as a firearm's id, I look at it this way. Whether it's hard to get or not, why would you open an account for someone who's BEST id is THAT one??? Frankly, I'd be a little worried if that's all someone could toss my way!!

The bottom line is all id can be forged ... your choice of id should include those you are most familiar. I just attended a good seminar held by our Secretary of State department showing all the ways the IL Driver's License has been counterfeited and how to tell a real from a fake. It was valuable information and you might want to check with your own state's DMV to see if they offer this training also.

-----  
Mr. Virr, my driver's license was originally obtained in 1959. I went to the police station, filled out an application, paid my fee, took the eye exam and passed a written and driving test. I received the license immediately. There was no photo of me on the license. I did not have to prove who I was, and I provided no form of identification to the examiner. (At that age I could not have provided any identification if he had asked for it.) Five years later the license, along with my billfold went through the wash, and was reduced a course powder. A motor vehicle employee who did not know me, only asked to see the old license, which was in powder form, and then replaced it. Years later the license was stolen and again replaced without question or proof of ID. (They did verify by telephone that a driver license was issued to someone bearing my name and that it was valid.) My current license is a renewal of that poorly documented driver's license. My social security card was obtained from the local post office when I was about 16. I signed a form requesting the Social Security Number and was given a Social Security Card. No ID was requested, nor was ID provided, not even the poorly documented driver's license. Would you consider this as the primary proof positive that I am who I say I am? It seems the government, along with banks and other business place a considerable amount of faith in the aforementioned documents. In fact all other forms identification I now carry are based on those two documents.

-----  
Anon raises the point that turns the whole thing into an exercise: We are totally dependent on the validity of the initial identification, even if we use biometrics. Once the "breeder document" is

received, all others flow from it; the Florida banker who accepts and authenticates a Florida drivers license is sunk if the Florida license was obtained using a fraudulent Oklahoma license.

-----

Majority of the folks are law abiding so we should not get too paranoid and question the authenticity of every Govt. issued ID to the extent that we can't open accounts anymore.

I am sure most of you have the electronic devise (we call it Demomate), which scans State issued DL's and prints out the information on the strip at the back which can be matched to the information on the face the ID. If it matches , there is no reason to dig further as to the validity of when it was issued.

On a lighter note, when asked to identify himself, a man looked into the mirror and said, "That's me!"

---

### **FDIC Examiners & CIP**

Just thought you want to know, our FDIC examiners are critiquing our draft CIP as part of the safety & soundness exam. We had a discussion about the CIP is only a draft, but they want to include it in the exam.

How unfair is that??

-----

Can you share with us what they are criticizing? Thanks.

-----

The FDIC never ceases to amaze me. They have nothing better to do than write you up for a law that isn't effective yet. I can understand that they wish to share their comments with you but including it in the exam, give me a break!

-----

Unfair! I disagree. They won't write you up for it, but they will review it and provide useful information toward compliance. In October, they'll be forgiving, in March they'll be less forgiving since we should know better and learn from others experiences (isn't networking great) and by your next exam they'll be even less forgiving.

You are getting a glass of lemonade, enjoy it.

-----

Are they asking to review any other part of BSA ? Our Austin, TX FDIC examiners told us at the last exam that BSA had been moved over to consumer compliance. Are they also looking at GLBA compliance, especially vendors contracts ? This stuff is scary, but we all have to grab the table and bend over at some time.

-----

Who reviews Privacy/vendor contracts for OCC bank's, the safety/soundness, compliance, or IT folks? I talked with an FDIC examiner in Oklahoma and he said their S&S folks still handled BSA. Seems like it goes back and forth.

-----  
Sorry, I couldn't post earlier. Here are their comments:

They have a check list that they are not sharing to see whether our draft CIP and training materials will be in compliance with the October 1 deadline.

For our particular bank, the examiner thought our draft CIP was "solid" and met the checklist requirements.

In addition, the examiner commented that he thought our training material was "overkill" in that it covered too much detail about our program and how to fill out the forms, etc.

The examiner did check the overall GLBA program, including the findings of our "surprise" inspections at all our branches.

The examiner went over our BSA vendor list, requesting copies of contracts with vendors for amounts over \$25,000. We talked about how vendors were selected and the criteria used in the selection process.

Hope this is helpful.

-----  
Maybe it's just been a really long day and I need to go home, but what's a BSA vendor list?

-----  
BSA vendor list is a list we have for all 3rd party vendor contracts with our bank.

-----  
Lestie, insert GLBA for BSA and you have the vendor list we all have to make sure the contract language is there for info security. Is that right wavewatcher ?

-----  
Quote:

-----  
Lestie, insert GLBA for BSA and you have the vendor list we all have to make sure the contract language is there for info security. Is that right wavewatcher ?  
-----

Yes. I understand that other people identify this list as just a 3rd party vendor or contracts agreement list.

-----  
It was the BSA that was throwing me. I'm on the right track now.

-----  
What were the surprise branch inspections that the FDIC reviewed?  
-----

I don't want to divert you from Anon's question; I too would like to know what aspects of BSA compliance they reviewed at the branches. That might be a bank's worst nightmare, particularly after CIP compliance becomes mandatory.

However, it is a good thing that they looked at your CIP program. As compliance is not yet mandatory, they cannot criticize the specifics of your program in the written report of examination. However, with any pending regulation, they can legitimately look at a bank's:

- \*Awareness of the new regulation,
- \*Preparation for compliance and
- \*Potential for compliance on the date when compliance is mandatory.

At this stage of the game, failure on one of those points generates legitimate criticisms. Their advance review of your program should give you a sense of confidence in your approach that many others would like to have right now.

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### **U.S. Citizenship - Revisited**

Ok, I know this was discussed a bit last week, but I need to take a little survey here.

This afternoon our Internal Auditor came for a preliminary BSA audit. One of the questions she asked had to do with Enhanced Due Diligence on non-U.S. citizens.

Since we have no way of telling who is and who isn't a citizen, we're considering adding a "citizen?" checkbox to our signature cards.

My question to you:

Do you ask your customers if they're US citizens? Or are you planning to ask?

-----

This is a good point. Since CIP breaks the ID down by US Citizen or Non US Citizen, I would think we have to be asking the question.

-----

The Supplementary Information published with the CIP reg states that the bank will not necessarily need to establish whether a potential customer is a U.S. citizen. Rather, the bank will have to ask each customer for a U.S. taxpayer identification number (SSN, EIN, or individual taxpayer identification number). If a customer cannot provide one, the bank may then accept alternative forms of identification.

-----

I agree totally!

-----

That's what we were planning on doing - start by asking for the SS# and going from there - but this question came up on our internal BSA audit, and the questions were supposedly taken straight from the examiner's manual. We don't want to get caught flat-footed when the examiners ask us about EDD for non-citizens....

The exact question she gave us was "Does the bank have 'appropriate, specific, and enhanced due diligence ... regarding non-U.S. citizens?'" (ellipsis included in original text) It's on the Patriot

Act part of her BSA audit papers. (She didn't know which section of Patriot Act it was referring to, though.) We had to tell her "no", because we don't know which customers are non-citizens.

Now if they were asking for non-US residents, I can tell who's who from the W-8's...

-----

"staying in compliance is like changing a tire on a moving car....."

Cute!! That moving car is probably loaded to the brim with politicians and examiners as well!

-----

As I recall, the enhanced due diligence under USA PATRIOT Act applies regarding correspondent accounts and private banking accounts. (12 CFR 103.181.) A few years ago there was enhanced due diligence regarding foreign political figures but I was not aware of a requirement for just plain non-US citizens.

-----

Ok, thanks, Steve! I'll see if I can track that down and let her know we don't have any correspondent accounts or private banking accounts (I'm starting to remember, and I think that was in there, too) for non-citizens.

-----

Is anyone treating foreign customers who open large dollar accounts through the branches as a "Foreign Private Banking" customer? While 312 of the PATRIOT Act defines Private Banking as REQUIRING \$1MM, if you have a foreign customer who deposits \$1MM, would you consider them to be a Private Banking customer?

This is where the issue of asking whether customers are citizens or not comes in. If a Resident Alien who signs a w-9 has a balance over \$1MM, would the regulators expect us to follow 312 for that customer?

I was just logging on tonight to ask your opinion about this very issue, so I was glad to see this thread!

We have been looking into the Matricula card issue. We called the person who is the head of the Hispanic Alliance for our county to discuss the card and she made an interesting statement. She stated that Banks should only be concerned with whether or not the person opening the account is who they say they are and that banks should not be concerned with whether or not that person is in this country legally. Her point was that many Mexicans with the Matricula card are illegals, but that should not be our concern.

I would be interested in knowing how you all feel about that statement. It seems to fly in the face of all we are trying to accomplish with the Patriot Act, OFAC, BSA, etc. Should we not care about doing business with illegals?

-----

I think we should be concerned as to how they are in the country. Why would you knowingly want to do business with someone who is in this country illegally? Maybe I'm missing something.

-----

If you're not near or on a border - you probably should be a little concerned about their business in the US. However, if you have a presence in a border city - people who live in the other country

can come over the border, open an account with you, and go back across the border in a couple of hours. I think the lady's comment about being concerned that they are who they say they are rather than the legality or purpose of their presence in the US is right on target - in my markets. It's risk based, obviously. If you're in middle America, the story might be different.

We've had very strict know your customer guidelines forever - often more strict than CIP - because of the markets we serve. We are comfortable accepting the Matricula consular card - as a piece of secondary identification. It may be easy to fake, but then so are many, many US ID's. We recognize that we're not the INS and thus don't have the resources or expertise to determine the legality of every customer's presence in the U.S. Although we want to be good corporate citizens, and we're as patriotic as anyone - it's scary to contemplate the possible repercussions from attempting to do the work of the INS.

The bottom line is that there is no one right answer. It depends on your risk tolerance, the nature of your business, and the location of your bank!

-----

Many illegal aliens have false SSNs (fake/# of deceased person/# of live person). That certainly presents a problem if you are checking SSNs as part of your fraud, risk or CIP process. You can't overlook that once you know it. Using a false SSN # is a crime.

I am not in a southern border state but am in NJ, and this is a problem in this area. At a former employer, we had a large problem come out of Colorado with many many fake SSNs - over 500 in a 4 month period were referred from one mortgage broker and were uncovered when the lender started verifying SSNs and ran a test on existing loans. It is easy to get into a car and drive anywhere you want.

Do you inquire what type of visa new customers who are aliens are here on? Many times you need to know that in order to make decisions whether to open accounts/approve loans. If they are here for 6 months, would you do a mortgage? Do you want to lend knowingly to someone you know can be deported? Write that loan off!

It is difficult to say we needn't be concerned with whether someone is here legally. That status can lead to many problems. You aren't necessarily going to be able to determine in all cases if someone is here legally, but if you gain knowledge that they are not, you should have a policy how you will handle the situation.

-----

Our current policy is not to open an account for anyone who cannot establish that they are in the US legally. Even if someone has a passport from another country, we require a US-issued document such as a valid visa. I am recommending keeping that policy in place; its working and I see nothing in the Patriot Act that says I should change it. I know we are not the INS, but we are citizens of this country and we should support and not help to subvert the immigration laws established by our government.

BC

-----

On the one hand it is not our place to police INS issues - but as with most issues, if you have the knowledge you must disclose it and take the necessary action. We take the Matricula card as a secondary ID only. We do not do loans for foreign nationals. If you obtain knowledge after the account is opened, file a SAR and then close the account.

-----  
Quote:

-----  
This is a good point. Since CIP breaks the ID down by US Citizen or Non US Citizen, I would think we have to be asking the question.  
-----

I was the compliance officer at the bank I worked at previously. The examiners did request enhanced due diligence on non-U.S. citizen accounts during the BSA portion of the exam. Instead of fighting them, I requested that the customer service area of the bank who imaged signature cards for all of the branches and had access to the account-opening documents, start a spreadsheet of accounts that were opened using W-8s. The accounts on the spreadsheet were then reviewed monthly for suspicious activity.

-----  
The Matricula Card issue, while very political, is really a no brainer. As U.S. citizens, we should all be concerned about who is in our country illegally. What is with everyone turning a blind eye to responsibilities that are inherent in our citizenship. Why do U.S. citizens aid and abet the subversive immigration policies of foreign powers. To me, Banks who accept the Matricula are dancing on a string being held by Vincente Fox. He's working you like a plow. Banks have a tremendous de facto responsibility to future safety, if not the future sovereignty, of the U.S. in the implementation of their CIP and the identification of their customers.

In fact, I submit that Leslie G. should be filing a SAR for every account she opens for Matricula Card holder in excess of \$5,000. The SAR is triggered because if a person is here legally, he will automatically present his state issued ID. If the person is not here legally, he will present the next best thing -- his Matricula card. It is a no brainer that those with Matriculas and ITINs are here illegally -- i.e. they have criminally violated immigration statutes by illegally entering the country.

SAR regs tell us that we must file the report if there is reason to suspect a violation of federal or state law. You should also consider that illegal alien income is indeed "illegal". If you set up an account to facilitate the collection of that illegal income as well as the remittance of that illegal income out of the country, then you are facilitating money laundering.

Yes, we should all feel sorry for the plight of the oppressed Mexican peasants who have little choice but to seek a new life in El Norte. In fact we should feel sorry for the rest of the world who wants to come here legally but can't. The fact of the matter is that we can't support the influx of an extra couple of billion new immigrant residents.

Too bad this has been made into such a political issue. From the days of our founding fathers up to the days of my own father, the simple and true answer is that we take care of American's first, but now the liberals have twisted things around so much that some poor misguided Americans (bless their hearts) seem to think we should take care of the world first. If we were to totally submit to such a policy America would cease to exist...and when that happens, there will be no one left to take care of anybody.

-----  
We do not accept work Visas, immigrant Visas or non-immigrant Visas for identification purposes. If a person has a genuine Visa, that person can get a state issued drivers license. If so, we then be cool in know they true Identity.  
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To the unregistered anonymous poster: if you are going to use a bankers forum to rant on personal political issues, I think the least you can do is register and state who you are. Thank you.

-----  
To Candy DuPont, "Junior" Member - thank you for expressing your opinion on what you think I should do. Although, I respect your right to express your opinion I am unconcerned with whether someone believes I should post anonymously or not. Apparently Banker's Online empowers unregistered users the privilege to post anonymously. To its credit Banker's Online does not censor points of view that may not be shared a particular member, non-member or junior member. This is something that is truly great about BOL, the sharing of information between banking professionals even though opinions may not be similar. My posting expressed opinions, not personal attacks and there was certainly no attempt to subtly pressure anyone to not post an opposing position.

I believe once that once we come to the realization that the USA Patriot is an extremely political piece of legislation, just as is the ECOA, the CRA, the TIS and the TIL that the more enlightened we become. The notice of inquiry published by Treasury regarding photocopies of ID and foreign issued ID was done so purely on the basis of politics. Treasury got caught not following the congressional mandate in Title III, Sec. 326 and got called on the carpet for it. Hence, the request for additional public comment.

I find it hard to believe that you would have written the same email in response to someone who would have stated that all banks should support illegal immigrants by accepting consular ID cards.

The FBI recently testified before the Judiciary Committee that consular ID's (e.g. Matriculas) serve as breeder documents. If you believe the FBI's conclusion, then an illegal person should be able to get a Matricula, open a bank account, get a Driver's License, apply to purchase firearms, and then commit random acts of terrorism. Yes, it is unfortunately a very complex and political situation.

Further, in regard to your position on the Matricula you may want to consider that out of the 15,000 or so banks in the U.S. that less than 200 accept the Matricula card. Isn't that amazing that less than 2% of U.S. financial institutions have opted to accept the risk?

Anyway, best wishes to you. BTW - I am a second generation American. My parents legally immigrated prior to my birth. Thank goodness both you and I have been given the right to express ourselves.

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#### CIP Contract Wording For Reliance On Another Bank

I am very new to compliance and my first project is to write the procedures for CIP. Bankers Online has been extremely helpful! With that being said, I have been asked to assist in writing verbiage for a contract to be drawn between our bank and the correspondent banks we underwrite and fund mortgage loans for. Per the USA Patriot Act, we need the contract to certify to the bank that the correspondent has implemented its anti-money laundering program, and that it will perform the specified requirements of the bank's CIP. Is copying from the regulation enough legalese or does anyone have an example they can share?

OK, I really want an answer to this one, because I already have had requests for this. So I'll be brave and start the ball rolling. I'm no lawyer and this is a rough draft. It'll still have to be edited to your bank's specific details. Let's put our heads together and polish it up.

\_\_\_\_\_ is regulated by the \_\_\_\_\_, and thus subject to the regulation implementing the anti-money laundering requirements.

This contract serves as certification that \_\_\_\_\_ has implemented an Anti-Money Laundering Program through Board approved policy. This policy sets forth Customer Identification Procedures in accordance with the USA PATRIOT Act. These procedures include:

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;
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.

(describe your reliance on third parties to perform CIP) \_\_\_\_\_ has purchased software, and subscribes to third parties, such as credit bureaus for identification verifications, and for screening prospective customers against lists of known or suspected terrorist or terrorist organizations as designated by government agencies.

An independent audit of the Customer Identification Program will be completed annually. After completion of said audit, \_\_\_\_\_ will re-certify implementation.

\_\_\_\_\_ The usual disclaimer, this is my opinion, not my employer's... Not meant as legal advice...

-----

Thanks for your help. I'll take your suggestions and rework them to apply to our situation.

---

---

### **Employee/Director CIP Exemption**

Is anyone addressing employee, director, stockholder accounts specifically under your existing customer exemptions? We are using the parameters that the customer must have maintained acct for >1yr and have stmts mailed to physical address and have had reasonable verification of SSN thru 1099/1098 rptng or thru Chex system or credit reporting agency -

Many employees and some directors have hold stmts and would not meet the established criteria. Should or can we specifically indicate that reasonable belief has also been established if they are employees/director or even stockholder of the bank to avoid having to subject these individuals to CIP? Or am I being too detailed?

Your thoughts will be appreciated!

-----

In the case of employees, you may have additional verifications on file in HR, especially if you are completing background checks. Also, you have additional TIN verification through W2 filing, which is very similar to the 1098/1099 provision you have for your existing customers.

I would suggest you expand your exemption criteria to include these (and other) employee-specific items if your goal is to avoid making CIP more burdensome for 'internal' customers than for other customers.

-----  
I would believe that in the case of employees, etc. the bank has already taken the steps necessary to claim reasonable belief. Most banks check identity information prior to hiring.

-----  
Are you going to perform this function on employee's spouses?

-----  
Thanks for your responses.

Good points!  
- thanks, now I've got more thinking to do!

I agree, that's why I don't want to have to CIP them, but as I understand you need to disclose how you formed that reasonable belief in policy or procedure. Based on your comments, if your employees, directors, etc., do not meet the criteria of your existing customer exemption then I would think you might want to include the statement you just responded with in your criteria (or something similar).

Even if you are not exempting existing customers, I wouldn't want to CIP a director or the CEO when they get another account after 10/1 !

Thanks again!

-----  
Quote:

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Even if you are not exempting existing customers, I wouldn't want to CIP a director or the CEO when they get another account after 10/1 !  
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I'm sure you can figure out how to get the info needed without "CIP"ing them - but I think my CEO and directors will be a little concerned if they DON'T get subjected to the new procedures after 10/1. After all, I've been preaching the importance of all this to them for months now!

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How about calling the local newspaper, telling them about the CIP requirements effective October 1 and offering some quotes and a photo op? One of your directors could be shown handing her drivers license to the CSR and the caption could explain it was something affecting all customers of all U.S. banks...

I'm not joking. The essence of public relations is to tell your own story rather than let someone else tell it for you. One of Leslie's well informed directors would probably be glad to go along with it.

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That is a fantastic idea! I'm going to share that one with the marketing and PR folks. Thanks!

Quote:

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Same Here.

If enough of us can get our banks to do this, maybe they will put it on 60 minutes. (Oh wait, those things never turn out well for banks!)

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That is a thought, and I hope I can convince all of our employees, Directors, etc., to participate by example in what we will be requiring our customers to do, but I know all too well what may incur. After all, we are telling them that this is to detect and prevent fraudulent activity, etc., and I can just hear the reaction a year from now when our CSR tells one of them (over the phone probably), I can't open the account or do the loan until I get and verify all of this info in the mail from Dallas, TX (130 miles away)!

My point in providing an out for these individuals that we do know (all too well) and are more than likely not committing fraud or involved in a terrorist ring, is to have the ability to forego such situations if necessary w/o having a policy violation. But then again, if we are faced with such a situation, it could be easier to "waive" the requirement open the account, change policy/procedure and get approval before it becomes a violation

I guess it all comes down to how you think your Directors and/or stockholders will react. I know I have some that if we talked about it in board next month, by this time next year when they need to purchase a CD they wouldn't remember!

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