

## *When the customer doesn't want to provide a TIN*

### *Receipt of "Constructive Notice"*

Whether for personal or political reasons, some people object to providing financial institutions with a TIN. They oftentimes provide a preprinted legal analysis of their position.

It should be assumed that some of those objecting to providing a TIN are sincere in their beliefs. However, debating the issue will serve no purpose. It is suggested that the financial institution simply provide the customer with the correct information.

A sample follows which can be revised to meet the needs of the individual institution. For example, you may provide your federal functional regulatory agency's contact information at the bottom of the form.

## *Financial institution Response to “Constructive Notice”*

Financial institutions occasionally encounter objections when they require a taxpayer identification number (TIN) as a condition of opening a deposit account. A refusal to provide a TIN may legitimately be based on the individual's beliefs or personal or political philosophy. Nevertheless, federal regulations require the financial institution to obtain the number.

In some cases, a potential customer provides a copy of one of several widely circulated memoranda purporting to explain why requiring a TIN is a violation of federal law and giving the financial institution "constructive notice" of the "violation." Some of the memoranda refer to several components of the Bill of Rights. Others selectively quote The Privacy Act of 1974 (TPA). The memoranda generally threaten legal action against the financial institution and, oftentimes the financial institution's employee. All reach the emphatic conclusion that the financial institution cannot require a TIN as a condition of opening an account. That conclusion is incorrect.

TPA, found at 5 U.S.C. 552a, prohibits government agencies from denying any "right, benefit, or privilege provided by law" to a person based solely that person's refusal to provide a TIN. However, TPA does not apply to a financial institution's refusal to open a deposit account because the depositor refuses to provide a TIN. Any one of the following reasons can be cited:

- a financial institution is not a government "agency," a term clearly defined in TPA; and
- opening a deposit account is not a "right, benefit or privilege provided by law"; and
- any disclosure required by federal statute (illustrated below) is specifically excluded from TPA coverage.

Another federal law, the Currency & Foreign Transactions Reporting Act, aka, The Bank Secrecy Act (BSA), requires financial institutions to obtain a TIN prior to opening any account. (Under BSA, the definition of a bank includes banks, savings and loans and credit unions; it is clearly applicable to all three types of institutions.)

BSA has included a requirement that banks obtain a TIN in connection with a deposit account since 1978. However, following the terrorist attacks of 9/11, BSA was amended to expand that requirement. Any flexibility that banks previously had in requiring the number was removed.

Prior to opening any account (deposit or otherwise) the bank is required to obtain four pieces of information from the customer. One of those is:

**31 CFR 1020.220(a)(2)(i)(4) Identification number, which shall be:**

- (i) For a U.S. person, a taxpayer identification number; or**
- (ii) For a non-U.S. person, one or more of the following: a taxpayer identification number; 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.**

So, if the potential customer is a U.S. citizen, he or she must provide a U.S. TIN. (Providing an incorrect number can be detected by the financial institution and may constitute perjury or loan fraud.) If the person claims to be a citizen of a country other than the U.S. then the financial institution is required to see and record acceptable evidence of that citizenship and, as noted, obtain an identifying number.

The policy "no TIN - no account" for U.S. Citizens is required, not prohibited, by federal law. Consumers objecting to the requirement should be provided with the address of the financial institution's primary federal regulatory agency so they can properly voice their complaint.