



July 1, 2002

Financial Crimes Enforcement Network  
Department of the Treasury  
P.O. Box 39  
Vienna, VA 22183

Re: Financial Crimes Enforcement Network; Due Diligence Anti-Money Laundering  
Programs for Certain Foreign Accounts  
67 FR 37736 (May 30, 2002)

Dear Madam or Sir:

America's Community Bankers ("ACB")<sup>1</sup> is pleased to comment on the Financial Crimes Enforcement Network's ("FinCEN") proposed regulation implementing section 312 of Title III of the USA PATRIOT Act of 2001 ("Patriot Act"). The proposal establishes minimum due diligence requirements for institutions that maintain correspondent and private banking accounts for non-US financial institutions and non-US persons.

### **ACB Position**

ACB generally supports the Department of Treasury's ("Treasury") risk-based approach that will enable financial institutions to tailor due diligence programs to their lines of business, size, customer base, and location. This reasonable standard is more appropriate than a rigid, "one size fits all" scheme. Accordingly, ACB strongly urges FinCEN to continue this approach as it completes the Patriot Act implementation process. In addition, ACB supports permitting covered financial institutions to incorporate the proposed due diligence requirements into their existing due diligence programs.

ACB also supports government efforts to effectively track financial transactions by terrorists and criminals. Nevertheless, ACB is concerned that the requirements triggered by the proposed rule will impose additional burdens on the already limited compliance resources of community-based financial institutions. While FinCEN has concluded the proposed rule does not impose a

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<sup>1</sup> ACB represents the nation's community banks of all charter types and sizes. ACB members, whose aggregate assets exceed \$1 trillion, pursue progressive, entrepreneurial and service-oriented strategies in providing financial services to benefit their customers and communities.

significant burden under its Regulatory Flexibility analysis, we disagree and are troubled as the cumulative burden associated with Patriot Act compliance continues to grow.

Specifically, section 312 requires financial institutions to determine whether any holder of a private banking account is a senior foreign political figure or a family member or close personal associate of such person and to report any known or suspected violation of law conducted through or involving the account. When taken together, such broad, open-ended requirements present significant compliance and operational burdens, particularly for smaller, community-based financial institutions with limited staff and compliance resources. Moreover, ACB encourages FinCEN and the other agencies charged with Patriot Act implementation to balance the prevention of terrorist financing against the privacy and security protection of legitimate, law-abiding customers and their non-public financial information.

Finally, while ACB supports FinCEN's flexible approach, we are concerned that such general instructions may be misinterpreted and incorrectly applied by banking regulators. Accordingly, ACB encourages FinCEN to work with the banking agencies to develop guidance on reasonable procedures for identifying immediate family members or close associates of senior foreign political figures without adding to the industry's cumulative Patriot Act compliance burden.

## **Background**

The proposal would require financial institutions to implement due diligence programs that include policies, procedures, and controls that are reasonably designed to detect and report known or suspected laundering through or involving correspondent accounts or private banking accounts maintained for foreign financial institutions or non-US persons.

Specifically, the due diligence program must consider the foreign institution's supervision and regulation in conjunction with guidance issued by Treasury and other federal regulators to determine whether the foreign institution presents a significant risk of money laundering. Institutions also must review public information to ascertain whether the foreign financial institution has been the subject of any criminal action or any regulatory action relating to money laundering.

Under the proposal, financial institutions maintaining private banking accounts for non-US persons must take reasonable steps to ascertain the identity of all nominal and beneficial holders, their line of business and source of wealth, as well as the source of funds deposited into the private banking account.<sup>2</sup> Institutions must also determine whether any holder is a senior foreign political figure and report any known or suspected violation of law conducted through or involving the account.

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<sup>2</sup> For the purposes of section 312, a private banking account requires a minimum aggregate amount of funds or other assets of at least \$1,000,000, is established on behalf of or for the benefit of one or more individuals who have a direct or beneficial ownership interest in the account, and is assigned to or is administered or managed by the covered financial institution.

## **Conclusion**

ACB stands ready to work with Treasury throughout the remainder of the Patriot Act rulemaking process to ensure that regulations are effective without being unduly burdensome. Thank you for the opportunity to comment on this important matter. Should you have any questions, please contact the undersigned at 202-857-3121 or via e-mail at cbahin@acbankers.org, or Krista Shonk at 202-857-3187 or via e-mail at kshonk@acbankers.org.

Sincerely,

A handwritten signature in cursive script that reads "Charlotte M. Bahin".

Charlotte M. Bahin  
Director of Regulatory Affairs  
Senior Regulatory Counsel