

Customer Information Programs and the USA PATRIOT ACT

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Opening a new bank account has become noticeably more complicated since the passage and implementation of the USA PATRIOT Act. While still typically easier than opening a corporate bank account in much of the rest of the world, many treasurers and CFOs are unhappy about providing the personal information about corporate signers that their banks now often require. In fact, many of them are not only complaining to their banks, but in some cases are refusing to provide requested information such as social security numbers and copies of drivers' licenses for corporate signers, since they believe (correctly) that the USA PATRIOT Act does not require them to provide the information. Unfortunately, the information requests fall under a bank's Customer Identification Program (CIP), rather than any specific language of the USA PATRIOT Act.

Under the CIP rule (31 C.F.R. § 103.121), which implements §326 of the USA PATRIOT Act, banks and other financial institutions (FIs) are required to:

- Adopt written procedures to verify the identity of any person seeking to open an account;
- Maintain records of the information used to verify the person's identity and
- Determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations.

Under the rule the minimum identification information that an FI must collect at the opening of all new accounts, business or personal, includes:

- Name,
- Address (a physical address is required, PO Boxes are not acceptable) and
- Identification number (typically social security number or EIN).

Individuals, either as account owners or potentially as signers for a business account, are also required to provide their date of birth.

The key word here is minimum. FIs are given a great deal of flexibility to develop CIPs that are appropriate to their size, market, and customer base. This includes the ability to require whatever additional information they feel is necessary to "have a reasonable belief that it knows each customer's identity." The rule as finally adopted does not require information for all signers on a business account, but it does "require a bank's CIP to address situations when the bank will take additional steps to verify the identity of a customer that is not an individual by seeking information about individuals with authority or control over the account, including signatories, in order to verify the customer's identity." While this is somewhat less onerous than the draft rule which originally mandated the collection of the minimum information from all corporate signatories, it still implies that individual signer data may be needed in some cases, without specifying what those cases are.

As a result, many banks simply require the collection of identifying information on all corporate signers to ensure that they are in strict compliance with the act. After all, regulators rarely criticize anyone for doing more than the required minimum, but will often impose fines or other consequences for even inadvertent failure to meet the minimums. Banks will go to significant lengths to avoid the potential fines and negative

publicity that can result from violations of any part of the CIP Rule. And in our current environment, regulators are aggressively searching for violations of banks' CIP policies.

Similarly, while the final rule does provide an exemption for publicly traded companies subject to SEC oversight (but only for their domestic operations), it does not require that an FI provide such an exemption. Given the desire to avoid potential regulatory issues and the potential for mistakes by line staff if they are told that they don't need to collect CIP information from "public companies," some banks are requiring identifying information from all new customers and all signatories. If the bank has not included this exemption in their formal CIP, then they must comply with the requirements of their written program. Pointing out to the bank that the regulation does not require verification for publicly traded companies may not carry much weight with a bank officer who could lose his/her job if they fail to comply with the letter of their FI's written policy.

At the end of the day, while the underlying source of the new requests for personal information regarding bank account signatories is the USA PATRIOT Act, the requirements that you will face at any given bank or financial institution (broker/dealers are included in this by the way) are mandated by that bank's written CIP, and CIPs are going to vary from bank to bank.

If a specific FI requires information that you are not comfortable providing, you may have more success dealing directly with senior executives in the "National" or "Corporate Banking" Department of that institution, since they are more likely to know of any possible exceptions to the rules. But don't assume that you can convince them to change their procedures because "the USA PATRIOT Act doesn't require that information." You will have to comply with the written requirements of the FI's CIP if you want to do business with that FI. If the institution continues to require information that you do not want to (or cannot) supply you may need to consider talking to other FIs. Don't be surprised, however, if you find similar requirements elsewhere. Alternatively, if the problem is only with specific signers, you may want to consider changing the signatories on your bank accounts.

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