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August 22, 2002

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

Attn: Section 312 Interim Regulations

Re: Financial Crimes Enforcement Network; Due Diligence Anti-Money Laundering
Programs for Certain Foreign Accounts
67 FR 48348 (July 23, 2002)

Dear Madam or Sir:

America's Community Bankers ("ACB")¹ is pleased to comment on the Financial Crimes Enforcement Network's ("FinCEN") interim final rule implementing section 312 of Title III of the USA PATRIOT Act of 2001 ("Patriot Act"). Until a final rule is issued, the interim rule provides guidance to insured depository institutions that must perform due diligence for correspondent and private banking accounts held by non-US financial institutions and non-US persons.

ACB Position

ACB generally supports the Department of the Treasury's ("Treasury") decision to issue an interim final rule in order to fully consider the prior proposal in light of the comments received. This measure will prevent financial institutions from incurring unnecessary compliance costs in the event that the proposed requirements are changed. ACB also prefers the guidance issued in conjunction with the interim rule to strict compliance until a final rule is issued, particularly given the Patriot Act's substantial penalties for non-compliance with the due diligence provisions.²

¹ 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.

² 31 U.S.C. 5322(d). Financial institutions that fail to conduct the proper due diligence for private banking or correspondent accounts held by non-U.S. persons or non-U.S. financial institutions may be fined up to \$1,000,000.

ACB would like to take this opportunity to reiterate our general concerns with the proposals issued to implement the Patriot Act. While ACB supports government efforts to effectively track financial transactions by terrorists and criminals, we are concerned that the requirements triggered by the proposed rule and the interim rule will impose additional burdens on the already limited compliance resources of community-based financial institutions.

ACB generally supports the interim final rule's risk-based approach that will enable financial institutions to focus compliance efforts on high-risk accounts by establishing due diligence policies that comport with existing best practices. This reasonable standard is more appropriate than a rigid, "one size fits all" scheme. ACB strongly urges FinCEN to continue this approach as it completes the section 312 rulemaking as well as the remainder of the Patriot Act implementation process.

While ACB supports this 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 standard techniques to be used in evaluating compliance until a final rule is issued.

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.

Background

Under the interim final rule, banks must still conduct due diligence for United States private banking and correspondent bank accounts involving foreign persons. While Treasury does not expect compliance with the terms and conditions of the proposed rule, banks are expected to comply with provisions that coincide with the Patriot Act.

Under the interim final rule, reasonable due diligence programs will focus on private banking and correspondent accounts that pose a high risk of money laundering based on an institution's overall assessment of money laundering risks posed by foreign private banking and correspondent accounts. In Treasury's view, due diligence and enhanced due diligence policies for these accounts should comport with existing best practices and evidence good faith efforts to incorporate due diligence procedures. Specifically, Treasury expects banks to focus on:

- High risk foreign private banking and correspondent accounts;
- Correspondent accounts used to provide services to third parties;
- High-risk correspondent accounts for financial institutions other than foreign banks, such as money transmitters; and
- Accounts opened on or after July 23, 2002.

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 black ink that reads "Charlotte M. Bahin". The signature is written in a cursive, flowing style.

Charlotte M. Bahin
Director of Regulatory Affairs
Senior Regulatory Counsel