#9

June 28, 2002

FinCEN
P.O. Box 39
Vienna, VA 22183
Attention: Section 312 Regulations

Re: Proposed Regulations Implementing Section 312 of the USA Patriot Act

Dear Sir or Madame:

The Conference of State Bank Supervisors ("CSBS") appreciates the opportunity to comment on the proposed regulations issued by the Department of the Treasury, implementing Section 312 of the USA Patriot Act (the "Proposed Regulations"). CSBS is the national organization of state officials responsible for chartering, regulating and supervising the nation's 6,868 state-chartered commercial and savings banks and 419 state-licensed branches and agencies of foreign banks. In preparing our comments, we consulted with the CSBS International Banker's Advisory Board, (IBAB) a group of international bank regulators and international bankers similar to banker advisory groups utilized by the Federal Reserve Board and soon to be established by Chairman Powell at the FDIC.

CSBS applauds the effort to help prevent the use of U.S. financial institutions for the purpose of money laundering and terrorism. CSBS understands the difficulty in pursuing those efforts while not unnecessarily and unduly burdening U.S. financial institutions to the point where such institutions are at a competitive disadvantage with foreign financial institutions. Most U.S. financial institutions have already implemented stringent and effective anti money laundering programs in compliance with the Bank Secrecy Act. These programs include comprehensive Know Your Customer policies and procedures. Any new requirements imposed by the Patriot Act on these institutions should be implemented in a manner reasonably calculated to provide meaningful benefits in the fight against money laundering and terrorism without imposing undue burdens

or restrictions or unnecessarily increasing the cost of doing business in the United States. In addition, the guidelines in the final rule should be clear and concise in order to avoid any confusion concerning the implementation of Section 312 of the Patriot Act.

Based on the foregoing, CSBS respectfully offers the following specific comments to the Proposed Regulations:

1. Definition of "Foreign Financial Institution"

The Proposed Regulations define "foreign financial institution" to include any person organized under foreign law, that if organized in the United States, would be required to establish an anti-money laundering program. Recent legislation has significantly expanded the scope of U.S. organizations that would fall under this provision, including entities such as casinos and mutual funds.

The proposed definition goes beyond traditional notions of correspondent banking and will encompass a wide range of businesses that do not engage in "correspondent banking" activities or maintain "correspondent accounts" with U.S. financial institutions. In addition, the accounts, activities, sources of funds and ownership of these businesses are already covered by the "know your customer" policies and procedures of U.S. financial institutions. The final rule should carefully weigh the added costs and responsibilities of implementing enhanced due diligence procedures for these non-traditional types of "foreign financial institutions." to ensure that the additional law enforcement benefits will result in effective and meaningful anti-money laundering strategies.

2. Definition of "Senior Foreign Political Figure"

The inclusion of individuals "widely and publicly" known to be close personal or professional associates of certain foreign political figures in the definition of "senior foreign political figures" is vague and would be difficult for a covered financial institution to implement and enforce.

This provision leads to uncertainty as to who would be covered, what constitutes "widely and publicly known," how exhaustive an investigation must a covered financial institution engage in, and how is the institution supposed to keep track of a customer's association with friends and business associates. As written, it will be extremely difficult for a covered financial institution to know if they are complying with this provision. To better ensure compliance, and assist covered institutions, Treasury should add clarity in the definition of "senior foreign political figure."

3. Due Diligence Programs for Correspondent Accounts

Another provision that is overly broad or vague and therefore would be difficult to comply with as written is the requirement under the enhanced due diligence program which requires a covered financial institution to consider any publicly available information from U.S. governmental agencies, multinational organizations and other *public information* to ascertain whether the foreign financial institution has been the subject of criminal action of any nature or regulatory action relating to money laundering.

Given the virtually unlimited sources of public information available today, more specific guidance is necessary as to the type and nature of public information that a financial institution should consider and the frequency of review of those sources. Otherwise this could lead to the unduly burdensome, ineffective and expensive result of a covered financial institution being required to continuously search the virtually limitless publicly available mediums (in the US and abroad), including the Internet, periodicals, newsletters, etc. for information regarding its correspondent customers. In order to enhance the effectiveness of this requirement, additional clarity and standards regarding how covered institutions should utilize public information is critical.

4. *Definition of Private Banking Account*

The definition of "private banking account" seems to be overly broad to the extent that it could encompass accounts established *outside the United States* solely by virtue of the fact that a U.S. based employee may have had some involvement in the process. It should be clear that an account will not be deemed *established* in the U.S. merely because the U.S. office of a foreign bank solicits or promotes deposit products on behalf of its head office or non-U.S. affiliates. A reasonable threshold of US employee involvement should be considered. For example, if a US employee is acting as account manager or is the account executive, it is reasonable to consider the account to be established in the US.

5. Enhanced Due Diligence for Certain Off Shore Banks

The Proposed Regulations require that a covered financial institution take reasonable steps to determine the ownership of any foreign bank whose accounts are subject to the enhanced due diligence procedures of the Proposed Regulations---essentially foreign banks operating with an off-shore license. For purposes of the Proposed Regulations, an owner is defined as any person who directly or indirectly

owns, controls, or has power to vote five percent (5%) or more of any class of securities of the foreign bank.

Historically, the threshold for determining ownership of financial institutions has been set at twenty five percent. Ownership of less than twenty five percent has been deemed to be *de minimus* since such person would not be able to control, influence or dictate the policies of such financial institution. Twenty five percent may not be an appropriate threshold for enhanced due diligence purposes, but five percent seems too low and represents a marked departure from existing approaches.

CSBS appreciates the opportunity to share our thoughts and concerns relating to the Proposed Regulations. We are happy to respond to any questions regarding the points included above.

Best Personal Regards,

Neil Milner
President and CEO