



September 18, 2002

FinCEN  
Department of the Treasury  
c/o Charles Klingman  
Section 326, Bank Rule Comments  
P.O. Box 39  
Vienna, VA 22183  
Sent via email to [regcomments@fincen.treas.gov](mailto:regcomments@fincen.treas.gov)

RE: Section 326, USA PATRIOT Act

Dear Sir or Madam:

The Mortgage Bankers Association of America (MBA) appreciates the opportunity to comment on the proposed rule implementing Section 326, Verification of Identification, of the USA PATRIOT Act of 2001.

MBA supports the Department's efforts to develop rules for identifying and verifying customer information that are designed to prevent money laundering activities while not unduly burdening financial institutions. It is our understanding that the rule proposed for banks will be the basis for developing customer identification rules for loan and finance companies. As a result, we would like to offer the following comments as they relate to mortgage lending.

### **Triggering the Verification Process**

The proposed rule requires that financial institutions obtain and verify customer identification information on individuals "seeking to open an account." The proposed rule states that credit accounts and other extensions of credit are included within the scope of Section 326. However, the proposal clarifies that a "customer" does not include a "person seeking information about an account, such as rates charged or interest paid on an account, if the person does not actually open an account." 67 Fed. Reg. 48292 (July 23, 2002). Thus a lender need not check the identity of a person who is merely rate shopping. We believe this is an important distinction and would support adoption in the final rule.

### **Triggering the Record Retention Requirement**

Mortgage lenders have expressed confusion as to what constitutes the triggering event for the recordkeeping requirement as compared to the triggering event for verifying consumers' identifications. MBA views recordkeeping and verification as two separate and distinct requirements. For example, a lender may begin investigating the borrower's identity upon taking a mortgage application, but should not be required to keep the records or copies of the documents verified if the loan does not close. It is this clarification that we urge you to include in the final rule.

The proposed rule states that a bank must maintain a record of the identifying information provided by the customer (i.e. copies of documents reviewed) for five years after the date the account is *closed*. This language implies that an account must have been opened, or in the case of mortgage lending -- that a loan was made. To clarify what we believe is the Department's intent, we recommend that the final rule expressly state that the recordkeeping requirement is only triggered if the mortgage is made. This would clarify that the taking of a mortgage application does not trigger the 5-year recordkeeping requirement if the loan is subsequently denied, withdrawn, cancelled or otherwise does not close.

### **Transfers of Servicing and Loan Sales**

The proposed rule indicates that transfers of accounts from one bank to another as a result of a merger, acquisition, or purchase of assets or assumption of liabilities fall outside of the scope of section 326. MBA supports the Department's proposal that a transfer of assets does not trigger new verification requirements. The proposal, however, is silent on how transfers of servicing and loans affect the *recordkeeping requirement*. Because the physical loan file often transfers with the loan or servicing rights, we ask that the Department clarify that the seller need not retain the records/documents for 5 years if they transferred to the buyer with the sale of the asset. It will be extremely difficult for many mortgage lenders to retain this information in physical or electronic form upon transfer of ownership. This level of record retention is not necessary today for proper management of the asset and would require significant system enhancements and operational changes.

### **Consistency Between Subsidiaries and Independent Mortgage Companies**

A significant number of mortgage companies are subsidiaries of banks, bank holding companies, thrifts or credit unions. Other mortgage companies are independently owned and licensed by the States. MBA believes it is critical to provide a consistent effective date for Section 326 for all "loan and finance companies" regardless of their ownership. To date, rules have not been published for loan and finance companies. As a result, mortgage company subsidiaries of banks are unclear as to the effective date of compliance with Section 326. We recommend that the effective date for section 326 for mortgage company subsidiaries be deferred to the implementation date to be imposed

on loan and finance companies. This will ensure that certain lenders are not placed at a disadvantage relative to their competitors when it comes to enforcement of this rule.

### **Alternative Forms of Identification**

The proposed rule implies that banks must inspect and retain copies of unexpired government-issued identifications when a customer meets face-to-face with the lender. It is important to note that some mortgage lenders use alternative forms of verification including bank statements, credit reports, tax returns, W-2s, and employment verifications, and may never visually inspect a driver's license. The extensive background check of the borrower's identity makes the driver's license less important as a verification document. MBA asks that the Department consider allowing these documentation alternatives in all mortgage lending cases not just when customers are not physically present.

### **Date of Birth**

The minimum standards proposed by the Department require banks to collect the following information: name, residence address, mailing address, tax identification number and date of birth. Currently on the Uniform Residential Loan Application, Form 1003 (URLA), mortgage lenders collect the age of the borrower, but not the date of birth. The URLA is a standard document required and developed by Fannie Mae, Freddie Mac, the Federal Housing Administration and Department of Veterans Affairs. Changes to this document must be coordinated among these entities. We suggest that mortgage lenders be allowed to collect the age of the applicant rather than the date of birth until the agencies update the URLA. Discussions are currently underway with these entities.

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MBA appreciates this opportunity to share our views. We hope that the Department will consider these comments in their development of a final rule for both banks and independent mortgage companies. Please do not hesitate to call if we can be of further assistance.

Sincerely,

/s/

Kurt Pfothenauer  
Senior Vice President, Government Affairs