

From: "Miller, Patrick H (Compliance)" <Patrick.Miller@mbna.com> on 05/04/2005 09:10:59 AM

Subject: EGRPRA (Currency Transaction Reports)

*MBNA America Bank, N.A.
1100 North King Street
Wilmington, Delaware 19884-0127*

May 4, 2005

Office of the Comptroller of the Currency
250 E Street, SW
Public Information Room Mailstop 1-5
Washington, DC 20219
Attn: Docket 05-01

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal
Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attn: Docket OP-1220

Robert E. Feldman, Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attn: 2005-02

Re: Request for Burden Reduction Recommendations

This comment letter is submitted on behalf of MBNA America Bank, N.A. ("MBNA") in response to the notice of regulatory review ("Notice") and request for public comment by the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, and the Office of Thrift Supervision, (collectively the "Agencies") published in the Federal Register on February 3, 2005. The Notice was published pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA) and requested recommendations on how to reduce the burden of rules pertaining to Money Laundering, Safety and Soundness, and Securities.

Cash Transaction Reporting

MBNA recommends that Treasury increase the Cash Transaction Reporting (31 CFR 103.22) threshold from the current \$10,000 to \$25,000 to reflect the impact of inflation and economic changes over the last 35 years. The Cash Transaction Reporting threshold was established in

1970 under the Bank Secrecy Act in response to increasing reports of illegally obtained cash entering the nation's financial system. It takes over \$50,000 to equal the same buying power today as the \$10,000 did in 1970 when adjusted for inflation. Many customers and legitimate businesses routinely transact in amounts over \$10,000 in cash today compared to 1970 as a result of inflation. MBNA suggests a \$25,000 threshold, which is equal to just over \$5,000 in 1970 dollars when adjusted for inflation. Additionally, MBNA recommends the Treasury establish a specific timeframe for reviewing the reporting thresholds for Cash Transaction Reports (CTR), Suspicious Activity Reporting (12 CFR 12.11 and 31 CFR 103.18) and Monetary Instrument Sales Records (31 CFR 103.29) established under the Bank Secrecy Act and make adjustments for inflation on a regular basis to ensure that reporting requirements are more indicative of the types of transaction associated with money laundering and criminal activity.

Customer Identification Program

MBNA recommends that Treasury review the requirement to obtain and perform verification of a business entity's Employer Identification Number (EIN) as part of the Customer Identification Program (31 CFR 103.121(b)(2)(i) and (ii)) under the USA PATRIOT Act requirements. The IRS relies upon the EIN in connection with the payment of taxes by business entities and the withholding of payroll taxes by businesses with employees. The purpose of the EIN is not for identification of the business entity. The EIN is relatively easy to obtain from the IRS and third parties on behalf of the requesting party can file the application. In contrast, the EIN is very difficult to verify and very few resources such as trusted third party databases and credit reporting agencies are available to perform the verification. Frequently, the resources that are available to verify information on a business entity cannot provide EIN verification for small to mid-size businesses. Other sources such as State business registries, licensing websites or copies of business licenses do not provide the EIN as well. MBNA recommends that Treasury consider replacing the requirement to obtain and verify the business EIN with language similar to that for foreign nationals under the Customer Identification Program. Treasury should enable financial institutions to obtain and verify a government issued identification number, such as a State issued business license number or other government (federal, state, local) issued business identification number in lieu of the EIN.

MBNA suggests that Treasury review the requirement to obtain a physical street address for all applicants under the Customer Identification Program (31 CFR 103.121(b)(2)(i)) implemented under the USA PATRIOT Act. Many of our customers, to minimize their exposure to identity theft and as recommended by government and private consumer advocates, have opened a post office boxes to ensure secure delivery of their mail. When opening a post office box it is necessary to register your physical address with the postal service. Therefore any need to determine the physical location of the post office box owner can be satisfied through the postal service. Financial institutions are interested in ensuring that customers receive their access devices, contracts, terms and agreements and monthly statements at the address where they receive mail. It serves no purpose to require financial institutions to verify a customer's physical address if the customer does not receive mail at that address. Any need for law enforcement or the government to locate a customer with a post office box should be directed to the postal service, which is a government agency.

MBNA also recommends that Treasury eliminate the split Record Retention requirement

imposed by the Customer Identification Program (31 CFR 103.121(b)(3)) under the USA PATRIOT Act requirements. The need to maintain the name, physical address, date of birth and tax identification number information on the account for 5 years after the date the account is closed creates an undue burden on financial institutions. MBNA suggests the Treasury consolidate the record retention requirements in the Customer Identification Program and require that financial institutions maintain this information for 5 years from the date the account is opened (which is the same requirement for the verification documentation). Financial institutions maintain the name, date of birth and tax identification number on the account as long as the account is opened and for period of time after the account is closed under normal business practices. The physical street address at the time the account is opened does not provide financial institutions with information of practical value, as a customer may change his/her address several times during the life of an account. The current record retention requirements force many financial institutions to maintain the account opening information and verification documentation indefinitely to ensure compliance.

MBNA additionally requests that Treasury review the examination procedure covering Reliance on Another Financial Institution and provide clarification as to what a financial institution must do to satisfy the requirements. It should be clear that upon satisfying the elements of this provision, that a financial institution has completed the requirements under 31 CFR 103.121(b)(6) including verifying that the other financial institution is subject to 31 USC 5318(h); is regulated by a federal functional regulator; reliance is reasonable; entering into a contract; and obtaining annual certification. Upon satisfying these requirements it should not be necessary for one financial institution to obtain and maintain copies of the applications and documents (passport, utility bills, banking statements, etc.) relied upon by the other financial institution when opening an account for a mutual customer. A reference to the reliance provision in the account opening documents should be suitable for this section of the exam. Requiring the relied-upon financial institution to provide the documents is both unnecessary and burdensome.

Competitive Disadvantage

Currently, finance companies that are not subsidiaries of a national bank have no specific USA PATRIOT Act compliance requirements. It is recognized that future rule making in this area will occur but until such time, financial institutions with a federal functional regulator are at a competitive disadvantage. The insurance premium finance industry is an example of this situation. The insurance premium finance industry relies on agents to collect and submit borrower information for financing. This information is derived from the property and casualty insurance application and underwriting process. Insurance agents generally do not collect TIN or EIN information because it is not required to place insurance with carriers. The U.S. Treasury Department exempted property and casualty insurers from the Customer Identification Program requirements due to the low risk of money laundering and terrorist financing associated with this product. Insurance agents place their premium financing arrangements exclusively with finance companies and not national banks because of the additional burden placed on national banks to obtain and verify TIN or EIN. Requiring only national banks and national bank's subsidiaries to collect the borrower's TIN / EIN places them at a competitive disadvantage to finance companies.

Politically Exposed Persons

MBNA suggests that Treasury provide an enhanced definition of politically exposed persons (PEPs) or senior foreign political figures. Section 312 of the USA PATRIOT Act requires financial institutions to conduct enhanced scrutiny of private banking accounts of current and former senior foreign political figures and to ensure that the methods are reasonably designed to detect and report transactions that may involve the proceeds of foreign corrupt acts. Financial institutions are being required to identify not only current and former senior foreign political figures but their family, businesses, close associates and others. It is not possible for financial institutions to verify all possible relationships of current or former foreign officials. There is no source available to identify all possible relationships and not all of these relationships are public information. MBNA also suggests the Treasury provide a detailed definition of "senior foreign political figures" and what constitutes a relationship for purposes of these requirements. Additionally, the Treasury should provide examples of demonstrated best practices to provide the financial industry with clear guidance and standards for reference.

MBNA appreciates the opportunity to comment on these matters. If you have any questions concerning these comments, or if we may otherwise be of assistance, please do not hesitate to contact the undersigned.

MBNA America Bank, N.A.

/s/Louis J. Freeh

Louis J. Freeh
General Counsel
(302) 432-1490