

## ORDER

**Order granting an exemption from customer identification program requirements implementing section 326 of the USA PATRIOT Act, 31 U.S.C. § 5318(l), for loans extended by banks (and their subsidiaries) subject to the jurisdiction of the Federal Banking Agencies to all customers to facilitate purchases of property and casualty insurance policies.**

**Issue Date: October 5, 2020**

By ORDER, under the authority set forth in 31 C.F.R. § 1020.220(b) implementing section 326(a) of the USA PATRIOT Act, 31 U.S.C. § 5318(l)(5), the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Federal Reserve), the Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA), collectively the Federal Banking Agencies (FBAs), with the concurrence of the Financial Crimes Enforcement Network (FinCEN), hereby grant an exemption from the requirements of the customer identification program (CIP) rules implementing section 326 of the USA PATRIOT Act, 31 U.S.C. § 5318(l),<sup>1</sup> for loans extended by banks<sup>2</sup> (and their subsidiaries<sup>3</sup>) subject to the FBAs' jurisdiction to all customers to facilitate purchases of property and casualty insurance policies<sup>4</sup> (hereinafter referred to as premium finance loans or premium finance lending).

### **Background**

By letter dated September 20, 2016, and by letter dated March 27, 2017, a consortium of banks<sup>5</sup> submitted a request to the FBAs and FinCEN for an exemption or interpretation

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<sup>1</sup> 31 C.F.R. § 1020.220 (FinCEN); 12 C.F.R. § 21.21(c)(2) (OCC); 12 C.F.R. §§ 208.63(b)(2) and 211.24(j)(2) (Federal Reserve); 12 C.F.R. § 326.8(b)(2) (FDIC); and 12 C.F.R. § 748.2(b)(2) (NCUA) (collectively, the CIP rules).

<sup>2</sup> This ORDER is applicable to banks, as that term is defined by 31 C.F.R. § 1010.100(d), and their subsidiaries, that are subject to the jurisdiction of the OCC, Federal Reserve, FDIC, or NCUA.

<sup>3</sup> See, e.g., 12 C.F.R. §§ 5.34(e)(3) and 5.38(e)(3) (requirements governing operating subsidiaries of national banks and Federal savings associations); see also <https://www.fincen.gov/resources/statutes-regulations/guidance/interagency-interpretive-guidance-customer-identification> for interagency FAQs describing the applicability of the CIP rules to bank subsidiaries.

<sup>4</sup> This ORDER does not apply to life insurance policies, annuity contracts or any other insurance product with features of cash value or investment.

<sup>5</sup> The consortium included the following banks: Pacific Enterprise Bank; BankDirect Capital Finance, LLC – BankDirect Capital Finance, a Division of Texas Capital Bank, N.A.; Premium Assignment Corporation, a subsidiary of SunTrust Bank; First Insurance Funding Corp.; AFCO Credit Corporation – AFCO Acceptance Corporation- Prime Rate Premium Finance Corp., subsidiaries of Branch Banking & Trust Company (BB&T); and Metabank (its AFS/IBEX division).

regarding the application of the CIP rules to insurance premium finance lending (the “Request Letters”).<sup>6</sup> The Request Letters asserted that there is no need to apply the CIP rules to insurance premium finance lending because this activity presents a low risk of money laundering. On September 27, 2018, the FBAs and FinCEN issued an Order granting an exemption from the requirements of the CIP rules implementing section 326 of the USA PATRIOT Act, 31 U.S.C. § 5318(l), for loans extended by banks (and their subsidiaries) subject to the FBAs’ jurisdiction only to commercial customers<sup>7</sup> to facilitate premium finance lending. By letter dated November 12, 2018, the American Bankers Association requested that the CIP exemption apply to all customers of premium finance lending and not just commercial customers (the “Supplemental Letter”). The Supplemental Letter noted that the same rationale for the CIP exemption for commercial customers also applies to an exemption for all customers of premium finance lending.

### **Regulatory Requirements**

Under 31 C.F.R. § 1020.220(b), the appropriate FBA with the concurrence of the Secretary of the Treasury may by order or regulation exempt any bank or type of account from the requirements of the CIP rules. The Secretary’s authority under this provision has been delegated to FinCEN. The FBAs and FinCEN must consider whether the proposed exemption would be consistent with the purposes of the Bank Secrecy Act (BSA)<sup>8</sup> and with safe and sound banking and may consider other appropriate factors.

The CIP rules require a bank to implement a CIP that includes risk-based verification procedures that enable the bank to form a reasonable belief that it knows the true identity of its customers.<sup>9</sup> These procedures must specify the identifying information that a bank will obtain from each customer prior to opening an account. These procedures must also include, at a minimum, the customer’s name, date of birth (for an individual), address, and identification number. For an individual, the address must be a residential or business street address; for an individual who does not have a residential or business street address, an Army Post Office or Fleet Post Office box number, or the residential or business street address of next of kin or of another contact individual, is acceptable. The address for a person other than an individual (such as a corporation, partnership, or trust) must be a principal place of business, local office, or other physical location. For a U.S. person, the identification number must be a taxpayer identification number. For a non-U.S. person, one or more of the following is required: a taxpayer identification number, passport number and country of issuance, alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or

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<sup>6</sup> The FBAs also consider oral representations made by the consortium as included in the Request Letters.

<sup>7</sup> In the Order dated September 27, 2018, commercial customers included businesses organized, for example, as corporations, partnerships, sole proprietorships, and trusts.

<sup>8</sup> 31 U.S.C. § 5311 (setting forth the purposes of the BSA).

<sup>9</sup> 31 C.F.R. § 1020.220(a)(2).

residence and bearing a photograph or similar safeguard.<sup>10</sup> The CIP must also contain procedures for verifying the identity of the customer.<sup>11</sup>

### **Description of Premium Finance Lending**

Premium finance loans provide short-term financing to business and non-business borrowers to facilitate their purchases of property and casualty insurance policies. According to FinCEN, these types of loans present a low risk of money laundering because of the purpose for which the loans are extended and limitations on the ability of a customer to use such funds for any other purpose.<sup>12</sup> Moreover, according to FinCEN, property and casualty insurance policies themselves are not an effective means for transferring illicit funds.<sup>13</sup>

Insurance agents and brokers assist their customers to arrange financing for the purchase of single-premium insurance policies. An insurance agent or broker typically solicits loan quotes from one or more premium finance lenders and then presents these quotes to the customer of the insurance agent or broker (i.e., the applicant or potential borrower). Most lenders require that insurance agents or brokers only request financing for insurance policies issued by insurance companies with satisfactory credit ratings. The agents and brokers who facilitate these transactions are not required to collect customer information under the CIP rules.

Once the potential borrower selects a loan offer and the terms are finalized, the potential borrower typically remits a down payment toward the insurance premium directly to the agent or broker. The premium finance lender advances a loan to the borrower covering the remainder of the single premium. Importantly, the bank remits the loan proceeds to the insurance company directly or through the agent or broker. The borrower is obligated to make payments on the loan either to the bank or to the agent or broker acting as an intermediary to forward the loan payments to the bank. The principal collateral for such a loan is the unearned premiums paid to the insurance company.

Because the lender depends on the return of these unearned premiums for repayment of the loan if a customer defaults, the lender has credit exposure to the insurance company that issued the insurance policy. Accordingly, a lender typically assesses the creditworthiness of the insurance company and not that of the potential borrower that is seeking to finance the purchase of a policy. For this reason, the bank premium finance lender has minimal interaction with the potential borrower while the loan is being underwritten.

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<sup>10</sup> 31 C.F.R. § 1020.220(a)(2)(i).

<sup>11</sup> 31 C.F.R. § 1020.220(a)(2)(ii).

<sup>12</sup> See “Customer Due Diligence Requirements for Financial Institutions,” 81 FR 29398, 29418 (May 11, 2016).

<sup>13</sup> See “Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations—Anti-Money Laundering Programs for Insurance Companies,” 70 FR 66754, 66757 (Nov. 3, 2005).

## **Request Letters**

The Request Letters represented that there is no need to apply the CIP rules to insurance premium finance lending because this activity presents a low risk of money laundering. In support of this contention, they note that the processes for executing a premium finance loan are highly automated, as most premium finance industry loan volume is quoted and recorded electronically. Moreover, the Request Letters state that these loans are typically submitted, approved and funded within the same business day and are conducted through insurance agents or brokers with no interaction between the bank and the borrower. The Request Letters maintain that these business processes make it difficult for banks to fully comply with the CIP information collection requirements. Specifically, agents and brokers do not initially provide bank premium finance lenders with taxpayer identification numbers and, in the case of sole proprietorships or individuals, the date of birth of the borrower. The Request Letters state that bank premium finance lenders, in compliance with their CIP requirements, must request this information from the agent or broker, creating delays in processing. The Request Letters also state that because of data privacy concerns, insurance brokers and agents are reluctant to collect personal information, such as the date of birth and social security number of individuals or individuals owning sole proprietorships. The Request Letters acknowledge that a bank would not be in compliance with the CIP rules if it approved a premium finance loan and opened an account on behalf of a customer without having the required information to identify and verify the customer's identity.

## **Supplemental Letter**

The Supplemental Letter states that the same rationale for the exemption for commercial customers is equally valid for individual customers. The Supplemental Letter notes that the inclusion of individuals acting as sole proprietors in the definition of commercial customers indicates that the risk for all individuals is the same. Accordingly, the Supplemental Letter requests that the Order dated September 27, 2018, be amended to clarify that the CIP exemption applies to all premium finance loans without limitation based on type of customer.

## **Findings Supportive of an Exemption**

Based on the information presented by the Request Letters and the Supplemental Letter, and in accordance with 31 C.F.R. § 1020.220(b) implementing section 326(a) of the USA PATRIOT Act, 31 U.S.C. § 5318(l)(5), the FBAs, with the concurrence of FinCEN, by this ORDER, and for the reasons described below, find that there is a valid basis for an exemption to apply to all customers of premium finance lending.

First, the FBAs find that the exemption is consistent with the purposes of the BSA, based on FinCEN's determination that premium finance loans present a low risk of money laundering or terrorist financing. The purpose of the BSA is "to require certain reports or records where they have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence

activities, including analysis, to protect against international terrorism.”<sup>14</sup> The CIP rules were promulgated pursuant to Title III, Section 326 of the USA PATRIOT Act, which added a new subsection to the BSA.<sup>15</sup> The purposes of Title III of the USA PATRIOT Act are, *inter alia*:

- to increase the strength of United States measures to prevent, detect, and prosecute international money laundering and the financing of terrorism;
- to provide a clear national mandate for subjecting to special scrutiny those foreign jurisdictions, financial institutions operating outside of the United States, and classes of international transactions or types of accounts that pose particular, identifiable opportunities for criminal abuse; and
- to ensure that all appropriate elements of the financial services industry are subject to appropriate requirements to report potential money laundering transactions to proper authorities.<sup>16</sup>

The Request Letters represented that premium finance loans present a low risk of money laundering or terrorist financing because (1) the loan proceeds are remitted to the insurance company (either directly or through an agent/broker) rather than the insured party, (2) property and casualty insurance policies have no investment value, and (3) borrowers cannot use these accounts to purchase other merchandise, deposit or withdraw cash, write checks, or transfer funds.

FinCEN agrees that the structural characteristics of premium finance lending, as described, present a low risk for money laundering activity or terrorist financing. In addition, FinCEN has already made the independent determination that these types of accounts present a low risk of money laundering, both because of the purpose for which such accounts are established and because the characteristics of these accounts make them poor vehicles for money laundering.<sup>17</sup> Based on this determination, FinCEN exempted financial institutions that finance insurance premiums from the general requirement to identify and verify the identity of the beneficial owner(s) of legal entity customers<sup>18</sup> and further exempted financial institutions that finance insurance premiums that allow for cash refunds from these beneficial ownership requirements.<sup>19</sup> Similarly,

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<sup>14</sup> 31 U.S.C. § 5311.

<sup>15</sup> 31 U.S.C. § 5318(l).

<sup>16</sup> Title III, Section 302 of the USA PATRIOT Act, 31 U.S.C. § 5311 note.

<sup>17</sup> See “Customer Due Diligence Requirements for Financial Institutions,” 81 FR 29398, 29418 (May 11, 2016).

<sup>18</sup> 31 C.F.R. § 1010.230(h)(iii).

<sup>19</sup> FIN-2018-R001, “Premium Finance Cash Refunds and Beneficial Ownership Requirements for Legal Entity Customers” (May 11, 2018) (confirming, based on FinCEN’s discussions with law enforcement, that insurance premium financing presents a low risk of money laundering, notwithstanding the potential for cash refunds to the borrower).

FinCEN has exempted commercial property and casualty insurance policies from the BSA compliance program rule for insurance companies.<sup>20</sup>

Second, this exemption is consistent with safe and sound banking. The resulting banking practices will not be contrary to generally accepted standards of prudent banking operation and will not give rise to abnormal risk or loss or damage to an institution, its shareholders, or the agencies administering the insurance funds. The Request Letters represented that the insurance premium finance business is a form of secured lending. Should a borrower default, the insurance company is legally obligated to return any unearned premiums to the lender. Further, most lenders require that insurance agents or brokers only request financing for insurance policies issued by insurance companies with a satisfactory credit rating. Also, as previously noted, the structural characteristics of premium finance lending present a low risk for money laundering activity or terrorist financing and thus are unlikely to pose a risk to the safety and soundness of the institution. Finally, banks engaging in consumer premium finance lending must comply with applicable consumer protection laws.

Accordingly, the FBAs find that this ORDER is consistent with safe and sound banking practices.

Therefore, each FBA, with FinCEN's concurrence, hereby grants by ORDER an exemption from the requirements of the CIP rules implementing section 326 of the USA PATRIOT Act, 31 U.S.C. § 5318(l), for loans extended by banks (and their subsidiaries) subject to that FBA's jurisdiction to all customers to facilitate purchases of property and casualty insurance policies by the borrower. This ORDER supersedes the previous Order issued on September 27, 2018.

In arriving at the determinations in this ORDER, the FBAs have relied on the determinations made by FinCEN and the accuracy and completeness of the representations made in the Request Letters and the Supplemental Letter. Nothing in this ORDER shall bar, estop, or otherwise prevent the FBAs from taking any action affecting a bank, including the revocation of this ORDER, on the basis of information not known to the FBAs as of the effective date of the ORDER.

Banks engaging in premium finance lending must continue to comply with all other regulatory requirements, including the regulations implementing the BSA that require the filing of suspicious activity reports.<sup>21</sup>

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<sup>20</sup> 70 FR 66754, 66757 (Nov. 3, 2005); 31 C.F.R. § 1025.100(b) (defining covered products to include permanent life insurance, annuity contracts and other insurance products with features of cash value or investment).

<sup>21</sup> 12 C.F.R. §§ 21.11 and 163.180 (OCC); 12 C.F.R. §§ 208.62, 211.5(k), 211.24(f), and 225.4(f) (Federal Reserve); 12 C.F.R. § 353 (FDIC); 12 C.F.R. § 748 (NCUA); 31 C.F.R. § 1020.320 (FinCEN).

IT IS SO ORDERED, this 5th day of October, 2020

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

By: \_\_\_\_\_/s/  
Ann E. Misback  
Secretary of the Board

FEDERAL DEPOSIT INSURANCE CORPORATION

By: \_\_\_\_\_/s/  
Doreen R. Eberley  
Director, Division of Risk Management Supervision

NATIONAL CREDIT UNION ADMINISTRATION

By: \_\_\_\_\_/s/  
Myra Toeppe  
Acting Director, Office of Examination and Insurance

OFFICE OF THE COMPTROLLER OF THE CURRENCY

By: \_\_\_\_\_/s/  
Grovetta N. Gardineer  
Senior Deputy Comptroller for Bank Supervision Policy

WITH CONCURRENCE, this 5<sup>th</sup> day of October, 2020  
OF THE FINANCIAL CRIMES ENFORCEMENT NETWORK

By: \_\_\_\_\_/s/  
Michael Mosier  
Deputy Director