

procedures for: (1) Verifying the identity of any person seeking to open an account, to the extent reasonable and practicable; (2) maintaining records of the information used to verify the person's identity, including name, address, and other identifying information; and (3) determining whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency. In prescribing these regulations, the Secretary was directed to take into consideration the various types of accounts maintained by various types of financial institutions, the various methods of opening accounts, and the various types of identifying information available. (See FR 68, 25090, May 9, 2003.)

*Current Action:* There is no change to existing regulations.

*Type of Review:* Extension of a currently approved information collection.

*Affected Public:* Business and other for-profit institutions and non-profit institutions.

*Burden:* Estimated Number of Respondents: 22,060.

*Estimated Average Annual Recordkeeping Burden per Respondent:* 10 hours.

*Estimated Average Annual Disclosure Burden per Respondent:* 1 hour.

*Estimated Total Annual Respondent Burden:* 242,660 hours.

2. *Title:* Customer identification program for broker-dealers. (31 CFR 103.122.)

*Office of Management and Budget Control Number:* 1506-0034.

*Abstract:* Broker-dealers are required to establish and maintain customer identification programs. (See FR 68, 25113, May 9, 2003.) A copy of the written program must be maintained for five years.

*Current Action:* There is no change to existing regulations.

*Type of Review:* Extension of a currently approved information collection.

*Affected Public:* Business and other for-profit institutions.

*Burden:* Estimated Number of Respondents: 5,448.

*Estimated Average Annual Burden Per Respondent:* The estimated average burden associated with the notice requirement in this proposed rule is two minutes per respondent.

*Estimated Number of Hours:* 630,896.

3. *Title:* Customer identification programs for futures commission merchants and introducing brokers. (31 CFR 103.123.)

*Office of Management and Budget Control Number:* 1506-0022.

*Abstract:* Futures commission merchants and introducing brokers are required to develop and maintain customer identification programs. (See FR 68, 25149, May 9, 2003.) A copy of the written program must be maintained for five years.

*Current Action:* This requirement was renewed effective November 30, 2005; it is being renewed again so that all the customer identification program requirements for various financial institutions may be considered together concurrently.

*Type of Review:* Extension of a currently approved information collection.

*Affected Public:* Business and other for-profit institutions.

*Burden:* Estimated Number of Respondents: 1,856.

*Estimated Average Annual Burden*

*Per Respondent:* The estimated average burden associated with the notice requirement in this proposed rule is two minutes per respondent.

*Estimated Number of Hours:* 20,471.

4. *Title:* Customer identification programs for mutual funds. (31 CFR 103.131.)

*Office of Management and Budget Control Number:* 1505-0033.

*Abstract:* Mutual funds are required to establish and maintain customer identification programs. (See FR 68, 25131, May 9, 2003.) A copy of the written program must be maintained for five years.

*Current Action:* There is no change to existing regulations.

*Type of Review:* Extension of a currently approved information collection.

*Affected Public:* Business and other for-profit institutions.

*Burden:* Estimated Number of Respondents: 2,296.

*Estimated Average Annual Burden*

*Per Respondent:* The estimated average burden associated with the notice requirement in this proposed rule is 2 minutes per respondent.

*Estimated Number of Hours:* 266,700.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget. Records required to be retained under the Bank Secrecy Act must be retained for five years. Generally, information collected pursuant to the Bank Secrecy Act is confidential but may be shared as provided by law with regulatory and law enforcement authorities.

#### *Request for Comments*

Comments submitted in response to this notice will be summarized and/or

included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: February 3, 2006.

**William D. Langford, Jr.,**

*Associate Director, Regulatory Policy and Programs Division, Financial Crimes Enforcement Network.*

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## **DEPARTMENT OF THE TREASURY**

### **Submission for OMB Review; Comment Request**

February 1, 2006.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before March 13, 2006 to be assured of consideration.

#### **Internal Revenue Service (IRS)**

*OMB Number:* 1545-1961.

*Type of Review:* Extension.

*Title:* Application for Extension of Time for Payment of Tax.

*Form:* IRS form 1127.

*Description:* Form 1127 is used by taxpayers to request extension of time to pay taxes. The conditions under which extensions may be granted are stated under Section 6161 of the Internal Revenue Code.

*Respondents:* Individuals or households.

*Estimated Total Burden Hours:* 833 hours.

*Clearance Officer:* Glenn P. Kirkland, (202) 622-3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

*OMB Reviewer:* Alexander T. Hunt, (202) 395-7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**Michael A. Robinson,**

*Treasury PRA Clearance Officer.*

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## DEPARTMENT OF THE TREASURY

### FEDERAL RESERVE SYSTEM

### FEDERAL DEPOSIT INSURANCE CORPORATION

### NATIONAL CREDIT UNION ADMINISTRATION

[No. 2006-04]

#### Office of the Comptroller of the Currency

#### Office of Thrift Supervision

#### Interagency Advisory on the Unsafe and Unsound Use of Limitation of Liability Provisions in External Audit Engagement Letters

**AGENCIES:** Office of Thrift Supervision (OTS), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); National Credit Union Administration (NCUA); Office of the Comptroller of the Currency (OCC), Treasury.

**ACTION:** Issuance of Interagency Advisory.

**SUMMARY:** The OTS, Board, FDIC, NCUA, and OCC (collectively, the "Agencies"), have finalized the *Interagency Advisory on the Unsafe and Unsound Use of Limitation of Liability Provisions in External Audit Engagement Letters* ("Advisory"). The Advisory informs financial institutions' boards of directors, audit committees, and management that they should not enter into agreements that incorporate unsafe and unsound external auditor limitation of liability provisions with respect to engagements for financial statement audits, audits of internal control over financial reporting, and attestations on management's

assessment of internal control over financial reporting.

**DATES:** *Effective Date:* The Advisory is effective for engagement letters executed on or after February 9, 2006.

**FOR FURTHER INFORMATION CONTACT:**

*OTS:* Jeffrey J. Geer, Chief Accountant, at [jeffrey.geer@ots.treas.gov](mailto:jeffrey.geer@ots.treas.gov) or (202) 906-6363; or Patricia Hildebrand, Senior Policy Accountant, at [patricia.hildebrand@ots.treas.gov](mailto:patricia.hildebrand@ots.treas.gov) or (202) 906-7048.

*Board:* Terrill Garrison, Supervisory Financial Analyst, at [terrill.garrison@frb.gov](mailto:terrill.garrison@frb.gov) or (202) 452-2712; or Nina A. Nichols, Assistant Director, at [nina.nichols@frb.gov](mailto:nina.nichols@frb.gov) or (202) 452-2961.

*FDIC:* Harrison E. Greene, Jr., Senior Policy Analyst (Bank Accounting), Division of Supervision and Consumer Protection, at [hgreene@fdic.gov](mailto:hgreene@fdic.gov) or (202) 898-8905; or Michelle Borzillo, Counsel, Supervision and Legislation Section, Legal Division, at [mborzillo@fdic.gov](mailto:mborzillo@fdic.gov) or (202) 898-7400.

*NCUA:* Karen Kelbly, Chief Accountant, at [kelbly@ncua.gov](mailto:kelbly@ncua.gov) or (703) 518-6389; or Steven Widerman, Trial Attorney, Office of General Counsel, at [widerman@ncua.gov](mailto:widerman@ncua.gov) or (703) 518-6557.

*OCC:* Zane Blackburn, Chief Accountant, at [zane.blackburn@occ.treas.gov](mailto:zane.blackburn@occ.treas.gov) or (202) 874-4944; or Kathy Murphy, Deputy Chief Accountant, at [kathy.murphy@occ.treas.gov](mailto:kathy.murphy@occ.treas.gov) or (202) 874-5675.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The Agencies have observed an increase in the types and frequency of provisions in financial institutions' external audit engagement letters that limit the auditors' liability. These provisions take many forms, but can generally be categorized as an agreement by a financial institution that is a client of an external auditor to:

- Indemnify the external auditor against claims made by third parties;
- Hold harmless or release the external auditor from liability for claims or potential claims that might be asserted by the client financial institution; or
- Limit the remedies available to the client financial institution.

Reliable financial and regulatory reporting supports the Agencies' risk-focused supervision of financial institutions by contributing to effective pre-examination planning and off-site monitoring and appropriate assessments of an institution's internal control over financial reporting, capital adequacy,

financial condition, and performance. Audits play a valuable role in ensuring the reliability of institutions' financial information.

The Agencies believe that when financial institutions agree to limit their external auditors' liability, either in provisions in engagement letters or in provisions that accompany alternative dispute resolution (ADR) agreements, such provisions may weaken the external auditors' objectivity, impartiality, and performance. The inclusion of such provisions in financial institutions' external audit engagement letters may reduce the reliability of audits and therefore raises safety and soundness concerns.

On May 10, 2005, the Federal Financial Institutions Examinations Council (FFIEC) on behalf of the Agencies published in the **Federal Register** a proposed *Interagency Advisory on the Unsafe and Unsound Use of Limitation of Liability Provisions and Certain Alternative Dispute Resolution Provisions in External Audit Engagement Letters* (70 FR 24576) and sought comments to fully understand the effect of the proposed Advisory on financial institutions.

#### II. Scope of Advisory

The Advisory applies to engagement letters between financial institutions and external auditors with respect to financial statement audits, audits of internal control over financial reporting, and attestations on management's assessment of internal control over financial reporting (collectively, "Audit" or "Audits"). The Advisory does not apply to:

- Non-audit services that may be performed by financial institutions' external auditors;
- Audits of financial institutions' 401K plans, pension plans, and other similar audits;
- Services performed by accountants who are not engaged to perform financial institutions' Audits (e.g., outsourced internal audits, loan reviews); and
- Other service providers (e.g., software consultants, legal advisors).

The Advisory applies to all Audits of financial institutions, regardless of whether an institution is a public or a non-public company, including Audits required under Section 36 of the Federal Deposit Insurance Act, OTS regulations, or Section 202 of the Federal Credit Union Act, Audits required by any of the Agencies, and voluntary Audits.