



FREQUENTLY ASKED QUESTIONS ABOUT OPENING DEPOSIT ACCOUNTS FOR FOREIGN CITIZENS¹

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Can a foreign citizen open a U.S. bank account?

There is no law that requires a customer to be a U.S. citizen when he or she opens a deposit account at a bank chartered under U.S. state or federal law.² In fact, citizens of foreign countries have been opening deposit accounts with U.S. banks for decades. Foreign nationals are attracted to U.S. banks, thrifts and credit unions for many of the same reasons so many American are: U.S. depository institutions set the global standard for their safety and soundness, reliability, management strength, government oversight and deposit insurance.

What kind of information is a bank required to collect when opening a deposit account for a foreign citizen?

Under the USA PATRIOT Act, in 2003, the Department of the Treasury Financial Crimes Enforcement Network, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Reserve System, the Federal Deposit Insurance Corporation, and the National Credit Union Administration have jointly adopted regulations regarding customer identification.³ Under these federal regulations, banks are required to adopt a comprehensive customer identification program, or CIP. The CIP rules set out five general standards that each bank must satisfy during the account opening process.

- The policy must be in writing and be tailored to be appropriate for the bank's size and type of business. The CIP must be an integral part of the anti-money laundering program for all banks.

¹ Georgia Appleseed thanks Texas Appleseed for allowing Georgia Appleseed to disseminate this important public service information. Georgia Appleseed is also thankful to Kathleen Scott, Esq., White & Case LLP, for her pro bono work in updating these responses to conform to changes in the law and regulation since the original date of issuance. Texas Appleseed and Community Resource Group recognize and thank Akin Gump Strauss Hauer & Feld LLP for its assistance in preparing the original version of this document. It is provided as a matter of public service for informational use, but it does not constitute legal advice and should not be used as such. Banks are strongly urged to confer with regulatory counsel in evaluating these issues.

² Customer Identification Program requirements are also in place for broker-dealers, commodity futures commission merchants and introducing brokers and mutual funds. These FAQs relate solely to accounts established by a banking organization (including a commercial bank, savings bank and credit union).

³ SEC and CFTC also adopted similar regulations for the institutions noted in footnote #2.

- The CIP must include risk-based procedures for verifying the identity of every customer to the extent reasonable and practicable.
- The CIP must include procedures for making and maintaining a record of all information obtained during the identity verification process.
- The CIP must include procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations issued by any Federal government agency and designated as such by Treasury in consultation with the Federal banking regulators, the SEC and the CFTC.
- The CIP must include procedures for providing customers with adequate notice that the institution is requesting information to verify their identities.

What procedures must my institution follow to verify a foreign citizen's identity?

An institution's CIP procedures must enable the institution to form a reasonable belief that it knows the true identity of each customer. The procedures must be based on an institution's assessment of relevant risks, including:

- the risks presented by the various types of accounts maintained by the bank;
- the various methods of opening accounts provided by the bank;
- the various types of identifying information available; and
- the bank's size, location and customer base.

As part of the CIP, when a customer who is a natural person applies to open an account, he or she must provide, at a minimum, a name, date of birth, street address, and identification number. For a U.S. person, it has to be the taxpayer identification number, which for an individual is a social security number. This identification number may include, for a non-U.S. person, one or more of the following:

- a taxpayer identification number;
- passport number and country of issuance;
- alien identification card number; or
- the "number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard."

In the State of Georgia, the Georgia Department of Banking & Finance does not impose any additional requirements beyond those under applicable federal law. State-chartered banks in other states should consult state banking regulations for any additional requirements imposed by state regulators.

There currently are no lists of “known or suspected terrorists or terrorist organizations issued by any Federal government agency and designated as such” by Treasury in consultation with the Federal banking regulators, the SEC and the CFTC. However, in order to comply with federal economic sanctions laws, the name of the applicant should be checked against the current control lists prepared by the Treasury Department’s Office of Foreign Assets Control (the List of Specially Designated Nationals and Blocked Persons) and against other lists of prohibited persons (including known or suspected terrorists) provided by any other federal agency. This check must be performed within a reasonable period of time after the account is opened, or earlier if required by another federal law or regulation. For purposes of compliance with the federal economic sanctions laws, the OFAC SDN list and the other economic sanctions regulations must be checked prior to opening the account.

How can my institution verify the identity of a customer?

An institution may not simply accept a customer’s identification information at face value. Instead, the institution must take steps to verify the customer’s identity and, in effect, the authenticity of the identification documents. An institution has wide latitude to select a verification method, but its written CIP procedures must describe when the institution will use other documents for this purpose, when it will use non-documentary methods, or a combination of both if the institution elects to use a mixture of verification methods.

Documentary Methods

For an individual, an institution should confirm a customer’s identity by obtaining an unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver’s license or passport. For a person other than an individual (such as a corporation, partnership or trust), documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, partnership agreement or trust instrument should be used.

Non-Documentary Methods

For an institution relying on non-documentary methods, the CIP must contain procedures that describe the non-documentary methods the institution will use. These methods may include:

- contacting a customer;
- independently verifying the customer’s identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database or other source;
- checking references with other banks; and
- obtaining a financial statement.

An institution's non-documentary procedures must address the following types of situations:

- when an individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard;
- when the institution is not familiar with the documents presented;
- when the account is opened without obtaining documents;
- when the customer opens the account without appearing in person at the bank; and
- where the institution is otherwise presented with circumstances that increase the risk that the institution will be unable to verify the true identity of a customer through documents.

What if an institution cannot verify a foreign citizen's identity?

The CIP must include procedures for responding to circumstances in which it cannot form a reasonable belief that it knows the true identity of any customer, including a foreign citizen. These procedures should describe:

- when the institution should not open an account;
- the terms under which a customer may use an account while the institution attempts to verify the customer's identity;
- when the institution should close an account, after attempts to verify a customer's identity have failed; and
- when the institution should file a Suspicious Activity Report in accordance with applicable law and regulation.

What kind of records must my institution keep regarding the account opening process?

At a minimum, under the CIP rules the records must include:

- all identifying information obtained about a customer;
- a description of any of the documents obtained from a non-U.S. citizen noting the type of document, any identification number contained in the document, the place of issuance and, if any, the date of issuance and expiration date;
- a description of the methods and the results of any measures undertaken to verify the customer's identity; and
- a description of the resolution of any discrepancy discovered when verifying the identifying information obtained.

An institution must retain this information for at least five years after the account is closed or in the case of credit card accounts, five years after the account is closed or becomes dormant.

What kind of notice must my institution provide customers?

The CIP rules provide that notice will be adequate if the institution generally describes the identification requirements and provides the notice in a manner reasonably designed to ensure that a customer is able to view the notice, or is otherwise given notice, before opening an account. Depending upon the manner in which the account is opened, the rules prescribe that an institution may post a notice in the lobby or on its website, include the notice on its account applications, or use another form of written or oral notice.

The CIP rule provides a sample notice that reads as follows:

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

To the extent that an institution is actively soliciting customers who do not speak English, it would seem appropriate, though not strictly required by the CIP rules, to translate the notice into an appropriate foreign language.

Is my bank permitted to rely on another institution's CIP procedures?

The CIP rules permit an institution to include procedures specify when it will rely on the performance by another financial institution (including an affiliate) of any CIP procedures. Institutions electing to rely on another bank's CIP procedures may only do so when:

- such reliance is reasonable under the circumstances;
- the other financial institution is itself subject to the CIP rules and is regulated by a federal regulator; and
- the other financial institution enters into a contract requiring it to certify annually that it has implemented its anti-money laundering program, and that it will perform (or its agent will perform) the specified requirements of the institution's CIP.

What is an “ITIN”?

The ITIN is a nine-digit tax-processing number issued by the Internal Revenue Service. The IRS issues ITINs to foreign nationals and other individuals who are required to file a U.S. tax return but are otherwise ineligible to obtain a social security number. The ITIN is for federal tax reporting and the IRS does not intend it to serve any other purpose. Thus, the ITIN does not authorize a holder to work in the U.S. nor does it give the holder any U.S. immigration status or benefit.

Is my bank permitted to accept an ITIN as a form of identification for opening an account?

Under the USA PATRIOT Act rules, the ITIN would seem to satisfy one of the criteria for an identification number. Nevertheless, in December 2003 the IRS issued its ITIN procedures to emphasize that the ITIN is not valid for identification outside the U.S. tax system. The IRS cautioned that ITIN applicants are not required to apply in person, and that the IRS does not further validate the authenticity of identity documents presented during the application process.

At this time, the regulators have not acted to resolve the conflict between the IRS and CIP positions.

What is a “*matricula consular*”?

The *matricula consular* is a form of official identification card issued by the Mexican government through one of its consulate offices. The Mexican authorities have designed the card to identify that the holder is of Mexican nationality and living outside of Mexico. The *matricula consular* does not give the holder any immigration status or benefit in the United States, nor does it serve as an official passport from Mexico. Several other nations in Central and South America have recently begun issuing identification cards under the “*matricula consular*” name. These FAQs do not address those other varieties of the *matricula* card.

What does a *matricula consular* look like?

The front of the card includes red and green graphics and contains a photograph of the holder, his or her present address, his or her permanent Mexican address, the date of birth and an expiration date. The back of the card includes signatures of the issuing consulate officer and the cardholder. A printed identification number appears on both sides and the card incorporates a number of visible security measures, including a color-shifting official seal and several security patterns. In fluorescent light, the letters “SRE” are written across the front of the card. The card also incorporates several invisible security measures viewable through a special decoder available to Mexican consulate offices and select law enforcement agencies.

How does one obtain a *matricula consular*?

The card is available only to Mexican citizens. An applicant must appear in person at a Mexican consulate office, provide proof of U.S. address (such as a utility bill), present an original or certified Mexican birth certificate, and hold some other form of official Mexican identification, such as a Mexican passport, Mexican driver's license or Mexican voter registration credentials. Applicants must also pay a nominal application fee.

Is my bank permitted to accept a *matricula consular* as a form of identification for opening an account?

Under the CIP rules, the *matricula consular* meets the description of a government-issued card evidencing nationality and bearing appropriate safeguards. As described above, banks are ultimately left with the discretion as to whether to accept the *matricula* card or not. An institution electing to accept the card must take reasonable steps under the regulations to ensure that it has verified the identity of the customer through documentary or non-documentary means. As described above, the regulations give banks broad discretion in selecting a verification methodology.

What are some of the pros and cons of accepting the Mexican *matricula consular*?

Cons

- Some public interest groups and government authorities have questioned the reliability of the cards.
- Institutions that accept the *matricula consular* may receive negative publicity.
- Institutions that accept the *matricula consular* face an increased burden of verifying the identity of cardholders under the CIP documentary and non-documentary verification protocols.
- Banks that wish to serve the under banked segment of society may do so in reliance on forms of identification other than the *matricula consular*.

Pros

- Many banks nationwide, including several household names, have elected to accept the *matricula consular* as a valid form of identification during the account-opening process.
- A number of consumer activists, municipal governments and law enforcement agencies also support the acceptance of the *matricula* card.
- Accepting the *matricula consular* will potentially allow an institution to serve a much larger customer population.

- Accepting the *matricula consular* will assist the under banked segment of our society in gaining access to the financial system.
- Institutions that do not accept the *matricula consular* are placed at a competitive disadvantage to those that do.
- Institutions that accept the *matricula consular* may receive favorable publicity.

In deciding whether to accept the matricula card, banks should weigh each of these factors as well as their implications on the verification protocol under the CIP regulations.

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The foregoing information has been provided as a matter of public service but is not intended to constitute legal advice. Financial institutions are strongly urged to confer with regulatory counsel in evaluating these issues.