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Kathryn Lee Holloman

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The New Identity Crises: USA PATRIOT Act Customer Identification Programs and the Matricula Consular as Primary Identity Verification for Mexican Nationals

According to the Inter-American Development Bank, $9.2 billion is wired from Mexican nationals in the United States to friends and families in Mexico each year.1 These transactions constitute the nation's third largest source of income, second only to oil and tourism.2 In the United States, there are twenty-one million people of Mexican origin, seven million of whom have Mexican citizenship and three million of whom are undocumented.3 Taken in aggregate, the group claims a staggering gross domestic product of $410 billion.4 It is estimated that this market will continue to surge as Hispanic populations grow within the United States, and that by 2006 the amount of money transferred from Mexican nationals will climb to $177 billion.5

Currently, Western Union is in control of twenty-four percent of the remittance market, with a high profit margin of thirty percent.6 Together with Money Gram, Western Union claims ninety-nine percent of the $48.7 billion international retail money-transfer business.7 Between ten to twenty percent of the total sum is retained as transfer fees and exchange rate fees.8 Other financial institutions have taken note of this potentially lucrative market, and have begun to devise ways to stake their own claims in targeting the Hispanic population.9

This Note will examine the implications of the USA PATRIOT Act ("Patriot Act") on banks' decision to accept the

2. Id. at 64.
3. Id. at 64.
4. Id. at 64.
6. Id.
7. Krebsbach, supra note 1, at 64.
8. Id. at 64.
9. See infra notes 14-47 and accompanying text.
Matricula Consular, an identification card issued by Mexican consulars to Mexican nationals, as a primary form of identification for purposes of opening a banking account. First, it will examine the motivations and the requirements of the Patriot Act, specifically focusing on the Title III International Money Laundering Abatement and Anti-terrorist Financing Act of 2001 and Section 326 Verification of Identification. Next, it will examine the proposed regulations for enforcing the Patriot Act that were issued by the Department of the Treasury. The note will then focus on the interactions between the Patriot Act and the programs accepting the Matricula Consular as the primary form of identification. Finally, possible modifications and alternatives to the current programs will be explored.

I. MATRICULA CONSULAR

In order to gain a larger share in the hyper-profitable transfer fee market, Wells Fargo, Bank of America and Citigroup have all launched programs aimed at attracting Mexican nationals to their money transfer service. In 1997, Wells Fargo became the first bank to start such a program with the introduction of its InterCuenta Express. The program is an account-to-account transfer service marketed towards Mexican nationals. More recently, Wells Fargo began the pilot Dinero al Instant, which permits cash-to-cash transfers even if the sender does not have an account at the bank. Wells Fargo has also set up booths in the lobbies of the consulate offices in San Jose and San Francisco to enable immigrants to sign up for accounts on the spot.

10. See infra notes 48-73 and accompanying text.
11. See infra notes 74-111 and accompanying text.
12. See infra notes 112-193 and accompanying text.
13. See infra notes 194-230 and accompanying text.
14. Krebsbach, supra note 1, at 64.
15. Id.
16. Id.
17. Id.
In April 2002, Bank of America launched its program entitled SafeSend. SafeSend allows its Mexican customers to use telephones, automatic teller machines (ATMs), or the Internet to transfer funds. Both account holders and non-account holders at Bank of America can create separate transfer accounts that have personal codes that allow access by telephone, ATMs, or Internet. The program allows those in the United States to send a safecard via the DHL Worldwide Express to Mexico. Family and friends may use the safecard to withdraw funds in Mexico by using a SafeSend ATM card and personal identification number (PIN) to withdraw money at one of the 20,000 ATMs located throughout the country. A flat fee of ten dollars is charged to account holders for the service, while non-customers will pay fifteen dollars regardless of the amount of money transferred.

Citigroup has also staked its claim to the transfer-fee market. In 2001, Citigroup purchased one of Mexico’s largest banks, Banamex, and after finalizing its acquisition of California Federal Bank, it will be poised to be the strongest contender in the remittance market. To secure this rank as a heavyweight in the remittance battle, Citigroup has launched two programs aimed at recruiting Mexican nationals. In July 2002, its Grupos Financiero Banamex division created a remittance program which allows Mexican nationals to send specific remittance sums back to Mexico on a regular basis, and this service is expected to be cheaper than similar services. The funds are withdrawn in Mexico using a Banamex ATM card along with a PIN. No ATM fees are charged, but the sender is charged a “fair exchange rate” to dispense the funds in pesos. In addition, Citigroup’s Money Card

20. Id.
21. Id.
22. Id.
24. Id.
25. Krebsbach, supra note 1, at 65.
26. Id.
27. Id.
28. Id.
29. Id.
30. Id.
Account is in its pilot phase in New York, Chicago, and Los Angeles. This program allows funds to be sent from a U.S. Citigroup bank and withdrawn at ATMs in Mexico. There is a five-dollar monthly maintenance fee charge for the account, as well as a $7.95 fee for withdrawal transactions made in Mexico. The most unique feature of the money card account is that those withdrawing funds are not required to have a bank account in Mexico to use the ATM card.

Competition among all three banks reached an all-time high in the spring of 2002, as all three began accepting the Matricula Consular as a primary form of identification to open a bank account, thus abandoning the previous policy that primary identification be a document issued by the U.S. government. The Matricula Consular is a wallet-sized identification card that resembles a driver's license, and includes the person's name, address in the United States, photo, date and place of birth, identification number, and Mexican government logo. Recently, Mexican authorities have added more security features, such as holograms, to prevent forgeries. The cards are issued by one of the forty-eight Mexican consular offices located throughout the United States. They cost twenty-nine dollars, are valid for five

31. Id.
32. Id.
33. Id.
34. Id.
35. Krebsbach, supra note 1, at 64.
37. Carter Dougherty, U.S. Banks, Cities Accept Mexican Illegals' ID, WASH. TIMES, July 18, 2002; see also Banks Alter Identification Rules to Enlist Mexicans, January 22, 2002, at http://news.theyolympian.com/Census2000/2898.shtml (last visited Feb. 15, 2003). The cards are intended to provide Mexican nationals with proof of identification and nationality, as well as enable them to obtain library cards, establish utility accounts, and enter public buildings. Mexico Pushes ID for Migrants – Aim is to Integrate Workers Into U.S. Locales as Amnesty Founders, WALL ST. J., Oct. 25, 2002. The cards may also be used to obtain a driver's license in some states. Id.
38. Dougherty, supra note 37.
39. Id.
years, and are issued without regard to legal status.\textsuperscript{40} In Los Angeles alone, there are 15,000 Matricula Consulars issued every month.\textsuperscript{41} Thousands more are issued in states close to the United States and Mexico border.\textsuperscript{42}

The acceptance of the Matricula Consular has proven useful in helping Mexican nationals to overcome their traditional reluctance of placing their money in banks, which has been associated with a cultural mistrust of financial institutions.\textsuperscript{43} For example, since Wells Fargo began accepting the Matricula Consular, it has opened 35,000 checking accounts using the card, with the aggregated holding of the accounts totaling fifty million dollars in deposits.\textsuperscript{44} Wells Fargo has also launched an advertising program aimed at Mexican nationals via television, radio, and direct mailings.\textsuperscript{45} Bank of America followed suit with its own Spanish-language advertising campaign, estimated to cost forty million dollars.\textsuperscript{46} However, with regulations promulgated under the Patriot Act slated to take effect on October 25, 2002, the new programs created by the banks may fall under attack.\textsuperscript{47}

\section*{II. PATRIOT ACT}

In reaction to the terrorist attacks of September 11, 2001, Congress began drafting legislation aimed at fighting the proclaimed “war on terrorism.”\textsuperscript{48} Their efforts culminated in the

\begin{thebibliography}{99}
\bibitem{40} Krebsbach, \textit{supra} note 1, at 64.
\bibitem{41} Dougherty, \textit{supra} note 37.
\bibitem{42} \textit{Id.} Mexican officials estimate that more than one million cards will be issued during 2002 alone. \textit{Mexico Pushes ID for Migrants – Aim is to Integrate Workers Into U.S. Locales as Amnesty Founders, supra} note 37. That is an increase from the 695,000 issued the previous year. \textit{Id.}
\bibitem{43} Krebsbach, \textit{supra} note 1, at 64.
\bibitem{44} Dougherty, \textit{supra} note 37.
\bibitem{45} Krebsbach, \textit{supra} note 1, at 64.
\bibitem{46} Dougherty, \textit{supra} note 37.
\bibitem{48} Ivan Schneider, \textit{Banks Crack Down on Terror Funds, BANK SYS. & TECH.},
\end{thebibliography}
issuance of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, better known as the Patriot Act.\textsuperscript{49} The final version of the Patriot Act overwhelmingly passed in the Senate by a vote of 98 to 1,\textsuperscript{50} and passed in the House by a margin of 356 to 66.\textsuperscript{51} On October 26, 2001, President George W. Bush signed the Patriot Act into law.\textsuperscript{52}

The Patriot Act is a 131-page statute divided into ten titles.\textsuperscript{53} The purported purposes of the legislation include the desire to “deter and punish terrorist acts in the United States and around the world,” as well as to “enhance law enforcement investigatory tools.”\textsuperscript{54} While all ten titles of the legislation are devoted to this pursuit, Title III of the Act, entitled International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001 (“IMLAFAT”), primarily focuses on reducing future terrorist activities by reducing money laundering that may finance such activities.\textsuperscript{55}

Prior to the enactment of the Patriot Act, three safeguards were in place to fight money laundering.\textsuperscript{56} The first was the Bank

April 8, 2002, available at http://www.banktech.com/story/whatsNews/BNK20020408S0002 (last visited Feb. 15, 2003). In fighting the war on terrorism, there has been a crack down against money laundering. \textit{Id.} Consequently, over $8 million in bulk case has been seized, and in excess of $80 million in suspected terrorist funds have been frozen. \textit{Id.}


\textsuperscript{51} \textit{Id.}


\textsuperscript{54} \textit{Id.}

\textsuperscript{55} Cowden, \textit{ supra} note 52, at 436-37. There are several provisions in the Patriot Act designed to protect financial institutions in the United States from being abused or manipulated by terrorist organizations. \textit{See id.} The Patriot Act has also resulted in a series of other regulatory obligations, some of which included procedures designed to prevent individuals or entities that participate in terrorism from opening accounts or executing business transactions through financial institutions in the United States. \textit{Id.}

\textsuperscript{56} \textit{See infra} notes 57-60 and accompanying text.
Secrecy Act of 1970 ("BSA") and its subsequent amendments. The second was the implementation of criminal money laundering statutes. Finally, in addition to the two safeguards mentioned, the President and the Office of Foreign Assets Control ("OFAC") are empowered to impose economic and trade sanctions that may forbid or limit certain types of transactions. The penalty for criminal violations of statutes that are administered by OFAC may consist of fines, imprisonment, or both.

However, the combination of all three of the safeguards against money laundering proved to be ineffective in preventing the financing of terrorism that led to the September 11 attacks. Consequently, IMLAFAT was enacted to provide yet another barrier to money laundering. IMLAFAT encompasses several different anti-money laundering initiatives, including Section 326. The essential requirements of Section 326 are to

1. Identify and verify the identity of persons seeking to open accounts;
2. Maintain records of the verification; and

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57. 31 U.S.C. § 5311 (2001). The BSA is essentially a reporting and record keeping statute. Id. The BSA requires that all banks file Suspicious Activity Reports ("SARs") when banks encounter suspicious transactions that may be linked with criminal activity, such as money laundering. Id. Consequently, SARs must be filed if a bank knows, suspects or has reason to suspect, that a transaction (1) involves funds derived from illegal activity or is intended to hide funds or assets derived from illegal activity; (2) is designed to evade regulations promulgated under the BSA; or (3) serves no business or apparent lawful purpose, and the [bank] knows of no reasonable explanation for the transaction after examining the available facts. Id. In addition, banks are required to file Currency Transaction Reports if a cash transaction exceeds $10,000.00, as well as report the transportation of currency in excess of $10,000.00 either out of or into the country. Id.


60. See 31 C.F.R. § 500.701 (2002).

61. Ivan Schneider, Hijackers Opened Accounts Using Phony SSNs, FBI Says, BANK SYS. & TECH., Sep. 10, 2002, available at http://www.banktech.com/story/BNK20020910S0002 (last visited Feb. 15, 2003). The procedures in place prior September 11th were ineffective in preventing money laundering that was being used to finance terrorism in that the hijackers were able to open thirty-five bank accounts in the United States using phony Social Security numbers. Id.

62. See id.

(3) compare the account applicant to government-provided terrorist lists.\textsuperscript{64}

Subpart (1) entitled Verification of Identification requires the Secretary of the Treasury to promulgate regulations that will enumerate the minimum standards that financial institutions must satisfy in verifying the identification of a customer attempting to open an account with that financial institution.\textsuperscript{65}

Although the specific regulations are left to the discretion of the Secretary of the Treasury, Congress mandated that, at a minimum, the regulations must provide for the implementation of reasonable procedures in all different areas.\textsuperscript{66} In regard to verification of identification, the regulations promulgated by the Secretary of the Treasury must establish a reasonable procedure for establishing the identity of any person that is seeking to open an account to any extent that is reasonable and practicable.\textsuperscript{67} Essentially, financial institutions are required to enact reasonable procedures for verifying customer identification by using reasonable efforts to establish a reasonable belief that it has ascertained the true identity of both old and new customers.\textsuperscript{68}

In prescribing the regulations in Section 326, Congress mandated that the Secretary of the Treasury consider several factors in regard to the unique nature of various financial institutions.\textsuperscript{69} The factors to be taken into consideration include the types of accounts that are maintained by the financial institutions, the differing methods of opening accounts, and the differing types of identifying information that are available.\textsuperscript{70} Congress also gave the Secretary of the Treasury the power to enact standards and procedures that would exempt any financial institution or any type of account from the requirements of any

\textsuperscript{64} Id.
\textsuperscript{65} § 326 (a)(1)(1).
\textsuperscript{66} Id.
\textsuperscript{67} § 326 (a)(1)(2)(A).
\textsuperscript{68} Id.
\textsuperscript{70} Id.
regulations prescribed under Section 326. The Act originally called for all final regulations under Section 326 to take effect before October 25, 2002, which marks the end of the one-year period after the date of the enactment of the IMLAFAT. However, on October 11, 2002, the Department of the Treasury issued a press release stating that financial institutions would not have to comply with Section 326 until final implementing regulations are both issued and become effective.

III. PROPOSED RULES ISSUED BY THE DEPARTMENT OF THE TREASURY FOR A CUSTOMER IDENTIFICATION PROGRAM

On July 17, 2002, the Department of the Treasury issued proposed rules for the implementation of Section 326. The proposed rules were developed jointly by the Department of the Treasury and the Treasury's Financial Crimes Enforcement Network, as well as by seven federal financial regulators ("the Agencies"). The aim of the proposed rules was to implement the Patriot Act and to protect the U.S. financial system from money laundering and terrorist financing. With respect to an individual

71. §326 (a)(1)(5).
72. Press Release, Office of Public Affairs of the Department of the Treasury, supra note 47.
73. Press Release, Office of Public Affairs of the Department of the Treasury, Treasury Department Provides Guidance on Compliance with Section 326 of USA PATRIOT ACT (Oct. 11, 2002), at http://www.treas.gov/press/releases/po3530.htm. Once finalized, the financial institutions will be afforded a reasonable amount of time in which to comply with the rules. Id. In the interim, financial institutions must still comply with all existing obligations to safeguard against money laundering. Id. In addition to this requirement, financial institutions should already be taking basic steps to ensure appropriate identification. Id.
75. Id. The seven agencies that participated in drafting the rules were the Board of Governors of the Federal Reserve System, Commodity Futures Trading Commission, Federal Deposit Insurance Corporation, National Credit Union Administration, Office of the Comptroller of the Currency, Office of Thrift Supervision, and Securities and Exchange Commission. Id.
customer opening a deposit or share account, banks are required to secure a taxpayer identification number of the customer within thirty days of the opening of the account and maintain a record of such information. If a bank is unable to secure a taxpayer number within the proscribed thirty day period, it may still be deemed not to have violated § 103.34 if it made a reasonable effort to secure the information and if it maintains and makes available to the Secretary of the Treasury a list that contains the names, addresses, and account numbers of the people from whom the bank has attempted to acquire such identification. In addition to recording the taxpayer identification number, a bank is required to record a non-resident alien's passport number or a description of some other government document that may be used to verify his or her identity.

A. Definitions

The proposed regulations defined various terms used in 31 C.F.R. § 103. An account is defined as "each formal banking or business relationship established to provide ongoing services, dealings, or other financial transactions." A deposit account is listed as a relationship that would constitute an account. An

Fed. Reg. 141. Section 103.34 governs the procedures a bank must abide by in verifying the identification of a customer. *Id.*

77. 31 C.F.R § 103.34 (a)(1)(2001).
78. *Id.*
79. *Id.* Several exceptions to the taxpayer identification requirement exist in regard to non-resident aliens. *Id.* A bank does not have to secure such information for accounts or transactions if (1) the alien is an accredited representative of an international organization that is entitled to certain privileges, immunities and exemptions under the International Organization Immunities Act; (2) the alien is residing in the United States for a period not to exceed 180 days; (3) the alien is not engaged in any business or trade in the United States but is attending a recognized college or university or any training program supervised or conducted by any agency of the Federal Government; and (4) if the alien is classified as a non-resident and is not engaged in a trade or business in the United States. 22 U.S.C. § 288 (2001); 31 C.F.R. § 103.34 (2001).
80. *Supra* note 74.
81. *Id.*; see also 67 Fed. Reg. 141.
82. *Supra* note 74.
account is limited to formal banking or business relationships that are intended to provide ongoing services to a client.\textsuperscript{83} The proposed rules define a customer as any person that is seeking to open a new account.\textsuperscript{84} Therefore, a person merely seeking information regarding the creation of an account would not qualify as a customer.\textsuperscript{85} Moreover, a person seeking to open a new account will be considered a customer even if he or she already has an existing account with the bank.\textsuperscript{86}

\textbf{B. Verifying Customer Identification – A Risk-Based Approach}

Section 326 requires financial institutions to implement and comply with reasonable procedures, to the extent that is reasonable and practicable, for verifying the identification of a customer who seeks to open an account.\textsuperscript{87} The proposed rules attempt to fulfill this regulation by mandating that each bank have a risk-based approach for verifying the identification of a customer.\textsuperscript{88} Under the risk-based approach, banks must consider the types of accounts maintained, the different methods of opening an account, and the types of identifying information available.\textsuperscript{89} These procedures must provide the bank with a reasonable belief that the identity offered is the true identity of the customer.\textsuperscript{90} Since the procedures are risk-based, there may be situations in which the bank need not verify the identity of the customer.\textsuperscript{91} For example, a bank would not be required to verify the identification

\textsuperscript{83} Id.
\textsuperscript{84} \textit{Id.}; see also 31 C.F.R. pt. 103.121 (a)(3)
\textsuperscript{85} \textit{Supra} note 74.
\textsuperscript{86} \textit{Id.}
\textsuperscript{88} 67 Fed. Reg. 141.
\textsuperscript{89} \textit{Id.} The American Bankers Association has commended the Treasury Department in calling for a risk-based procedure to be adopted as it claims that such a procedure is the only reasonable and effective method of implementing the requirements of Section 326. Letter from John J. Byrne, senior counsel and compliance manager, The American Bankers Association, to the Financial Crimes Enforcement Network (Sept. 6, 2002), available at http://www.aba.com/NR/rdonlyres/00006645jnpyjmkmelafcvw/USAPatriotActSect326Commlatter2.pdf (last visited on Feb. 15, 2003).
\textsuperscript{90} 67 Fed. Reg. 141.
\textsuperscript{91} \textit{Supra} note 74.
of a customer that has an existing account with the bank if the bank has previously verified the customer's identity in accordance with procedures that are consistent with the proposed rule, and if the bank continues to have a reasonable belief as to the true identity of the customer.\textsuperscript{92}

C. Types of Identity Information Requested to Establish Customer Identity

The proposed rules require that banks establish procedures that specify the types of identifying information that the bank must secure from the customer.\textsuperscript{93} There are also certain minimal pieces of identifying information that a bank must secure before opening an account.\textsuperscript{94} For individuals, these minimal pieces of identifying information consist of a name, address, date of birth and an identification number.\textsuperscript{95} In regard to the identification number, a bank must secure at least one or more of the following when opening an account for a non-U.S. resident: taxpayer identification number, passport number and country of issuance, alien identification card number, or number and country of issuance of any other document issued by a government that provides both a photograph or other similar safeguard and evidence of nationality or residence.\textsuperscript{96} The Department of the Treasury and the Agencies note that the types of information required by the proposed rules are similar to informational requirements currently required under 31 C.F.R. § 103.34.\textsuperscript{97}

Once the information is provided to the bank, the bank must have procedures that describe precisely how the bank will verify the information provided by the customer.\textsuperscript{98} Moreover, the proposed rules require that the bank establish procedures that will describe when the bank will use documents for the purpose of

\begin{footnotesize}
\begin{enumerate}
\item[92.] Id.
\item[93.] Id.
\item[94.] Id.
\item[95.] Id.
\item[96.] Id.
\item[97.] Id.
\item[98.] Id.
\end{enumerate}
\end{footnotesize}
identity verification and when it will use alternative measures for identity verification purposes.\textsuperscript{99} Again, all of these procedures are to be risk-based.\textsuperscript{100}

\subsection*{D. Time Frame for Verifying Customer Identification}

The verification of identification must occur within a reasonable time after the account is opened.\textsuperscript{101} The Department of the Treasury and the Agencies deliberated about requiring the identification to be verified before the account could be opened but decided against such a requirement for logistical reasons.\textsuperscript{102} Primarily, they emphasized that such a requirement would place an undue onus on both banks and customers due to the lengthy amount of time that could be involved in identity verification.\textsuperscript{103} The creation of a procedure that produced such a heavy burden would be contrary to the Patriot Act’s expressly stated mandate that the newly established procedures be both reasonable and practicable.\textsuperscript{104} The proposed rules acknowledge that other safeguards typically employed by banks, such as restricting the number of transactions or the dollar value of transactions in newly created accounts, would provide protection until the bank was able to satisfactorily verify the customer’s identity.\textsuperscript{105} Therefore, the proposed rules create flexibility in that banks are allowed to utilize a risk-based approach to determine the length of time that is reasonable to verify a customer’s identity on a case-by-case basis.\textsuperscript{106}

\subsection*{E. Inability to Establish Identity}

Finally, the proposed rules require that banks develop a procedure for responding to situations in which the bank is

\begin{itemize}
\item \textsuperscript{99} Id.
\item \textsuperscript{100} Id.
\item \textsuperscript{101} Id.
\item \textsuperscript{102} Id.
\item \textsuperscript{103} Id.
\item \textsuperscript{104} Id.
\item \textsuperscript{105} Id.
\item \textsuperscript{106} Id.
\end{itemize}
without sufficient information to reasonably form the belief that it has ascertained the true identity of a customer.\textsuperscript{107} The procedures must enumerate specific actions that the bank will undertake when confronted with a lack of verification.\textsuperscript{108} Moreover, the procedures developed by banks must address the terms under which a customer may use a newly created account while his or her identification is being verified.\textsuperscript{109} The procedures must also establish a means of determining the time to terminate an open account after attempts to verify the customer's identification have failed.\textsuperscript{110} As a final measure, if a bank is unable to form a reasonable belief that it has ascertained the true identity of a customer, the procedures must provide for a determination of whether Suspicious Activity Reports should be filed in compliance with the applicable governing laws.\textsuperscript{111}

IV. \textbf{ANALYSIS OF THE INTERACTION BETWEEN ACCEPTING THE MATRICULA CONSULAR AND THE PATRIOT ACT}

Since the attacks on September 11, 2001, the Department of the Treasury has implemented unprecedented procedures and regulations designed to curb money laundering.\textsuperscript{112} Money laundering is a daunting problem, as reflected by the International Monetary Fund's (IMF) estimation that it comprises two to five percent of the global gross domestic product annually.\textsuperscript{113} This percentage is equivalent to one to three trillion dollars a year.\textsuperscript{114} The funds are used for various criminal activities, including

\begin{itemize}
  \item 107. \textit{Id.}
  \item 108. \textit{Id.}
  \item 109. \textit{Id.}
  \item 110. \textit{Id.}
  \item 111. \textit{Id.}
  \item 112. Don Temple, \textit{USA Patriot Act Outlook} (July 2002), \textit{BANK SYS. & TECH.}, June 26, 2002, available at http://www.banktech.com/story/BNK20020626S0002 (last visited Feb. 15, 2003). The Patriot Act itself is an attempt to streamline anti-money laundering efforts that deter money laundering activity and terrorist financing. \textit{Id.} Consequently, in order to comply with the Patriot Act, financial institutions will be forced to use stringent anti-money laundering programs to report any and all suspicious transactions. \textit{Id.}
  \item 113. \textit{Id.}
  \item 114. \textit{Id.}
\end{itemize}
Accordingly, enacting stringent regulations aimed at reducing money laundering has been a top priority in the war on terrorism.\textsuperscript{115} The proposed rules issued for implementing Section 326 of Title III of the Patriot Act fail to support the overwhelming movement to fight money laundering.\textsuperscript{116} Initially, it appears that the Department of the Treasury was prepared to impose heavy responsibilities on various financial institutions.\textsuperscript{117} However, rather than mandating strict requirements for customer identification programs for financial institutions, the proposed rules adopt a flexible “reasonable procedure” approach to customer identification.\textsuperscript{118} Banks are required to exercise “reasonable efforts” in verifying customer identification to the extent that they may form a “reasonable belief” as to the true identity of the customer.\textsuperscript{119}

It has been suggested, however, that a more detailed and uniform procedure is necessary for verifying customer’s identification. Realistically, the creation of such procedures was the congressional intent behind assigning the Department of Treasury to enact regulations to implement Section 326.\textsuperscript{120} Yet the proposed rules create no such procedures and provide no definite guidelines for banks to follow.\textsuperscript{121} Ultimately, these lax

\begin{itemize}
  \item \textsuperscript{115} Id.
  \item \textsuperscript{116} U.S. Dep’t of State, International Narcotics Control Strategy Report 2001 (released March 2002), \textit{available at} http://www.state.gov/g/inl/rls/nrcrpt/2001 rpt/ (last visited Feb. 15, 2003). Immediately after the terrorist attacks on September 11\textsuperscript{th}, law enforcement officials focused on anti-money laundering measures to help identify the perpetrators and determine how they were financed. \textit{Id.} Several taskforces were formed to examine the financial aspects of the terrorist networks. \textit{Id.} The findings of these task forces indicate that the enactment of more stringent anti-money laundering regimes, particularly those that are successful in identifying the true identity of the originators of international wire transfers, will impact terrorist financing. \textit{Id.}
  \item \textsuperscript{117} \textit{See infra} notes 118-230 and accompanying text.
  \item \textsuperscript{118} Temple, \textit{supra} note 112.
  \item \textsuperscript{119} Schneider, \textit{supra} note 68.
  \item \textsuperscript{120} \textit{Id.}
  \item \textsuperscript{121} Cliff Stephens and Tom Crook, \textit{Pressure from All Sides}, \textit{BANK SYS. & TECH.}, Oct. 7, 2002, \textit{available at} http://www.banktech.com/story/BNK20021007S00002 (last visited Feb. 15, 2003). It has been suggested by banks that have successfully installed an anti-crime strategy that one of the most important attributes of such a program is a solid customer verification process for the opening of new accounts. \textit{Id.}
  \item \textsuperscript{122} \textit{Id.}
\end{itemize}
requirements defeat the underlying purpose of the Patriot Act: to curb money laundering. 123

The danger in failing to establish such procedures is that banks are left to their own discretion in determining what constitutes a reasonable procedure. 124 The opportunity to venture into the $9.2 billion dollar market for wire transfers from Mexican nationals in the United States could skew a bank's definition of "reasonable." 125 The acceptance of the Matricula Consular reflects the growing desire among banks to enter this marketplace. 126 Moreover, banks are reluctant to impose higher identification requirements than competing banks for fear of placing themselves at a potential disadvantage. 127

The decision to accept the Matricula Consular as a primary form of identification has garnered both support and opposition. 128 Supporters of the decision argue that the acceptance of the card promotes Hispanic participation in the financial systems of the country. 129 Historically, Mexican nationals have been reluctant to become involved with financial institutions in the United States, due in part to a deep cultural mistrust of banks. 130 Consequently, an estimated twenty-five percent of Hispanic families are

123. Id. Another problem is that lax identification requirements are conducive to check fraud. Id. It was estimated that in 1999 banks across the country lost a total of nearly $679 million because of check fraud. Id. Check fraud has been identified as a serious problem facing financial institutions, and occurs because of, among other things, poor identification procedures. Id. Also, an estimated fifty percent of losses occur in new accounts. Id.
124. Id. Krebsbach, supra note 1, at 64.
125. Id.
126. Id.
127. Ivan Schneider, Financial Industry to Serve Watchdog Role in USA PATRIOT Act, BANK SYS. & TECH., Feb. 21, 2002, available at http://www.banktech.com/story/BNK20020221S0007 (last visited Feb. 15, 2003). There are currently no regulations in place to prevent a customer from leaving one bank because of its adherence to due diligence and taking their business to a bank that does not have the same standards. Id. In addition, if banks within the United States lose business to banks that are not as dedicated to preventing money laundering, there may be serious ramifications on the competitiveness of United States financial institutions. Id. In fact, the country's position as the leading financial center may be endangered. Id.
128. See infra notes 129-230 and accompanying text.
129. Ha, supra note 18.
130. Krebsbach, supra note 1.
In the current economy, where having a bank account is as essential as having electricity, running water, and telephone service, the ramifications of being unbanked are far reaching. In addition, supporters argue that maintaining a bank account will encourage Mexican nationals to save more. Most important, however, is the impact that having a bank account could have on prolonged family self-sufficiency. This is particularly poignant in regard to retirement plans, as unbanked families are significantly less likely than are families with access to bank accounts to be covered by a retirement plan. In 1998, for example, forty-seven percent of families with bank accounts were covered by retirement plans, while ninety-two percent of unbanked families had no such retirement coverage.

In addition to these benefits, access to banks would also provide Mexican nationals with a safe and convenient place to store their money. Hispanics that do not have a bank account have a higher tendency to either carry large amounts of cash with them or to store their cash in their homes. This activity has been deemed a considerable contributing factor in the high crime rates associated with Hispanics, specifically regarding robbery. Reports indicate that Hispanics were significantly more likely to be robbed than non-Hispanics. In fact, Hispanics have a robbery

132. Id.
133. Banks Alter Identification Rules to Enlist Mexicans, supra note 37.
134. Ha, supra note 18.
135. Stegman, supra note 131.
136. Id.
137. Id.
138. Ha, supra note 18.
140. Ha, supra note 18.
141. U.S. Department of Justice, Bureau of Justice Statistics—Victim Characteristics,
rate nearly twice that of non-Hispanics (eleven versus six per 1,000, respectively).\textsuperscript{142} North Carolina encourages Mexican nationals to place their money in a checking or savings account to avoid becoming easy targets for potential robbers.\textsuperscript{143}

Despite the individual and societal value that may be reaped by accepting the Matricula Consular as a primary means of identification for opening a bank account, and thereby easing the process for Mexican nationals, the decision to accept the card has run into staunch opposition.\textsuperscript{144} Critics brand the decision as irresponsible public policy, and insist that national security requires that the responsibility of identification should not be delegated to other countries but must remain under the authority of the United States government.\textsuperscript{145}

The argument that the opposition most fervently raises is rooted in immigration concerns.\textsuperscript{146} They argue that the use of the Mexican-issued identification card is a virtual admission of an illegal immigration status in the country.\textsuperscript{147} If the person were legally within the U.S., he or she would be able to produce U.S. identification documents such as the green card that they are required to carry by federal law.\textsuperscript{148} A legal resident status in the U.S. would also provide Mexican nationals with access to other valid forms of identification such as a driver’s license.\textsuperscript{149} Indeed, it is generally acknowledged that the Matricula Consular is chiefly

\begin{itemize}
  \item \textsuperscript{143} North Carolina Governor’s Crime Commissions, \textit{Protect Your Money – Don’t Be an Easy Target}, \textit{available at} http://www.gcc.state.nc.us/\textsc{Crime\_Prevention/\textsc{Espanol/ProtectMoney\textsc{ENGFINAL.PDF}}} (last visited Feb. 15, 2003).
  \item \textsuperscript{144} See infra notes 145-230 and accompanying text.
  \item \textsuperscript{145} Friends of Immigration Law Enforcement [hereinafter FILE], \textit{Illegal Alien ID Cards and Public Entities}, \textit{available at} http://www.fileus.com/dept/id/matricula/ (last visited on January 20, 2003).
  \item \textsuperscript{146} See infra notes 147-167 and accompanying text.
  \item \textsuperscript{147} Terje Langeland, \textit{Matricula Melee: Group Threatens Fight Over Mexican I.D. Cards}, \textsc{COLORADO SPRINGS INDEPENDENCE}, Dec. 12, 2002, \textit{available at} http://www.fileus.com/dept/id/matricula/colo-springs-indy-02-12-102.html.
  \item \textsuperscript{148} Id.
  \item \textsuperscript{149} Dougherty, supra note 37.
\end{itemize}
used by illegal immigrants.\textsuperscript{150} The cards themselves add to the concerns by not disclosing the immigration status of the Mexican national.\textsuperscript{151} Furthermore, a Wells Fargo representative has publicly stated that the bank does not question the legal status of any of its customers.\textsuperscript{152}

More than simply allowing illegal immigrants to gain access to financial institutions, the opposition argues that the local government’s acceptance of the cards is tantamount to the creation of de facto amnesty for illegal aliens that is not authorized by Congress or by the President.\textsuperscript{153} They propose that banks’ acceptance of non-U.S.-issued forms of identification encourages illegal aliens to continue to reside illegally in the country, and also provides an incentive for others to illegally immigrate to the U.S.\textsuperscript{154} Immigration and Naturalization Services ("INS") have refused to make an official statement regarding their position on the Matricula Consular.\textsuperscript{155}

The Mexican government, recognizing this de facto amnesty, actively encourages local governments to accept the Matricula Consular in an effort to integrate undocumented aliens into the U.S. mainstream, to further the amnesty.\textsuperscript{156} The choice to target local governments, as opposed to the federal government is twofold; it gives constituents some protection and builds

\begin{flushleft}
\textsuperscript{150} Id.
\textsuperscript{152} Id.
\textsuperscript{153} Id.
\end{flushleft}
momentum to began to make changes on the federal level. In addition to local governments, their efforts to gain support for the acceptance of cards have also specifically focused on banks. Their efforts to convince banks of the added benefits of allowing Mexican nationals to open bank accounts using the Matricula Consular have apparently been successful, as now some sixty-six banks recognize the card.

Some members of the opposition have alleged that, in addition to creating de facto amnesty, the decision to accept the cards is both criminal and unconstitutional. In regard to the criminal allegations, they argue that acceptance of the cards amounts to a violation of the Federal Immigration and Nationality Act ("FINA"). They cite to the provision of the FINA which states that anyone that "encourages or induces an alien to reside (here) ... is in violation of the law." Those in violation of the FINA may face federal fines or a prison term of up to five years. Bank officials, however, have maintained that their decision to accept the cards is not illegal. As for the accusations of unconstitutionality, opponents argue that Congress has plenary power over the entire field of immigration law under the Commerce Clause (Article I, Section 8) of the federal constitution. Therefore, official policies that allow for the acceptance of the cards into the United States, and enabling Mexican nationals to open bank accounts, is not illegal.

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157. Id.
158. Id.
159. Id.
160. See infra notes 161-168 and accompanying text.
162. FILE, supra note 145.
163. Id.
164. Ha, supra note 18. Perhaps the difference between the public outcry against the acceptance of the cards and banks' decision to accept them can be explained by the constantly growing gap between the public's perceptions of immigrations and those of financial institutions. Card-Carrying Immigrants, WASH. POST, Dec. 22, 2002. Polls suggest that approximately sixty percent of the public believes that immigration is a current threat to national security in the U.S. Id. This may be partially attributed to discussions of immigration almost exclusively being linked to security threats since the terrorists attacks on September 11th. Id.
165. FILE, supra note 145.
acceptance of an identification document that is issued by another country’s government in violation of the federal law erroneously appropriates Congressional powers to financial institutions. Consequently, they argue that the banks' decisions to accept the cards may be challenged on its constitutional validity.

Outside the realm of immigration, another problem arising from the decision to accept the Matricula Consular is the possibility of fraudulent and/or illegally obtained identification. Indeed, the problem has already begun to surface with regard to fraudulently obtained identification. To obtain the card, an individual is required to produce only a Mexican birth certificate and one other picture identification. In Denver, a deputy director of INS reported that one individual that was arrested had three separate Matricula Consular cards. All of the cards were issued through the consulate and all contained his photograph, but a different name was printed on each. Because of such incidents, federal immigration officers warn that the cards cannot be trusted. The proposed rules recognize this potential and accordingly encourage banks to use other verification methods, even if dealing with original documents. The rules proceed to list several alternatives for verification, including non-documentary methods that the banks could use such as obtaining a

166. Id.
167. Id.
168. Los Angeles City Council Should Reject Use of Mexican Consular ID Cards, Says Federation for American Immigration Reform, U.S. Newswire, May 1, 2002. It should be noted that concerns have already arisen as to the reliability of documents whose validity cannot be independently corroborated. Id. Banks could use imaging technology to aid in detecting forged or otherwise fraudulent identification. Id. Even though it may be difficult for all banks to use such a system, it may be beneficial for certain banks to do so, especially those accepting the Matricula Consular as a primary form of identification. Id. Currently available document verification programs are able to test an identification document for its known refractory properties, to capture the documents digital image, and to compare information collected against governmentally prepared lists of suspected or known terrorists. Id.
169. See infra notes 170-173 and accompanying text.
171. Id.
172. Id.
173. Id.
174. Id.
financial statement and checking references with other financial institutions.\textsuperscript{175}

This is especially true in light of recent problems with identify theft. Identity theft was targeted as a "highlighted trend" by the June 2001 issue of SAR Activity Review due to the financial industry's perception of an increase in the occurrence of identity theft-based fraud.\textsuperscript{176} False identification has been lauded as the "essence of financial crime," as some element of fraud is inherent in money laundering.\textsuperscript{177} Accordingly, rather than making alternative verification optional, the proposed rules should mandate that all banks seek out alternative identification information in addition to the Matricula Consular, in order to fully execute the underlying purpose of the Patriot Act.\textsuperscript{178}

Regardless of its motivations, the decision by banks to provide easier access into this substantial economic market may likely prove conducive to money laundering.\textsuperscript{179} In 2001, wire transfers were classified as an area of high activity in money laundering.\textsuperscript{180} In fact, the money services industry itself has recognized that money transmissions are vulnerable to abuse.\textsuperscript{181} Another activity highlighted as indicating terrorist financing is the deposit of funds followed by a wire transfer after a short period of time.\textsuperscript{182} In the interest of preventing both money laundering and the financing of terrorism, banks should not make wire transfers more readily available by requiring only a Matricula Consular to establish an account.\textsuperscript{183}

More importantly, however, the type of account that banks are allowing Mexican nationals to open based exclusively on their Matricula Consular are the types of accounts that terrorists target

\begin{thebibliography}{99}
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\bibitem{175} Id.
\bibitem{176} U.S. Dep't of State, \textit{supra} note 116.
\bibitem{178} See \textit{id.}
\bibitem{179} U.S. Dep't of State, \textit{supra} note 116.
\bibitem{180} Id.
\bibitem{181} Id.
\bibitem{182} Id.
\bibitem{183} Id.
\end{thebibliography}
for money laundering. The September 11, 2001, terrorists opened twenty-four basic checking accounts at four different banks in the United States with the value of the accounts averaging between three and five thousand dollars. All accounts were opened at large, well-known banks because of the anonymity that a customer may maintain at a large institution. The terrorists opened their accounts within thirty days of entering the United States using visas that were issued through the United Arab Emirates or Saudi Arabia. The anonymity offered by the large banks and the marginal amount of money in the accounts aids terrorists in avoiding detection as it enables them to "operat[e] in a manner that does not raise red flags, thereby falling below the financial radar screen." 

The type of accounts opened by Mexican nationals using their Mexican identification would presumably be similar to the accounts utilized by the terrorists to launder money. Wells Fargo, Bank of America, and Citigroup's size enables them to capture a sizable portion of the market due to their infrastructure and capacity to operate both in the United States and Mexico, while also providing the anonymity that terrorists seek. Similarly, the monetary value of the accounts opened by the Mexican nationals would be comparable to the value on deposit in terrorists' accounts. Terrorists could use Matricula Consular to

184. Stephens & Crook, supra note 121.
185. Id.
186. Id. Even though the terrorists in the September 11th attacks opened accounts at large banks, small banks are becoming a target for terrorists as well. Id. One reason that terrorists are moving to the smaller banks is that smaller banks are typically slower in installing anti-money laundering provisions than large banks. Id. This makes them more attractive for money laundering. Id. Banks are cautioned to take all possible precautions against money laundering, to prevent the risk of attracting terrorists. Id.
187. Id.
188. Id. (quoting Dennis Lormel, chief of the FBI's financial crimes unit).
189. Id.
190. Id.
191. U.S. Dep't of State, supra note 116. Terrorism does not require a substantial amount of money to be effective. Id. In fact, the attacks on the World Trade Center and the Pentagon were estimated to have cost just above five hundred thousand dollars. Id.
open bank accounts just as they used identification issued by other governments to open their accounts in 2001.

However, terrorists rely on financial institutions such as banks as a means of moving their funds, and it should be the duty of banks to thwart the financing of terrorism by preventing such transfers. Yet the proposed rules fail to establish a more detailed and uniform procedure for enforcing this duty. Rather, the rules merely note that when dealing with certain types of accounts that pose a heightened risk of money laundering, such as the ones opened based on the Matricula Consular, banks should prescribe additional measures to ascertain the true identity of the customer. Due to the optional nature of this regulation, banks are free to disregard this advice, and thus fail to prevent money laundering. Ultimately, the decision to accept the Matricula Consular as the primary form of identification for opening an account acts only to further the financing of terrorism by offering terrorists an easily accessible forum for money laundering. Again, such an action defeats the anti-money laundering initiatives of the Patriot Act.

V. POSSIBLE MODIFICATIONS AND ALTERNATIVES TO EXISTING PROGRAMS

International money transfers to individuals that have no formal account relationship with a bank, such as those relying on the Matricula Consular as a primary form of identification for opening a bank account, have already been identified as an area whose procedures are in need of modification to comply with anti-money laundering initiatives passed in the wake of the September 11, 2001, terrorist acts. It has been suggested that, because of the lack of know-your-customer philosophy that is typically associated with this area of banking services, banks should

193. See id.
194. Katkov, supra note 47.
implement special monitoring procedures in regard to international money transfers.\footnote{195}{Id.}

A possible modification to the decision to accept the Matricula Consular as a primary means of identification that would make the program more compliant with the anti-money laundering initiatives of the Patriot Act would be the installation of transaction monitoring software.\footnote{196}{Schneider, supra note 177.} The software promises to identify terrorists by analyzing the behavior of those utilizing various financial services.\footnote{197}{Id.} The transaction monitoring software specifically examines behavior that deviates from the expectations of normal account activity in an attempt to detect unusual activity that may indicate money laundering.\footnote{198}{Id.} The software may provide a safeguard against the money laundering risks presented by the acceptance of the Matricula Consular as a primary form of identification. Therefore, the implementation of such software is one possible modification to these programs that could be adopted to help prevent the financing of terrorism.

Another possible modification to the programs is the addition of a private component to public data.\footnote{199}{Id.} One means of accomplishing this is by adding a PIN to a government issued identification, such as a Social Security Number.\footnote{200}{Id.} This would provide broader protection against illegal uses, such as money laundering, in that a Social Security Number would not be
functional for verification purposes without its assigned PIN. Consequently, a criminal who steals a Social Security Number would be unable to use it to open an account, since he or she would not have access to the corresponding PIN.

Another possible alternative is to require financial institutions to adopt protocols that demand heightened security standards for money transfers. While the banks are making wire transfers more accessible, Western Union has modified its anti-money laundering and anti-terrorist protocols. The more strict guidelines not only satisfy the Patriot Act requirements, but also exceed them in certain areas. The Department of the Treasury, for example, mandates that for wire transfers exceeding $3,000, the name and address of both the sender and receiver must be verified, a non-expired government issued picture ID must be examined, and the information must be recorded. Western Union, however, requires that these actions be undertaken for wire transfers of $1,000 or more. Rather than relaxing the requirements for customer identification, banks should be encouraged, if not required, to enact more stringent procedures similar to those of Western Union. With regard to banks’ concerns for being placed at a competitive disadvantage, Western

201. Schneider, supra note 61.
202. Id. The Social Security Administration ("SSA") has already begun using PINs for selected procedures, such as for changes of address requested by current benefit recipients. Id. The SSA also predicts an expansion in the use of PINs. Id. It has been predicted that PIN verification may be used between the SSA and potential creditors, as well as in the area of online services. Id.
203. See infra notes 204-208 and accompanying text.
205. Id. One such program that exceeds the requirements of the Patriot Act is Western Union’s system for executing high value transactions. See id. When an agent attempts to take a customer’s information for such a transaction, the agent’s computer will automatically freeze up, thereby forcing the agent to contact a trained compliance operator. Id. The operator will then interview both the agent and the customer before the transaction can be executed. Id.
206. Id.
207. Id. As another example of Western Union’s heightened requirements, the Department of the Treasury mandates that an agent record a client’s Social Security number, name, address, date of birth, and occupation when handling transactions of $10,000 or greater. Id. Western Union, which previously required such information to be gathered for transactions of $8,500, currently requires it for transfers of $7,500 or more. Id.
Union reports that there has been little or no “pushback” by customers in response to the heightened identification requirements.\textsuperscript{208}

Yet another possible alternative to the current system is the installation of a national identification program.\textsuperscript{209} The Department of the Treasury has already recommended the implementation of this type of program for foreign customers.\textsuperscript{210} Such a program has been predicted to encourage an industry-wide movement towards the sharing of information within the industry and with law enforcement.\textsuperscript{211} A significant advantage of this type of program is that it would allow financial institutions to create a total picture of any individual or entity that is using a financial system.\textsuperscript{212} This concept has been dubbed an “involuntary account aggregation,” and would provide for a comprehensive, single view of the individuals or entities across all financial institutions.\textsuperscript{213} This would benefit law enforcement by allowing them to better monitor terrorist financing.\textsuperscript{214} This type of national identification program would, therefore, better serve the underlying goals of the Patriot Act than the programs currently utilized by financial institutions.

\textsuperscript{208} Id. When Western Union implemented more strict identification requirements for large money transfers in 1997, they suffered from a decline in business. Id. However, no such decline occurred as a result of the more stringent requirements adopted in the wake of September 11th, mostly due to the public’s willingness to disclose personal information since the attacks. Id.

\textsuperscript{209} Schneider, supra note 177.

\textsuperscript{210} Id.

\textsuperscript{211} Id. For example, the New York Clearing House, in conjunction with twenty-four banks that are members, initiated a program aimed at bolstering information sharing. Id. The program detects transactions that are linked to known terrorists and money launderers who have been identified by the Office of Foreign Assets Control. Id.

\textsuperscript{212} Id.

\textsuperscript{213} Id. This type of industry wide program has been compared to the Y2K initiative. Id. Specifically, both programs have difficult goals, but such goals can be achieved through industry mobilization, as evidenced through the success of the various Y2K programs. Id.

\textsuperscript{214} Id. Such a program has been praised for the benefits that it would create for law enforcement, specifically by allowing them to better understand terrorist financing regardless of which instruments are used. Id. However, it has also been noted that there may be great difficulties on behalf of banks (especially those banks that have grown by acquisitions) to institute such programs. Id. This is mainly due to the current methods of organization of information employed by banks. Id. Typically, banks organize data by product, geography, or line of business, rather than by individuals or entities. Id.
Of all the possible alternatives, however, the issuance of a national identity card has generated much public debate. The controversy arises out of privacy issues regarding the government's encroachment on civil liberties. The fear is that the government may abuse the system to collect and then disseminate personal information. Even if the government itself did not intentionally distribute or abuse the information, there may be employees who accidentally or purposely release the information. Opponents of a national identification card also argue that the use of the card may extend past its intended purpose. Opponents analogize the potential expansion of the use of the card to that of Social Security numbers. Social Security numbers were originally intended to track the earnings of workers in order to determine taxes and benefits. Currently, however, the numbers are used ubiquitously in many different types of private transactions. The concern, therefore, is that the main purpose of the card may quickly evolve to uses other than the prevention of terrorism.

In addition to these privacy concerns, there are also worries that such a card would usher in a new forum for discrimination. One concern is that minorities, such as Latinos, Asians and Caribbeans, would likely be the target of identification checks by

215. Steven Brill, *The Biggest Hole in the Net*, Newsweek, Jan. 6, 2003, at 48. One of the earliest post-September 11th arguments against the establishment of a national identification card came when the Eagle Forum (a leading organization of Republican conservatives) and the American Civil Liberties Union joined forces against state motor-vehicles commissioners who sought to apply minimum-security standards to driver's licenses. *Id.* The impetus behind the commissioners movement was the use of phony driver's license by several of the September 11 terrorists to board their flights. *Id.*

216. *Id.* It should be noted, however, that polls have been conducted showing that most Americans are not appalled by the idea of establishing a national identification card. *Id.*


218. *Id.* at 4.

219. *Id.*

220. *Id.*

221. *Id.*

222. *Id.*

223. *Id.*

police, landlords, and banks. The failure to produce the card upon demand by authorities may well result in search, detention or even arrest of the minorities. Opponents of the card believe that the stigma and humiliation of providing the card to prove national status is simply unacceptable.

Perhaps the most effective, but probably the least practical, alternative focuses on rooting anti-money laundering initiatives in a know-your-customer philosophy, rather than relying on any single form of identification. Banks have taken the know-your-customer rules seriously in regard to lending procedures, securities, and investing-type relationships with consumers, but have not extended the same procedures for opening checking accounts due to the low perceived risk associated with those accounts. The benefit gained by tightened know-your-customer policies is that more information will be gathered from the customers, thus adding an additional safeguard against false identification. Historically, individuals that have no formal account relationship, the unbanked sector, have not been exposed to the know-your-customer account opening procedures. These monitoring procedures should be mandatory for banks accepting the Matricula Consular as the primary form of identification, since international money transfers are a particular target for terrorism financing and money laundering. Verification of identity is crucial to prevent the furtherance of both.

V. CONCLUSION

In the trying times since September 11th, the country has been forced to redefine its balance between liberty and safety. In order to best protect the nation from additional terrorist attacks, the needs of homeland security dictate that the scales tip more in the favor of safety than liberty. In furthering the endeavor to

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225. Id.
226. Id.
227. Id.
228. Schneider, supra note 61.
229. Temple, supra note 112.
230. Katkov, supra note 47.
protect the nation, financial institutions in general, and banks in particular, are called upon to act as trip wires for potential terrorists. Rather than acting as a trip wire, the decision to accept the Matricula Consular acts more as a back door for terrorists. That is, the relaxed identification requirements allow terrorists to more easily incorporate themselves into American financial institutions. In essence, the decision aides money laundering and terrorism financing. It undermines the very underpinnings of the Patriot Act’s anti-money laundering and anti-terrorism initiatives, and accordingly should be expressly prohibited.

It has been said that the war against terrorism will be won not by battles, but by information. If this holds true, the decision to acknowledge the Matricula Consular as a primary form of identification for opening bank accounts poses a serious threat to the United States emerging victorious from the war. The motivations behind the decision are clear: banks wants to profit from the large, and virtually untapped, economic market surrounding the transfer of funds from Mexican nationals, and there is societal value that can arise from their actions. However, the expense of lowering identification requirements to achieve this end may very well come at the cost of national security. Yet what must be remembered is that the cost of the safety of a nation is far outweighed by any monetary gain. Just as there have been heightened regulations and security in the areas of airport security, visa issuance and flight school monitoring, so too should there be a movement towards higher standards of customer identification. Due to the vast potential of this decision to aid Mexican nationals, this program should by no means be terminated. Ultimately, however, there must be a modification of identification requirements by Wells Fargo, Bank of America, and Citigroup, such as the adoption of a more uniform and detailed system for accepting the Matricula Consular. If this does not occur, the consequences may be a cost too great to bear.

KATHRYN LEE HOLLOMAN