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DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Chapter X

RIN 1506-AB15

Request for Comments: Customer Due Diligence Requirements for Financial Institutions; Public Hearing

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice of public hearing; request for comment.

SUMMARY: FinCEN is announcing the first in an intended series of public hearings to continue gathering information on its Advance Notice of Proposed Rulemaking (ANPRM) on Customer Due Diligence (CDD) Requirements for Financial Institutions, published in the Federal Register on March 5, 2012.¹ In particular, FinCEN seeks further clarification on the issues described in this Notice. FinCEN invites various components of the law enforcement and regulatory communities to participate. In addition, FinCEN invites other interested parties, including industry representatives, to attend and/or provide comments at this first public hearing, to be held on July 31, 2012 at the U.S. Department of the Treasury building in Washington, D.C. FinCEN will also provide information in this Notice about how to submit comments and/or attend the hearing and

¹ Financial Crimes Enforcement Network, “Customer Due Diligence Requirements for Financial Institutions,” 77 FR 13046 (March 5, 2012), [available at http://www.regulations.gov#!docketDetail;D=FINCEN-2012-0001;ct=FR%252BPR%252BN%252BO%252BSR](http://www.regulations.gov#!docketDetail;D=FINCEN-2012-0001;ct=FR%252BPR%252BN%252BO%252BSR).

what procedures to follow to submit information to the Treasury Department to obtain entry to the hearing site.

DATES: This public hearing will be held on July 31, 2012, beginning at 9:30 a.m., Eastern Time, and ending at 5 p.m., in Washington, D.C. Requests to attend the hearing and/or provide oral comments, written outlines of the oral comments, and the personal identification information required of those individuals who wish to enter the Treasury Department building, must be received on or before July 24, 2012. More information on the intended subsequent hearings will be provided at a later date.

ADDRESSES: Requests to attend and/or provide comments: Requests to attend and/or provide comments at the Public Hearing must be submitted by email to the FinCEN BSA Resource Center at BSA_Resource_Center@FinCEN.Gov, or by mail to FinCEN, P.O. Box 39, Vienna, VA 22183. Include “CDD Public Hearing” in the body of the text or the “subject” line of the email.

Meeting site: This public hearing will be held at the United States Department of the Treasury, located at 1500 Pennsylvania Avenue Northwest, Washington, DC 20220.

Inspection of comments and outlines: Written comments and outlines may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Vienna, VA. Persons wishing to inspect the comments submitted must request an appointment with the Disclosure Officer by telephoning (703) 905-5034 (not a toll free call). In general, FinCEN will make all written comments, including outlines, publicly available by posting them on <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

FinCEN: Regulatory Policy and Programs Division, Financial Crimes Enforcement
Network, (800) 949-2732 and select option 6.

SUPPLEMENTARY INFORMATION:

Information about attending and/or providing comments at the hearing.

Individuals requesting to attend and/or provide oral comments should provide the following information in their request, which must be submitted to FinCEN at the address appearing in this Notice under the heading ADDRESSES: Request to attend and/or provide oral comments: (1) The name of the person wishing to attend and/or provide comments; (2) the person's contact information (telephone number and email address); (3) the organization(s) the person represents, if any; and, if wishing to provide comments, (4) a separate written, one to two-page outline of the proposed comments. FinCEN is requesting a written outline of comments in advance of the hearing for scheduling purposes. Given space and time limitations, not all requests to attend and/or provide oral comments may be honored. However, any outlines received will be made part of the public record for the hearing.

Based upon the requests received, FinCEN will develop an agenda for witness oral comments, will notify those commenters scheduled as part of the agenda, and will post the agenda on FinCEN's website (address: www.fincen.gov). Each comment, as well as a general summary of the hearing's discussion will be made available for public inspection after the public hearing; as such, information that a respondent does not desire to be made public, such as a phone number, should not be included in the outline of the comment discussed above. Information about the webcast will be posted on FinCEN's website prior to the public hearing, and the public hearing will be made available via webcast.

Due to security requirements and to facilitate entry to the meeting site, anyone wishing to attend must contact BSA_Resource_Center@FinCEN.Gov, or (202) 354-6400 no later than July 24, 2012, in order to provide the following required clearance information: For U.S. citizens: Full name, business affiliation, date of birth, and Social Security number; For foreign nationals: Full name, business affiliation, date of birth, passport number, and the country where the passport was issued. When arriving for the meeting, attendees must present a government-issued photo or passport identification and should arrive at least one-half hour prior to the start time of the meeting. The public meeting is physically accessible to people with disabilities. Individuals requiring special services, such as sign language interpretation, are asked to indicate this to BSA_Resource_Center@FinCEN.Gov.

For those unable to attend in person, written comments to the detailed questions may also be submitted for the record by email or mail to the respective address above by July 31, 2012. FinCEN will make such written comments publicly available by posting them on <http://www.regulations.gov>.

Request for hearing comments.

On March 5, 2012, FinCEN published an Advance Notice of Proposed Rulemaking (ANPRM) to solicit public comment on a wide range of questions pertaining to the development of a Customer Due Diligence (CDD) regulation that would codify, clarify, consolidate, and strengthen existing CDD regulatory requirements and supervisory expectations, and establish a categorical requirement for financial institutions to identify the beneficial owner(s) of their customers, subject to risk-based verification. The comment period for the CDD ANPRM ended on June 11, 2012, and all comments

are currently under review. During this ongoing comment review process, FinCEN identified comment letters submitted by multiple law enforcement agencies stating a requirement for financial institutions to identify beneficial ownership of their customers, as discussed in the ANPRM, would significantly enhance law enforcement's ability to conduct financial investigations of all manners of financial crimes. FinCEN has also identified several issues raised by commenters, on which it is soliciting further clarification through oral comment and dialogue during the July 31, 2012 public hearing. Such clarification would assist FinCEN in adequately considering the issues as it moves forward in the rulemaking process. In addition to any other topics or concerns a respondent wishes to address at this public hearing, FinCEN specifically seeks clarification, including examples where appropriate, on the following issues:

1. Multiple comment letters indicated that some financial institutions already identify beneficial ownership of their customers in certain circumstances. FinCEN seeks detailed information as to how and when those financial institutions currently obtain beneficial ownership information, including, but not limited to: (i) the circumstances in which financial institutions obtain beneficial ownership information other than in connection with the regulations implementing Section 312 of the USA PATRIOT ACT,² (ii) the basis for determining that such circumstances warrant the collection of beneficial ownership information, (iii) the specific procedures financial institutions currently use to obtain beneficial ownership information in such circumstances, including the definition of "beneficial owner" used, and (iv) how those circumstances and procedures vary

² 31 CFR §§1010.610(b)(1)(iii)(A) and 1010.620(b)(1).

across different lines of business, product type, customer profile and geographic location.

2. FinCEN seeks detailed information as to whether and how financial institutions currently verify beneficial ownership information obtained from their customers. The information sought includes, but is not limited to, whether and how financial institutions verify: (i) the identity of the individual identified by the customer as the beneficial owner of the customer, and (ii) that the individual identified by the customer as the beneficial owner, is indeed the beneficial owner of the customer (i.e., the status of the identified individual).
3. FinCEN seeks detailed information as to the costs associated with obtaining beneficial ownership information under current practices, and the expected costs associated with obtaining beneficial ownership information as discussed in the ANPRM.
4. FinCEN seeks detailed information as to the costs associated with verifying beneficial ownership information to the extent this is done under current practices, and the expected costs associated with verifying beneficial ownership information as discussed in the ANPRM.
5. Multiple comment letters expressed concern regarding the definition of “beneficial owner” in connection with a categorical requirement for financial institutions to identify beneficial ownership of their customers, as discussed in the ANPRM. FinCEN seeks detailed information about potential alternative definitions, and why such alternatives would be preferable from a financial institution’s perspective.

6. As reflected in multiple comment letters, certain financial institutions already identify beneficial ownership of their customers in certain circumstances in order to manage risk more effectively. FinCEN seeks detailed information about how identifying beneficial owners enhances a financial institution's ability to manage risk. FinCEN also seeks detailed information as to the circumstances and account relationships in which beneficial ownership information may not be relevant for financial institutions in managing risk.
7. Many commenters have suggested FinCEN consider requiring financial institutions to obtain beneficial ownership information of their customers on a risk basis. FinCEN seeks detailed information as to (i) how financial institutions would expect to assess risk in determining whether to obtain beneficial ownership information (e.g., what specific factors would a financial institution consider); (ii) specific examples of any customer or account relationships or red flags that would be considered of higher risk for purposes of obtaining and verifying beneficial ownership information, and similarly any such relationships that would be considered of lower risk for purposes of obtaining and verifying beneficial ownership information; and (iii) how financial institutions would obtain and verify beneficial ownership information on a risk basis. For those financial institutions that already obtain beneficial ownership information on a risk basis, FinCEN seeks detailed information as to when they obtain it – during the onboarding process, or after a review of the account activity? If the latter, would the review of the account activity be a part of a periodic/routine review conducted by the financial institution or based upon the identification of red flags? Do

financial institutions reassess risk presented periodically or based upon red flags identified? What steps do financial institutions take when new risks have been identified?

8. FinCEN seeks additional detailed information as to the abilities and limitations of a financial institution in mitigating risk associated with its customer's underlying clients in the context of intermediated accounts. The information sought includes, but is not limited to: (i) the factors a financial institution considers when conducting diligence on its customer (i.e., the intermediary) to assess the risk of the account (e.g., whether the customer is (1) a domestic or foreign entity, (2) regulated or unregulated for anti-money laundering purposes, etc.), (ii) whether, and if so, in what circumstances and what type of information does a financial institution obtain from its customer (i.e., the intermediary) about the customer's underlying clients, and (iii) any monitoring or other procedures applied to the customer's account to identify suspicious activity and mitigate risks that may be associated with the customer's underlying clients.
9. FinCEN seeks detailed information as to how financial institutions currently conduct due diligence on trust accounts. The information sought includes, but is not limited to: (i) how financial institutions assess risk with respect to trust accounts, as opposed to accounts held by natural persons or legal entities, and (ii) what information a financial institution obtains about the trust, including identifying information about the trustee.

10. FinCEN seeks detailed information as to the differences, if any, in obtaining beneficial ownership information from foreign legal entity customers compared to domestic legal entity customers.
11. Lack of transparency in the formation and operation of “shell companies”³ may be a desired characteristic for certain legitimate business activity, but it is also a vulnerability that allows these companies to disguise their ownership and purpose. FinCEN seeks detailed information as to whether and how financial institutions identify whether legal entity customers are “shell companies.”

CONCLUSION

With this public hearing, FinCEN is seeking clarification on the issues raised by commenters regarding the CDD ANPRM set forth above.

Date: July 9, 2012

Nicholas Colucci
Acting Director,
Financial Crimes Enforcement Network

³ The term “shell company,” as used herein, refers to non-publicly traded corporations and limited liability companies that typically have no physical presence (other than a mailing address) and generate little to no independent economic value. See FinCEN Guidance, FIN-2006-G014, “Potential Money Laundering Risks Related to Shell Companies” (November 9, 2006).

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