



Department of the Treasury Financial Crimes Enforcement Network

Ruling

FIN-2012-R005

Issued: August 13, 2012

Subject: Compliance obligations of certain loan or finance company subsidiaries of Federally regulated banks and other financial institutions

The Financial Crimes Enforcement Network ("FinCEN") is issuing this Ruling to clarify the requirements under FinCEN's regulations for loan and finance companies that are subsidiaries of financial institutions subject to the same regulations applicable to the parent financial institution and examinations of a Federal functional regulator for compliance with the anti-money laundering and counter-terrorist financing obligations under the laws generally known as the Bank Secrecy Act ("BSA").¹ FinCEN hereby determines that a loan or finance company that: 1) is a subsidiary² of a financial institution subject to these regulations, including at least anti-money laundering program ("AML") and suspicious activity reporting ("SAR") requirements; 2) is required to comply with the AML and SAR regulations applicable to the parent financial institution; and 3) is subject to examination by the Federal functional regulator of the parent financial institution, is deemed to comply with FinCEN's regulations at 31 CFR 1029.

On February 14, 2012, FinCEN issued a final rule titled "Anti-Money Laundering Program and Suspicious Activity Report Filing Requirements for Residential Mortgage Lenders and Originators" ("Final Rule"), which defined non-bank residential mortgage lenders and originators as loan or finance companies for the purpose of requiring them to establish AML and SAR programs and comply with other requirements under FinCEN's regulations.³ Non-bank

¹ For purposes of this Ruling, the term "financial institution" shall have the meaning set forth in 31 CFR 1010.100(t). The term "Federal functional regulator" is defined at 31 CFR 1010.100(r). Unless otherwise noted, the other terms in this Ruling shall have the meaning of the term set forth in 31 CFR 1010.100 (2011).

² A loan or finance company is a "subsidiary" of a financial institution if the company is controlled by the parent financial institution. *See, e.g.*, 12 CFR 5.34 regarding Operating Subsidiaries of National Banks.

³ 77 FR 8148 (Feb. 14, 2012), <http://www.gpo.gov/fdsys/pkg/FR-2012-02-14/pdf/2012-3074.pdf>, codified at 31 CFR §§ 1010.100, 1029.210 and 1029.320. The Final Rule was preceded by an Advance Notice of Proposed Rulemaking and a Notice of Proposed Rulemaking in 2009 and 2010, respectively. *See* 74 FR 35830 (July 21, 2009), "Anti-Money Laundering Program and Suspicious Activity Report Requirements for Non-Bank Residential Mortgage Lenders and Originators" <http://edocket.access.gpo.gov/2009/pdf/E-9-17117.pdf>; 75 FR 76677 (Dec. 9,

residential mortgage lenders and originators must comply with the Final Rule beginning August 13, 2012.⁴

Certain regulations issued⁵ - and policies adopted⁶ - by Federal functional regulators require certain subsidiaries of a financial institution to comply with the regulations that apply to that financial institution. Requiring a loan or finance company subsidiary of such a financial institution to comply with the Final Rule, as well as the parallel regulations of a Federal functional regulator, could be needlessly burdensome and duplicative, particularly if the financial institution were subject to examinations by both FinCEN and the Federal functional regulator. For example, if a loan or finance company that is an operating subsidiary of a national bank was required to comply with FinCEN's regulations for loan and finance companies, as well as the parallel regulations of the OCC, the financial institution and the loan or finance company would be subject to redundant, overlapping regulations and examinations -- a result that is contrary to FinCEN's implementation approach with the Final Rule, as well as policies reflected in other FinCEN regulations.⁷

Accordingly, this Ruling confirms that when a subsidiary loan or finance company is obligated to comply with the AML and SAR regulations that are applicable to its parent financial institution and is subject to examination by the parent financial institution's Federal functional regulator, the loan or finance company is deemed to comply with FinCEN's regulations at 31 CFR 1029.

This Ruling is provided pursuant to the authority set forth at 31 CFR 1010.710. Financial institutions with questions about this Ruling or other matters related to compliance with the BSA and FinCEN's implementing regulations may contact FinCEN's Regulatory Helpline at (800) 949-2732.

2010), "Anti-Money Laundering Program and Suspicious Activity Report Filing Requirements for Residential Mortgage Lenders and Originators" <http://edocket.access.gpo.gov/2010/pdf/2010-30765.pdf>.

⁴ 31 CFR 1029.210(d).

⁵ For example, a loan or finance company may be subject to the AML and SAR regulations, and related examinations of: (1) the Office of the Comptroller of the Currency ("OCC"), if the company is an operating subsidiary of a National Association or a savings and loan association (12 CFR 21.11 and 21.21; 12 CFR 563.177 and 563.180); (2) the Board of Governors of the Federal Reserve System ("FRB"), if the company is a subsidiary of an FRB-member state bank (12 CFR 208.62 and 208.63(b)).

⁶ See, e.g., Federal Financial Institutions Examination Council, *Bank Secrecy Act / Anti-Money Laundering Examination Manual* (2010), pages 67 and 160-165, regarding filing SARs on transactions involving affiliates of banks, and consideration of affiliates' business activities and risks when developing AML programs and other BSA-related compliance programs.

⁷ See, e.g., 31 CFR § 1020.210, regarding AML programs of financial institutions subject to the AML rules of a Federal functional regulator.