

Notice of Meeting

FinCEN Announces a Roundtable Discussion on September 28th in Chicago, Illinois, regarding the Advance Notice of Proposed Rulemaking on Customer Due Diligence Requirements for Financial Institutions

The Financial Crimes Enforcement Network (FinCEN) will host a roundtable discussion to continue gathering information on the 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 The meeting will be held on September 28, 2012, at the U.S. Commodity Futures Trading Commission (CFTC), 525 West Monroe Street, 11th Floor, Chicago, IL 60661. Participants will first need to clear security in the lobby of the building. The meeting will consist of two sessions, a morning session for Futures Commission Merchants and Introducing Brokers beginning at 9:00am, Central Time, and ending at 12:00 pm and an afternoon session for all other interested financial institutions beginning at 1:00 pm and ending at 4:00 pm.

On March 5, 2012, FinCEN issued the ANRPM to solicit public comment on the potential development of an explicit CDD obligation for financial institutions, including a requirement to collect beneficial ownership information of their customers. The comment period closed on June 11, 2012. On July 31, 2012, officials from the U.S. Department of the Treasury (Treasury), including FinCEN, hosted a public hearing to invite additional comment on specific issues raised during the comment period.²

This roundtable discussion continues Treasury's series of outreach efforts to engage with representatives from affected financial institutions on various key issues, including the specific topics listed below, with respect to the ANPRM. An agenda for each session will be provided to the respective participants closer to the date of the event. A general summary of the discussion will be made available for public inspection after the event.

Requests to attend must be submitted no later than September 21, 2012 by e-mail 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 "Chicago CDD Public Hearing" in the body of the text or the "subject" line of the e-mail. Due to security requirements and to facilitate entry to the meeting site, individuals requesting to attend should provide the following information in their request: (1) The name of the person wishing to attend; (2) the person's contact information (telephone number and e-mail address); (3) the organization(s) the person represents, if any. Participants will need to bring identification with a photograph for building security. Given space and time limitations, not all requests to attend may be honored, so early registration is encouraged.

KEY ISSUES

In addition to other topics and concerns, FinCEN specifically seeks clarification, including examples where appropriate, on the following issues:

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;det=FR%252BPR%252BN%252BO%252BSR>

² <http://www.fincen.gov/whatsnew/html/20120913.html>

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,³ (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 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.

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

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 on boarding 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”⁴ 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.

⁴ 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 mailing address) and generate little or no independent economic value. See FinCEN Guidance, FIN-2006-G014, “Potential Money Laundering Risks Related to Shell Companies” (November 9, 2006).

FinCEN seeks detailed information as to whether and how financial institutions identify whether legal entity customers are “shell companies.”