

Notice of Meeting

FinCEN Announces a Roundtable Discussion on December 3rd in Miami, Florida, regarding the Advance Notice of Proposed Rulemaking on Customer Due Diligence Requirements for Financial Institutions

The Financial Crimes Enforcement Network (FinCEN) will host a fifth and final 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 December 3, 2012, at the Miami Branch of the Federal Reserve Bank of Atlanta, 9100 N.W. 36th Street, Miami, FL 33178. The meeting will consist of two separate sessions, a morning session beginning at 9:30 am, Eastern Time, and ending at 12:30 pm and an afternoon session beginning at 1:30 pm and ending at 4:30 pm. Advanced registration is required for all participants.

On March 5, 2012, FinCEN issued the ANPRM 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, September 28, 2012, October 5, 2012, and October 29, 2012, officials from the Department of Treasury (Treasury), including FinCEN, hosted public meetings in Washington, DC, Chicago, IL, New York, NY, and Los Angeles, CA, respectively, 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. Representatives from all interested financial institutions are invited to attend and participate. An agenda for each session will be provided to 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 November 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 "Miami CDD Public Hearing" in the body of the text or the subject line of the e-mail. In order to attempt to accommodate preferred timeframes for attendance, please also include "morning session," "afternoon session," or "no preference," in the body of the text or the subject line. Although we will attempt to accommodate requested timeframes for attendance, FinCEN will notify participants in which session they are confirmed based upon space limitations. Due to security requirements and to facilitate entry to the meeting

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>

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

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. Given space and time limitations, not all requests to attend may be honored, so early registration is encouraged.

Please note: Prior to the Roundtable Meeting, participants will need to clear security at the entrance gate and then proceed to the parking area and lobby, which are located at the back of the property. Security inspection requirements: valid government issued picture ID, all autos will be inspected, and no cameras or weapons allowed on the premises (allow 15 minutes for this inspection).

KEY ISSUES

In addition to other topics and concerns, 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, (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.
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” 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.”