American Bankers Association
Building Success. Together.

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October 24, 2016 *Via Federalregister.gov*

Mr. Jamal El-Hindi
Acting Director
Financial Crimes Enforcement Network
P.O. Box 39
Vienna, VA 22183

Re: Customer Identification Programs, Anti-Money Laundering Programs, and Beneficial Ownership Requirements for Banks Lacking a Federal Functional Regulators, 81 Federal Register 58425 (August 25, 2016).

Dear Mr. El-Hindi:

The American Bankers Association[1] (ABA) appreciates the opportunity to comment on the Financial Crimes Enforcement Network (FinCEN) proposed rule to apply anti-money laundering programs to banks without a Federal functional regulator (Release). ABA represents many state-chartered trust companies and limited-purpose banks that do not have deposit insurance and that do not have a Federal functional regulator, banks that would be subject to these new requirements. ABA supports the change but urges FinCEN to allow a sufficient transition period to ensure a smooth process.

Background on the Proposal

Pursuant to its 2002 Interim Final Rule,[2] FinCEN deferred the application of anti-money laundering (AML) program requirements to any bank "that is not subject to regulation by a Federal functional regulator."[3] The proposal now under review would address the issue of compliance for these financial institutions and, according to the Release, "would eliminate the present regulatory 'gap' in AML coverage between banks with and without Federal functional regulator."[4]

Under the proposal, non-federally regulated banks would become subject to the same Bank Secrecy Act-Anti-Money Laundering (BSA-AML) rules with which federally-regulated financial institutions must comply. The proposed requirements include an AML program, which at a minimum must include policies and procedures, a designated compliance officer, employee training, and an independent audit function to test programs. In addition, non-federally regulated banks would be required to establish a customer identification program (CIP) consistent with federal regulation, as

[1] The American Bankers Association is the voice of the nation's $16 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard $12 trillion in deposits and extend more than $8 trillion in loans.
[2] FinCEN, Interim Final Rule—Anti-Money Laundering Programs for Financial Institutions, 67 FR 21110 (Apr. 29, 2002).
[3] 31 CFR 1010.205(b)(1)(vi) and (b)(2).
[4] Release, 81 Fed. Reg. 58431.

well as comply with the beneficial ownership requirement that was finalized on May 11, 2016, when that requirement takes effect.

Need for Adequate Compliance Transition Period

ABA understands the impetus for FinCEN to make BSA-AML compliance more uniform across various types of financial institutions, such as non-federally-regulated banks, as well as registered investment advisers.[5] However, we must challenge the suggestion made in the Release that non-federally-regulated banks are necessarily "subject to less rigorous AML requirements."[6] In fact, we would like to point out that a majority of state banking regulators that have primary jurisdiction over state-chartered trust companies already require these institutions to comply with BSA-AML rules.[7]

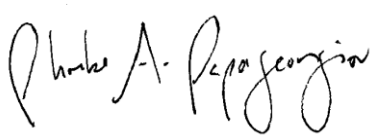
Even though many of these institutions are therefore currently complying with FinCEN regulations as required by their state bank regulators, we nonetheless request that any final rule incorporate an adequate period for compliance. While there are similarities between existing mandates and the proposed FinCEN requirements, an adequate transition period is needed to avoid disruptions. Furthermore, providing such a transition period should not raise any significant compliance risks, because these institutions are already subject to existing parallel requirements in many instances.

At a minimum, we ask for two years from the date of a final rule release. This period would allow the affected institutions to make necessary changes to internal controls, policies and procedures, and systems to comport as needed with FinCEN rules. In addition, to the extent there are states that currently do not require compliance with BSA-AML rules, it would give those institutions some time to get all the elements in place before being subject to an extensive and demanding new regulatory regime.

Conclusion

ABA appreciates this opportunity to comment on the proposed rule. We urge FinCEN to provide non-federally regulated entities, such as state-chartered trust companies, at least a two year transition period for compliance after the rule is made final. If you have any questions about the letter, please write the undersigned at phoebep@aba.com.

Sincerely,



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[5] FinCEN proposed rules to impose BSA-AML requirements on registered investment advisers on September 1, 2015.
[6] 81 Fed. Reg. 58431.
[7] According to the Conference of State Bank Supervisors' *Profile of State Chartered Banking*, at least forty states required state-chartered trust companies to comply with applicable FinCEN regulations.