



May 4, 2012

By electronic delivery to:

<http://www.regulations.gov>

Financial Crimes Enforcement Network
P.O Box 39
Vienna, VA 22183

Regarding: Request for Comments - Customer Due Diligence Requirements for Financial Institutions - Docket Number FINCEN-1012-0001 - RIN 1506-AB15

Dear Sir or Madam:

The Community Bankers Association of Illinois (CBAI), on behalf of its 400 community bank members, is pleased to provide the Financial Crimes Enforcement Network (FinCEN) with our observations and recommendations on its advance notice of proposed rulemaking (ANPRM or Rule) on questions pertaining to the development of customer due diligence (CDD) regulations which would codify, clarify, consolidate and strengthen existing CDD regulatory requirements and supervisory expectations and establish categorical requirements for financial institutions to identify the beneficial ownership of their accountholders, subject to risk-based verification and pursuant to an alternative definition of beneficial ownership as described in the ANPRM.

Community banks have long been enlisted in the fight against identity theft, financial fraud, money laundering, and terrorist financing. In recent years monitoring and reporting this activity has become increasingly important both nationally and globally. Community banks understand the importance of awareness, development of comprehensive policies and procedures, training, implementation, monitoring, reporting, and periodic examination for compliance regarding KYC (Know Your Customer), BSA (Bank Secrecy Act), CDD (Customer Due Diligence), AML (Anti

Page 2.

FinCEN

Customer Due Diligence Requirements

May 4, 2012

Money Laundering), CIP (Customer Identification Program), CFT (Counter-Financing of Terrorism), EDD (Enhanced Due Diligence), OFAC (Office of Foreign Assets Control), SDN (Specially Designated Nationals), SAR (Suspicious Activity Reports), and others. As good citizens, community banks are proud to fulfill their responsibility to identify and report the illicit actors, but doing so comes with a very real regulatory burden including significant costs of compliance.

Within the financial service industry community banks are least able to absorb the burdens and costs of compliance with new laws, rules and regulations. CBAI is concerned that the proposed ANPRM would be burdensome and difficult to implement. CBAI encourages FinCEN to tread as lightly as possible on community banks and to be cognizant of the many and significant challenges community banks face on a daily basis in complying with an ever increasing regulatory burden while also striving to serve the needs of their communities, consumers, and small businesses.

CBAI recommends FinCEN recognize the difference between the higher risks posed by the less personalized transaction-based business model and the global reach of Wall Street banks and financial firms and the modest risks posed by the personalized relationship-based business model of community banks with their superior knowledge and close interaction with their local customers and communities. We recommend FinCEN custom tailor any new rules to reflect the heightened risks posed by the Wall Street banks and financial firms. This tiered regulatory approach has precedence and is now advocated by many senior banking regulators. We recommend FinCEN follow this enlightened approach to rulemaking for community banks.

The Scope of the ANPRM states FinCEN is considering (as an initial matter) developing CDD rules to cover certain financial institutions (FIs) including banks. However FinCEN believes it may be appropriate for all FIs and will consider extending such a rule to other FIs in the future. CBAI recommends that before increasing any regulatory requirements (i.e. burden) for community banks FinCEN should first make sure everyone in the financial service industry is required to follow (at a minimum) the same rigorous standards for awareness, training, implementation, and examination attained by community banks. The benefit will be a leveling of the playing field between community banks and other banks and financial service providers which is currently skewed against community banks.

Page 3.

FinCEN

Customer Due Diligence Requirements

May 4, 2012

Under existing regulations there are several situations where institutions are expressly required to obtain beneficial ownership information, but these situations are rarely encountered by community banks. CBAI has reservations with the ANPRM's proposed obligation to categorically obtain beneficial ownership information. The front-line customer service representatives (CSR) at community banks are honest, hard-working and sincere individuals consistently striving to serve the needs of their customers. Taking away nothing from their considerable abilities, CBAI believes FinCEN is rapidly approaching the point of requiring CSRs to perform at a level they are simply not qualified to perform. FinCEN itself admits to the "vast array of complex ownership structures of legal entities" and may require CSR to determine such things as identifying "the individual with *greater* responsibility than any other individual for managing or directing the regular affairs of the entity." Depending on the complexity of an account's ownership and structure it may very well take the review and interpretation by an attorney to properly determine beneficial ownership. CBAI recommends FinCEN be realistic in its requirements on community banks and not ask them to perform in a way they are not capable of performing.

CBAI appreciates that FinCEN is looking to qualify the requirements such that "the institution can form a reasonable belief that it knows the true identify of each customer [and presumably beneficial owner]." The term "reasonable belief" seems to provide community banks with some latitude but it is subjective and could just as easily be used against the community bank by overzealous regulatory examiners - particularly if that "reasonable belief" is proven to be inaccurate at a later date. We are concerned this apparent safe harbor will provide little protection to community banks that in good faith have tried to comply with the rules. Therefore, CBAI recommends strengthening the protections for community banks from overzealous regulatory examiners.

If FinCEN moves forward and implements rules in the ANPRM, CBAI recommends adopting a risk-based approach similar to that utilized in the case of the CIP Rules, whereby potential new requirements would apply only to new customers versus all existing customers. CBAI also suggests that legal entity customers that are exempt from identification under the CIP rules should be exempt from the requirements to obtain beneficial ownership information. In addition, CBAI recommends FinCEN to allow banks to rely on the customers to identify and verify the identity of beneficial owners including those acting as agents on behalf of another individual.

Page 4.
FinCEN
Customer Due Diligence Requirements
May 4, 2012

CBAI recommends FinCEN be aware of the negative reaction many community bank customers will have with the additional level of questioning and the documentation requirements from the implementation of the proposed Rule. Our members' customers are generally understanding of the many compliance requirements faced by their community banks, but with each new requirement imposed by government regulation the community banker/customer relationship is strained further. We believe this will particularly be the case with unbanked and underserved individuals who have not developed a long and trusting relationship with their local community bank. CBAI strongly believes that it is in the best interests of our economy and the country to include as many of our citizens as possible in our banking system.

CBAI also urges FinCEN to comply with the President's Executive Order #13563 (January 18, 2011). This Executive Order require regulators to identify the least burdensome tools for achieving regulatory ends, and to take into account the benefits and costs (both quantitative and qualitative) and use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. When the proposed Rule is published for comment this cost benefit analysis should be included.

CBAI generally agrees with the objective of a "strengthened compliance and enforcement of CDD program requirements by clarifying, consolidating and harmonizing agencies minimum expectations with respect to CDD policies, procedures, and processes including the fundamental elements necessary for an effective program." Within the context of that objective, **CBAI urges FinCEN to be aware of and not increase the regulatory burden on community banks, consider the realistic abilities of community bank CSRs, create a deep safe harbor for community banks which put forth an effort to comply with the rules, minimizes negative customer reactions to any new rules, and justify any new rules with a robust cost/benefit analysis.**

Thank you for your consideration of these observations and recommendations. If you have any questions or need additional information, please contact me at 847-909-8341 or by e-mail at davids@cbai.com .

Page 5.
FinCEN
Customer Due Diligence Requirements
May 4, 2012

Sincerely,

/s/

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