

Recent FinCEN Developments

September 22, 2020

The Financial Crimes Enforcement Network (“FinCEN”) has been busy in recent weeks, issuing statements and guidance to the financial industry at a pace that is robust by historical standards and perhaps surprising amid a global pandemic. Since we last wrote about anti-money laundering (“AML”) guidance from FinCEN, just a month ago, three additional developments have occurred that are of interest to financial institutions.¹ We describe each of these developments briefly below, and we will continue to provide updates as warranted.

FINCEN SEEKS COMMENTS ON ENHANCING AML PROGRAM EFFECTIVENESS

Most recently, FinCEN issued an Advance Notice of Proposed Rulemaking (“ANPRM”) on September 16, 2020, soliciting public comment on a wide-ranging set of questions regarding potential amendments to existing AML regulation.² The proposed amendments reflect recommendations by the Bank Secrecy Act (“BSA”) Advisory Group, a forum organized by Congress for industry, regulators and law enforcement members to share information about BSA reporting requirements.

Designed to “provide financial institutions greater flexibility in the allocation of resources and greater alignment of priorities across industry and government, resulting in the enhanced effectiveness and efficiency of [AML] programs,” the proposed amendments center on a new requirement for AML programs to be “effective and reasonably designed.”

According to the ANPRM, an “effective and reasonably designed” AML program would be one that: “(1) assesses and manages risk as informed by a financial institution’s own risk assessment process, including consideration of AML priorities to be issued by

¹ See FinCEN, Statement on Enforcement of the Bank Secrecy Act (Aug. 18, 2020), available [here](#). See also Debevoise Client Update, Federal Banking Agencies and FinCEN Seek to Clarify BSA/AML Enforcement (Aug. 28, 2020), available [here](#).

² FinCEN Press Release, FinCEN Seeks Comments on Enhancing the Effectiveness of Anti-Money Laundering Programs (Sept. 16, 2020), available [here](#).

FinCEN consistent with the proposed amendments; (2) provides for compliance with BSA requirements, and (3) provides for the reporting of information with a high degree of usefulness to government authorities.” If the proposed amendments were to be implemented, FinCEN would also publish a list of national AML priorities every two years and impose requirements with respect to the risk assessment process.

FinCEN explained that it is especially interested in industry-specific feedback related to the impact of the potential amendments. Comments are due November 16, 2020, after which the potential amendments themselves would presumably be issued for public comment.

A LONG-AWAITED AML PROGRAM RULE EXTENDS COMPLIANCE OBLIGATIONS TO STATE-CHARTERED BANKING ENTITIES

On September 4, 2020, more than four years after inviting public comments on the proposal, FinCEN published a final rule requiring banks without a Federal functional regulator to meet minimum standards for AML programs, including compliance with customer identification program (“CIP”) and beneficial ownership requirements.³ Many of these banks were already required to file suspicious activity reports and currency transaction reports and, in some cases, to adopt a CIP. With publication of this final rule, they are now subject to the full panoply of AML compliance obligations imposed under federal law.

With this step, FinCEN eliminated what has long been criticized as a gap in the U.S. regulatory framework—differing treatment of state- and federally-chartered banks. Compliance with these new requirements will become mandatory on March 14, 2021 (180 days from the date of publication in the Federal Register).

GUIDANCE REGARDING DUE DILIGENCE FOR POLITICALLY EXPOSED PERSONS

On August 21, 2020, FinCEN, together with the Federal Reserve Board, the Federal Deposit Insurance Corporation, the National Credit Union Administration and the Office of the Comptroller of the Currency, issued a joint statement clarifying due

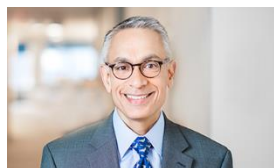
³ 85 Fed. Reg. 57129 (Sept. 15, 2020), available [here](#).

diligence requirements under the BSA that apply to customers who are politically exposed persons (“PEPs”).⁴

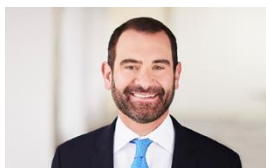
The joint statement does not establish new supervisory expectations nor alter regulatory obligations. Rather, the agencies clarify the types of customers that should be treated as PEPs and reaffirm that due diligence for these customers “should be commensurate with the risks posed by the PEP relationship.” Although acknowledging that there is “no regulatory requirement or supervisory expectation for banks to have unique, additional due diligence steps for [PEPs],” the guidance explains that PEPs often pose heightened risk and provides examples of how financial institutions may evaluate those risks. This focus on a risk-based approach is consistent with FinCEN’s recent enforcement guidance as well as revisions to the Federal Financial Institutions Examination Council’s Bank Secrecy Act/Anti-Money Laundering Examination Manual that were announced earlier this year.⁵

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Please do not hesitate to contact us with any questions.



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⁴ Joint Statement on Bank Secrecy Act Due Diligence Requirements for Customers Who May Be Considered Politically Exposed Persons (Aug. 21, 2020), available [here](#).

⁵ See Debevoise Client Update, Banking Regulators Release Updates to BSA/AML Examination Manual (Apr. 17, 2020) available [here](#).