

RESCINDED

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Transmittal – See OCC 2020-11

Bank Secrecy Act/Anti-Money Laundering: FinCEN; Final Rule and Proposed Rule for Special Due Diligence Programs for Certain Foreign Accounts

The Financial Crimes Enforcement Network (FinCEN) published the attached final rule and proposed rule in the *Federal Register* on January 4, 2006. The final rule implements the international correspondent banking provisions and the private banking provisions of section 312 of the USA PATRIOT Act. Simultaneously, FinCEN announced a related notice of proposed rulemaking involving one key provision of section 312 that requires enhanced due diligence for correspondent accounts maintained for certain foreign banks.

Section 312 of the USA PATRIOT Act requires U.S. financial institutions to perform due diligence and, in some cases, enhanced due diligence, with regard to correspondent accounts established or maintained for foreign financial institutions and private banking accounts established or maintained for non-U.S. persons. The final rule implements the general due diligence requirements pertaining to foreign financial institutions as well as the due diligence and enhanced scrutiny requirements pertaining to private banking accounts. Specifically included in the requirements is the duty to conduct enhanced scrutiny of any private banking account that is maintained for senior foreign political figures, their immediate family members, or persons widely and publicly known to be close associates of such individuals.

FinCEN has also released a notice of proposed rulemaking regarding the key provision of section 312 that requires enhanced due diligence for correspondent accounts maintained by certain foreign banks. The notice of proposed rulemaking focuses on clarifying that U.S. financial institutions have some flexibility in applying the enhanced due diligence procedures on a risk- assessed basis, tailoring the enhanced due diligence to the risks associated with the particular account. The issuance of the proposed rule opens a 60-day comment period, and FinCEN will take into consideration all comments before issuing the final rule.

The final rule became effective on February 3. Banking institutions have 90 days from the time the regulation was published in the *Federal Register* to establish and apply the due diligence requirements to new correspondent and private banking accounts. A new account is one established at least 90 days after the January 4 date of publication. For existing accounts and those accounts established before the 90-day time frame, the final rule takes effect 270 days from the January 4 date of publication. The effective dates would be April 4 for new accounts and October 2 for existing accounts. The interim rule will remain in effect until the new rule is effective.

To

Chief Executive Officers and
Compliance Officers of All
National Banks, Federal
Branches and Agencies,
Department and Division Heads,
and All Examining Personnel

FinCEN issued a fact sheet summarizing the basic requirements of the final rule and the proposed rule. The fact sheet is attached to provide further guidance. Questions may be addressed to your supervisory office or to the Compliance Policy Department at (202) 649-5740.

Ann F. Jaedicke
Deputy Comptroller for Compliance Policy

Related Links

- [Final Rule–71 FR 496](#)
- [Notice of Proposed Rulemaking–71 FR 516](#)
- [Fact Sheet](#)

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