U.S. GOVERNMENT ACCOUNTABILITY OFFICE
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Washington, DC 20548

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May 26, 2016

The Honorable Richard Shelby
Chairman
The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Jeb Hensarling
Chairman
The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
House of Representatives

Subject: *Department of the Treasury, Financial Crimes Enforcement Network: Customer Due Diligence Requirements for Financial Institutions*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on major rules promulgated by the Department of the Treasury, Financial Crimes Enforcement Network (FinCEN) entitled "Customer Due Diligence Requirements for Financial Institutions" (RIN: 1506-AB25). We received the rules on May 9, 2016. They were published in the *Federal Register* as final rules on May 11, 2016. 81 Fed. Reg. 29,398.

The final rules were issued under the Bank Secrecy Act to clarify and strengthen customer due diligence requirements for: banks; brokers or dealers in securities; mutual funds; and futures commission merchants and introducing brokers in commodities. The rules contain explicit customer due diligence requirements and include a new requirement to identify and verify the identity of beneficial owners of legal entity customers, subject to certain exclusions and exemptions.

Enclosed is our assessment of FinCEN's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rules. Our review of the procedural steps taken indicates that FinCEN complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rules, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Jamal El-Hindi
Deputy Director
Financial Crimes Enforcement Network
Department of the Treasury

ENCLOSURE

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON MAJOR RULES
ISSUED BY THE
DEPARTMENT OF THE TREASURY,
FINANCIAL CRIMES ENFORCEMENT NETWORK
ENTITLED
"CUSTOMER DUE DILIGENCE REQUIREMENTS
FOR FINANCIAL INSTITUTIONS"
(RIN: 1506-AB25)

(i) Cost-benefit analysis

The Financial Crimes Enforcement Network (FinCEN) published for comment on December 24, 2015, a preliminary Regulatory Impact Assessment (RIA) for the proposed rule (80 Fed. Reg. 80,308), which provided a quantitative estimate of the costs to the private sector for which adequate data are available and a qualitative discussion of both the costs and benefits for which data are not available. As a result of the comments submitted, FinCEN revised the preliminary RIA to include additional cost estimates and published with the final rule a final RIA. The annualized quantified costs (under low cost scenarios) are estimated to be $153 million (at a 7 percent discount rate) and $148 million (at a 3 percent discount rate). The annualized quantified costs (under high cost scenarios) are estimated to be $287 million (at a 7 percent discount rate) and $282 million (at a 3 percent discount rate). Because the benefits of the rule cannot be quantified, FinCEN has utilized a breakeven analysis to determine how large the final rule's benefits would have to be in order to justify its estimated costs. The RIA uses Treasury's estimate of $300 billion in illicit proceeds generated annually in the United States due to financial crimes, to determine the minimum level of effectiveness that the final rule would need to achieve for the benefits to equal the costs. Based on this analysis, using the upper bound of the cost assessment, FinCEN has concluded that the final rule would only have to reduce illicit activity by 0.6 percent to yield a positive net benefit. FinCEN believes that the final rule will reduce illicit activity by a greater amount than this.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

FinCEN concluded that the rule will apply to a substantial number of small entities that include all federally regulated banks and all brokers or dealers in securities, mutual funds, and futures commission merchants and introducing brokers in commodities, as each is defined in the Bank Secrecy Act; a total of 1,323 introducing brokers in commodities, the majority of which are small entities; but it will not include any small futures commission merchants. Based upon recent data, for the purposes of the RFA, there are approximately 5,088 small federally regulated banks out of a total of 6,348 (comprising 80 percent of the total number of banks), 6,165 federally regulated credit unions (of which approximately 93 percent are small credit unions), 1,349 small brokers or dealers in securities out of a total of 4,269 (comprising 31.5 percent of the total); and 90 small mutual funds out of a total of 10,711 (comprising 8 percent of the total).

FinCEN included a succinct statement of the need for, and objectives of, the rule; a summary of the significant issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis (IRFA), a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; a

description of and an estimate of the number of small entities to which the proposed rule would apply; a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for the preparation of the report or record; and a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. §§ 1532-1535

Section 202 of UMRA requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. FinCEN believes that the RIA provides the analysis required by UMRA.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

FinCEN published a Notice of Proposed Rulemaking on August 4, 2014 (79 Fed. Reg. 45,151). FinCEN received 141 comments in response to the proposed rule addressing many issues. As a result of the comments addressing the cost of implementing the proposal, FinCEN conducted and published a preliminary RIA and issued an IRFA. FinCEN states that it received 38 comments addressing these documents, which were summarized and responded to in the final rules. As a result of these comments, FinCEN revised its RIA and IRFA and issued a final RIA and FRFA. FinCEN states that it initiated this rulemaking process in March 2012 by issuing an Advance Notice of Proposed Rulemaking (ANPRM) that described FinCEN's potential proposal for codifying explicit customer due diligence (CDD) requirements, including customer identification and verification, understanding the nature and purpose of accounts, ongoing monitoring, and obtaining and verifying beneficial ownership information. FinCEN received 90 comments, mostly from banks, credit unions, securities and futures firms, mutual funds, casinos, and money services businesses. FinCEN also held five public hearings from July to December 2012 in Washington, D.C., Chicago, New York, Los Angeles, and Miami. At these meetings, participants expressed their views on the ANPRM and offered specific recommendations about how best to balance the benefits with the practical burdens associated with obtaining beneficial ownership information.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

FinCEN states that there is a new recordkeeping requirement contained in this rule (31 C.F.R. 1010.230) which has been approved by the Office of Management and Budget (OMB) in accordance with PRA, under control number 1506-0070. In summary, the rule would require covered financial institutions to collect, and to maintain records of, the information used to identify and verify the identity of the names of the beneficial owners of their legal entity customers (other than those that are excluded from the definition).

Under the proposed and final rules, covered financial institutions are required to establish and maintain written procedures that are reasonably designed to identify and verify beneficial owners of new accounts opened by legal entity customers. They also must maintain a record of the identifying information obtained, and a description of any document relied on, of any non-documentary methods and the results of any measures undertaken, and of the resolution of each substantive discrepancy. Under the proposed rule covered financial institutions were required to obtain from each legal entity customer a certification, in a prescribed form, containing the identifying information required. In the final rule the institution may obtain the information either by using the certification form or by any other means that it obtains information from the customer.

FinCEN states that it reconsidered the PRA burden estimates published in the proposal, based on the comments received to the proposal and the preliminary RIA and IRFA, and published its revised estimates. The revised estimates are a result of information that FinCEN obtained as a result of the comments received, and particularly as a result of developing the RIA. Specifically, FinCEN states that it increased its estimate of the time to develop and maintain beneficial ownership identification procedures, from 1 hour to 56 hours (40 for small entities), and its estimate of the time for identification, verification, and review and recordkeeping of the beneficial owners of legal entity customers, from 20 minutes per customer to a range of 20-40 minutes per customer. FinCEN states that the affected members of the public are certain financial institutions and businesses or other for-profit and not-for-profit entities; the estimated number of respondents is 28,917; the estimated total annual responses are 10,843,875; and the estimated recordkeeping burden is 7,041,289 hours. FinCEN states that the numbers presented assume that the number of account openings in 2013 is representative for an average yearly establishment of accounts for new legal entities. Records are required to be retained pursuant to the beneficial ownership requirement for 5 years.

Statutory authorization for the rule

The final rule is promulgated under the authority of 31 U.S.C. 5318(h) and 31 U.S.C. 5318(a)(2).

Executive Order No. 12,866 (Regulatory Planning and Review)

FinCEN states that it has been determined that this regulation is an economically significant regulatory action as defined in section 3(f)(1) of Executive Order 12,866, as amended. Accordingly, this final rule has been reviewed by OMB. As a result of being an economically significant regulatory action, FinCEN prepared and made public a preliminary RIA, along with an IRFA pursuant to the Regulatory Flexibility Act, on December 24, 2015. FinCEN states that it received 38 comments about the RIA and/or the IRFA, which were addressed. FinCEN states that it incorporated additional data points, additional sources of costs, and other points raised by commenters, directly into the final RIA itself, which was included in the final rule in its entirety, following the narrative responses to the remaining comments not addressed by these changes to the RIA.

Executive Order No. 13,132 (Federalism)

The final rule does not address the Order.