

MEMO# 23960

November 18, 2009

FinCEN Proposes Rule to Expand Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity

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TO: AML COMPLIANCE WORKING GROUP No. 9-09 RE: FINCEN PROPOSES RULE TO EXPAND SPECIAL INFORMATION SHARING PROCEDURES TO DETER MONEY LAUNDERING AND TERRORIST ACTIVITY

The Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN") recently issued a notice of proposed rulemaking to amend the Bank Secrecy Act's information sharing rules to allow certain foreign law enforcement agencies, and State and local law enforcement agencies, to submit requests for information to financial institutions (the "Proposed Rule"). [\[1\]](#) The Proposed Rule also clarifies that FinCEN itself, on its own behalf and on behalf of others, may submit such requests.

In particular, the proposal would make the following changes:

- **Allowing Certain Foreign Law Enforcement Agencies To Initiate 314(a) Queries.** The Proposed Rule would permit the use of the 314(a) program by a foreign law enforcement agency that is from a jurisdiction that is a party to a treaty that provides, or in the determination of FinCEN is from a jurisdiction that otherwise allows, law enforcement agencies in the United States with reciprocal access to information comparable to that obtainable under section 103.100. Qualifying foreign law enforcement agencies will be subject to the same certification standards as are currently applicable to Federal law enforcement agencies. FinCEN also anticipates that the foreign request will be screened initially by a Federal law enforcement official

serving as an attaché to the requesting jurisdiction.

- **Allowing State and Local Law Enforcement Agencies To Initiate 314(a) Queries.** The Proposed Rule would broaden 314(a) access to allow State and local law enforcement agencies to submit 314(a) queries. State and local law enforcement agencies will be subject to the same certification standards as are currently applicable to Federal law enforcement agencies.
- **Clarifying That FinCEN, on Its Own Behalf and on Behalf of Appropriate Components of the Department of the Treasury, May Initiate 314(a) Queries.** The Proposed Rule would add a provision stating that FinCEN may request information directly, on its own behalf and on behalf of appropriate components of the Department of the Treasury, whether a financial institution or a group of financial institutions maintain or has maintained accounts for, or had engaged in transactions with, specified individuals, entities or organizations. FinCEN will be subject to the same certification standards as requesting law enforcement agencies.

Comments to the Proposed Rule are due by December 16, 2009. ICI is reviewing the Proposed Rule. If you have specific concerns or questions, please contact me at 202-326-5837 or emykolenko@ici.org.

Eva M. Mykolenko
Assistant Counsel - International Affairs

endnotes

[1] Notice of Proposed Rulemaking, Financial Crimes Enforcement Network; Expansion of Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity, 74 Fed. Reg. 58926 (Nov. 16, 2009), available at <http://edocket.access.gpo.gov/2009/pdf/E9-27447.pdf>

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