



FedFin Client Report

Friday, April 27, 2018

International CFT Commitments Advance as Congress Continues AML Debate

Client Report: **LAUNDER125**

Executive Summary

In this report, we assess today's [final statement](#) on counter terrorism financing agreed to by over seventy countries and a House FinServ Financial institution and Consumer Credit Subcommittee hearing on FinCEN's Customer Due Diligence (CDD) rule ([see FSM Report LAUNDER121](#)). The final statement expresses signatory commitment to implement FATF AML/CFT standards, increase information sharing amongst government agencies, fight anonymous financial transactions, partner with the technology industry, and improve the traceability of non-profit funds. The statement also commits to implementing FATF cryptocurrency standards and welcomes review of additional action.

Ranking Member Clay (D-MO) hopes that implementation of the CDD addresses some of FATF's concerns regarding the U.S. AML/CFT regime. Chairman Luetkemeyer (R-MO) and Rep. Maloney (D-NY) argued that government collection of beneficial ownership information would reduce burdens on banks. Reps. Luetkemeyer and Hill (R-AR) said that the IRS already has beneficial ownership information and argued that this should be shared with FinCEN. Rep. Hill also pushed for delaying the implementation of the CDD rule until Congress advances BSA reform legislation.

Analysis

The FATF statement focuses on the following issues:

- **Information Sharing:** The statement supports minimizing information-exchange barriers between financial intelligence units, intelligence and investigation services, prosecutorial and/or judicial authorities, and law enforcement while also stressing respect for human rights, privacy and data protection. The statement

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also calls for partnerships with the financial sector to identify AML/CFT trends and for cooperation from major internet and social media platforms in advancing counter-narratives by civil society to terrorist content.

- **Transaction Transparency:** The statement supports working with the private sector to trace, detect, sanction and dismantle illegal money transmitting and to tackle the risks associated cash and informal remittances. It supports working with the private sector to identify beneficial ownership “as appropriate” and says that FATF standards should apply to non-profits while not discouraging their legitimate use.
- **New Technology:** The statement supports the FATF’s review of cryptocurrency standards and presses for global implementation. Despite concerns about the use of mobile banking technology for terrorist transactions, the statement mentions this only by applauding digital identity and mobile banking innovations for promoting financial inclusion.
- **International Coordination:** The statement reiterates support for the use of international and national asset freezing and seizure mechanisms, saying that publicizing these decisions will hinder terrorist activities. In line with FATF standards, the statement also says that countries should be able to apply appropriate countermeasures to jurisdictions not meeting FATF standards when directed by FATF or acting independently.

House FinServ Financial Institutions and Consumer Credit Subcommittee

Opening Statements

No opening statements were given.

Testimony

Greg Baer, President of The Clearing House Association, said that while the CDD rule will provide useful information to law enforcement, requiring banks to reconfirm beneficial ownership information of existing customers would be burdensome and add little value. He also argued that FinCEN’s recent FAQs will further complicate compliance and go beyond the rule’s requirements in other areas. In addition, he called on the banking agencies not to require beneficial ownership information collection at a ten percent equity threshold and pressed for legislation to prevent the formation of shell companies.

Carlton Greene, Partner at Crowell & Morning LLP, applauded FinCEN's approach to developing the CDD rule but said that some problems remain with the FAQs. As long as banks show a good-faith effort towards implementation, he suggested that enforcement should not be too formulaic or aggressive until these problems are resolved.

Gary Kalman, Executive Director at the FACT Coalition, argued that the CDD rule's implementation should not be delayed. While he said that the rule is a step toward a better AML/CFT framework, he pushed for a tougher definition of beneficial ownership and applauded separate legislative reform efforts from both Reps. Luetkemeyer and Maloney.

Dalia Martinez, testifying on behalf of the Mid-Size Bank Coalition, emphasized the high cost of BSA compliance and argued that the new rule and FAQs are too vague and will lead to additional derisking by banks.

Q&A

- **Beneficial Ownership:** Reps. Maloney and Clay argued that beneficial ownership information should be disclosed to state or federal authorities at company formation. Rep. Hill argued that a central depository of beneficial ownership information accessible by banks would be a data security risk. He and Rep. Luetkemeyer said that the IRS has beneficial ownership information and suggested increasing information sharing between FinCEN and the tax agency. Rep. Loudermilk (R-GA) asked if the rule's beneficial ownership threshold of 25 percent should be lower.
- **Potential Rule Delay:** Rep. Hill argued that the rule should be delayed since Congress is trying to change the BSA framework. FinServ Ranking Member Waters (D-CA) pressed Mr. Kalman to reiterate his view that the rule should go into effect as scheduled.
- **FAQs:** Reps. Tipton (R-CO) and Williams (R-TX) suggested that the new FAQs have increased confusion surrounding the rule; Rep. Williams said technical corrections may have to be issued.