



Financial Crimes Enforcement Network Department of the Treasury

Regulatory Releases

The following summarizes the variety of regulatory releases that we issue pursuant to our authority as the administrator of the Bank Secrecy Act. We also outline the effect of the various releases on financial institutions subject to the regulatory provision at issue.

I. Regulations:

As administrator of the Bank Secrecy Act,¹ the Financial Crimes Enforcement Network issues regulations implementing the Bank Secrecy Act. These regulations are codified in title 31 of the Code of Federal Regulations, part 103 (31 C.F.R. part 103). Related publications include:

- Final rules
- Interim final rules
- Notices of proposed rulemakings
- Advance notices of proposed rulemakings
- Corrections

Final rules issued by the Financial Crimes Enforcement Network in accordance with the procedures specified in section 553(c) of the Administrative Procedure Act,² and interim final rules published in accordance with section 553(b)(B) of the Administrative Procedure Act, including any subsequent corrections to these rules, are binding obligations on individuals and entities within the scope of such rules pursuant to our authority to issue such rules under the Bank Secrecy Act.

¹ The Secretary of the Treasury has delegated responsibility for the administration of the Bank Secrecy Act to the Director of the Financial Crimes Enforcement Network. Treasury Order 180-01 (September 26, 2002).

² 5 U.S.C. §§ 500 *et seq.* The rules we issue that are published in the *Federal Register* are generally referred to as “legislative” rules that impose a distinct obligation on the public and are binding. Agencies may issue such rules to the extent authorized by statute. Under the Administrative Procedure Act, such rules must generally be published in the *Federal Register* according to a three-step process as outlined in its section 553: (1) issuance of a notice of proposed rulemaking (issuance of an additional advance notice of proposed rulemaking is also acceptable); (2) receipt and consideration of comments on the proposed rule; and (3) issuance of a final rule incorporating a statement of its basis and purpose. Section 553(b)(B) of the APA contains an exception for “good cause” (hence, the existence of interim final rules, which are binding). “Interpretive” rules (*i.e.*, rules that provide interpretive guidance, but create no distinct substantive obligation) and “procedural” rules (*i.e.*, rules that only provide for processes related to a substantive obligation) do not need to be published according to the preceding three-step procedure; however, in order for a rule to be binding, it must be developed and published according to the three-step procedure or fall within the good cause exception.

II. Regulatory Interpretations and Guidance:

We routinely issue interpretations of Bank Secrecy Act regulations as well as guidance to financial institutions on complying with our regulations. Interpretation and guidance will fall into one of the three categories listed below.

1. ***Administrative Rulings:*** In conformance with the procedures outlined at 31 C.F.R. §§ 103.80-87, we will issue administrative rulings interpreting regulations contained in part 103 either unilaterally or in response to specific requests made and submitted to us consistent with the procedures outlined at 31 C.F.R. § 103.81.

Administrative letter rulings drafted by the Financial Crimes Enforcement Network (FinCEN) are issued pursuant to our authority as the administrator of the Bank Secrecy Act, if the facts and circumstances, issues, and analyses that appear in an administrative letter ruling are of general interest to financial institutions then the letter ruling is published on our website. Published letter rulings often express an opinion about a new issue, apply an established theory or analysis to a set of facts that differs materially from facts or circumstances that have been previously considered, or provide a new interpretation of Title 31 of the United States Code, or any other statute granting FinCEN authority.

2. ***Interpretive Guidance:*** We routinely issue written interpretive regulatory guidance in various forms, formal and informal. Examples of the same include:

- Interpretive releases, including written responses to informal inquiries on the application of 31 C.F.R. part 103 that are not made and submitted to the Financial Crimes Enforcement Network consistent with the procedures outlined at 31 C.F.R. § 103.81
- Frequently Asked Questions
- Staff commentaries

Such interpretations of regulations issued pursuant to the Bank Secrecy Act in 31 C.F.R. part 103 that are published on FinCEN's public web site under the heading "Guidance" shall have persuasive precedential effect and, to that extent, may be relied upon by those financial institutions subject to the specific provision of 31 C.F.R. part 103 being interpreted until such interpretation is superseded, revoked, or amended.

If written guidance is not published on FinCEN's public web site under the heading "Guidance", although not binding, such guidance provides useful insight into our view of the application of the Bank Secrecy Act and its implementing regulations at the time that the guidance is issued.

3. *Statements of Policy*: We will issue statements outlining or describing our policy with respect to specific issues arising under the Bank Secrecy Act. These statements provide useful insight into our view of the application of the Bank Secrecy Act and its implementing regulations at the time the statement is issued.

III. Advisories:

We will issue advisories to financial institutions concerning money laundering or terrorist financing threats and vulnerabilities for the purpose of enabling financial institutions to guard against such threats. Such publications often contain guidance on complying with our regulations to address those threats and vulnerabilities.

If published on the FinCEN public web site under the heading “Advisories” to the extent such publications interpret regulations issued pursuant to the Bank Secrecy Act in 31 C.F.R. part 103, they shall have persuasive precedential effect and may be relied upon by those financial institutions subject to the specific provision of 31 C.F.R. part 103 being interpreted until such interpretation is superseded, revoked, or amended.

If such publications are not published on FinCEN’s public web site under the heading “Advisories”, although not binding, such guidance provides useful insight into our view of the application of the Bank Secrecy Act and its implementing regulations at the time that the guidance is issued.

IV. Enforcement Assessments and Consent Assessments:

We issue releases involving the assessment of civil money penalties against financial institutions for systemic non-compliance with the Bank Secrecy Act.

An enforcement assessment and a consent to such assessment are binding on the subject financial institution. Although an enforcement action applies exclusively to the subject financial institution, regulatory interpretations contained in such assessments shall have persuasive precedential effect and, to that extent, may be relied upon by those financial institutions subject to the specific provision of 31 C.F.R. part 103 being interpreted until such interpretation is superseded, revoked, or amended.