Commission’s May 21 NOPR raises many new technical and policy issues, the Movants require additional time to conduct member company consultations and to prepare reasoned comments.

Upon consideration, notice is hereby given that an extension of time for filing comments on the May 21 NOPR is granted to and including August 17, 2009.

Kimberly D. Bose, Secretary.

[FR Doc. E9–17235 Filed 7–20–09; 8:45 am]
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DEPARTMENT OF THE TREASURY
31 CFR Part 103
RIN 1506–AB02
Financial Crimes Enforcement Network: Anti-Money Laundering Program and Suspicious Activity Report Requirements for Non-Bank Residential Mortgage Lenders and Originators

AGENCY: Financial Crimes Enforcement Network (FinCEN), Department of the Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: FinCEN is issuing this advance notice of proposed rulemaking (ANPRM) to solicit public comment on a wide range of questions pertaining to the possible application of anti-money laundering (AML) program and suspicious activity report (SAR) regulations to a specific sub-set of loan and finance companies: Non-bank residential mortgage lenders and originators. FinCEN seeks comment on: An incremental approach to the issuance of regulations for loan and finance companies that would initially affect only those persons engaged in non-bank residential mortgage lending or origination; how any such regulations should define persons engaged in non-bank residential mortgage lending or origination; the financial crime and money laundering risks posed by such persons; how AML programs for such persons should be structured; whether such persons should be covered by BSA requirements other than the AML program or SAR reporting requirements; and whether any such persons should be exempted from AML program or SAR reporting requirements.

DATES: Written comments on this ANPRM must be received on or before August 20, 2009.

ADDRESSES: FinCEN: You may submit comments, identified by Regulatory

DEPARTMENT OF ENERGY
Federal Energy Regulatory Commission
18 CFR Part 40
Docket No. RM08–13–000
Transmission Relay Loadability Reliability Standard: Notice of Extension of Time

July 13, 2009.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking: extension of comment period.

SUMMARY: On May 21, 2009, the Federal Energy Regulatory Commission issued a Notice of Proposed Rulemaking proposing to approve Reliability Standard PRC–023–1 (Transmission Relay Loadability Reliability Standard) developed by the North American Electric Reliability Corporation. The date for filing comments on the Commission’s NOPR is being extended

at the request of the American Public Power Association, Edison Electric Institute, the Electric Power Supply Association and the National Rural Electric Cooperative Association.

DATES: Comments are due on or before August 17, 2009.

ADDRESSES: Interested persons may submit comments, identified by Docket No. RM08–13–000, by any of the following methods:

• Mail/Hand Delivery: Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:


SUPPLEMENTAL INFORMATION:
Transmission Relay Loadability Reliability Standard: Notice of Extension of Time

On July 9, 2009, the American Public Power Association, Edison Electric Institute, the Electric Power Supply Association, and the National Rural Electric Cooperative Association (Movants), on behalf of their respective member utilities, filed a motion for an extension of time to file comments in response to the Commission’s Notice of Proposed Rulemaking issued May 21, 2009, in the above-referenced proceeding. Transmission Relay Loadability Reliability Standard, 127 FERC ¶ 61.175 (2009) (May 21 NOPR). The motion states that because the
I. Background

The Bank Secrecy Act (BSA) authorizes the Secretary of the Treasury (the Secretary) to issue regulations requiring financial institutions to keep records and file reports that the Secretary determines “have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.” The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.

Financial institutions are required to establish AML programs that include, at a minimum: (1) The development of internal policies, procedures, and controls; (2) the designation of a compliance officer; (3) an ongoing employee training program; and (4) an independent audit function to test programs. When prescribing minimum standards for AML programs, FinCEN must “consider the extent to which the requirements imposed under [the AML program requirement] are commensurate with the size, location, and activities of the financial institutions to which such regulations apply.” Federally regulated depository institutions are already required to have AML programs. This ANPRM considers imposing on companies performing certain services with respect to residential mortgages, analogous requirements to those currently applicable to depository institutions performing those same services.

The BSA defines the term “financial institution” to include, in part, “loan or finance company” and “persons involved in real estate closings and settlements.” On April 29, 2002, and again on November 6, 2002, FinCEN temporarily exempted both of these categories of financial institutions, among others, from the requirement to establish an AML program. The purpose of the temporary exemption was to enable Treasury and FinCEN to study the exempted categories of institutions and to consider the extent to which AML requirements should be applied to them, taking into account their specific characteristics and money laundering vulnerabilities.

On April 10, 2003, FinCEN issued an ANPRM regarding AML requirements for persons involved in real estate closings and settlements. The 2003 ANPRM noted that the BSA had no definition of the term “persons involved in real estate closings and settlements;” that FinCEN had not had occasion to define the term in a regulation; and that the legislative history of the term provided no insight into how Congress intended the term to be defined. The 2003 ANPRM also noted that real estate transactions could involve multiple persons, including: Real estate agents, banks, mortgage banks, mortgage brokers, title insurance companies, appraisers, escrow agents, settlement attorneys or agents, property inspectors and other persons directly and tangentially involved in property financing, acquisition, settlement, and occupation. The 2003 ANPRM further noted that the persons involved in real estate transactions, and the nature of their involvement, could vary with the contemplated use of the real estate, the nature of the rights to be acquired, or how these rights were to be held, e.g., for residential, commercial, portfolio investment, or development purposes.

Finally, the 2003 ANPRM expressed FinCEN’s views as to guiding principles that should be considered in defining persons involved in real estate closings and settlements. Any definitions or terms that define the scope of the rule should consider: (1) Those persons (i.e., individuals and business entities) whose services rendered or products offered in connection with a real estate closing or settlement can be abused by money launderers; (2) those persons who are positioned to identify the purpose and nature of the transaction; (3) the importance of various participants to successful completion of the transaction, which may suggest that they are well positioned to identify suspicious conduct; (4) the degree to which professionals may have different roles, in different transactions, that may result in greater exposure to money laundering; and (5) involvement with the actual flow of funds used in the transaction.

FinCEN has not issued any additional notices regarding persons involved in real estate closings and settlements since the 2003 ANPRM. This is FinCEN’s first notice regarding loan and finance companies. FinCEN has in the interim continued its research and analysis related to the categories of financial institutions exempted in 2002.

In view of increasing concern among regulators, law enforcement and Congress over abusive and fraudulent sales and financing practices in both the primary and secondary residential mortgage markets, FinCEN also has undertaken a number of strategic, outreach and law enforcement support initiatives focused on residential mortgage lending.

FinCEN is contemplating an incremental approach to implementation of AML regulations for loan and finance companies that would focus first on those business entities that are engaged in residential mortgage lending or origination and are not currently subject to any AML program requirement under the BSA or other Federal law. These “non-bank residential mortgage lenders and originators” are primary providers of mortgage finance—in most cases dealing directly with the consumer—and are in a unique position to assess and identify...
money laundering risks and fraud while directly assisting consumers with their financial needs and protecting them from the abuses of financial crime. FinCEN believes that new regulations requiring non-bank residential mortgage lenders and originators to adopt AML programs and report suspicious transactions would augment FinCEN’s initiatives in this area. Among other benefits, such regulations would complement efforts underway by mortgage companies to comply with the nationwide licensing system and registry under development since the passage of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E. Act). As mortgage companies implement systems and procedures to comply with the S.A.F.E. Act, there will be opportunities for them to review and enhance their educational and training programs to ensure that employees are able to identify and appropriately deal with fraud, money laundering and other financial crimes.

II. Issues for Comment

This ANPRM solicits comment on all aspects of the potential impact of applying BSA requirements to non-bank residential mortgage lenders and originators.

1. What Are the Money Laundering Risks in the Non-Bank Residential Mortgage Finance Sector?

As noted in the 2003 ANPRM, the residential real estate sector may be vulnerable at all stages of the money laundering process. Money laundering is a process by which funds with an illicit origin are converted into funds with a plausibly legitimate origin. There are three general stages of money laundering. The “placement” stage is the stage at which funds from illegal activity or funds intended to support illegal activity are first introduced into the financial system. Money laundering “layering” involves the distancing of illegal funds from their criminal source through the creation of complex layers of financial transactions. “Integration” occurs when illegal funds are made to appear to have been derived from a legitimate source. Despite the relative illiquidity of most real estate assets, money launderers have used residential mortgage transactions—fraudulently and legitimately structured—to disguise the proceeds of crime.

In some cases, a significant percentage of SARs filed with FinCEN have reported suspected fraud-for-profit and fraud-for-housing schemes involving real estate brokers, appraisers, and other persons associated with real estate finance and settlements. FinCEN studies also have shown the connection between persons involved in mortgage fraud and other suspected financial crimes. The crime of money laundering is defined, in part, with respect to the proceeds of specific unlawful, “predicate” activities. Both mortgage fraud and the act of laundering mortgage fraud proceeds are crimes under Federal and State laws, and both are destructive to consumers, individual businesses and the financial system as a whole.

FinCEN seeks comment on the experience of the residential real estate lending sector with money laundering and fraud schemes, the existence of any safeguards in the industry to guard against these crimes, the impact that compliance with AML program and SAR reporting requirements may have on business operations, and what additional steps may be necessary to protect the industry from abuse by money launderers, including those who finance terrorist activity.

2. Should FinCEN Pursue an Incremental Approach to Regulation of Loan and Finance Companies That Focuses First on Persons Engaged in Non-Bank Residential Mortgage Lending or Origination?

As is the case with the term “persons involved in real estate closings and settlements,” the term “loan or finance company” is not defined or discussed in any FinCEN regulation, and there is no legislative history on the term. The term, however, could conceivably extend to any business entity that makes loans or finances purchases to or on behalf of consumers and businesses.


FinCEN is inclined to defer regulations for commercial real estate finance businesses and other types of consumer and commercial finance businesses until further research and analysis can be conducted to enhance our understanding of their business operations and money laundering vulnerabilities.

There has been a “regulatory gap” between the BSA’s coverage of depository institutions and non-bank residential mortgage lenders and originators. FinCEN is concerned that this disparity in BSA regulatory coverage may have made non-bank residential mortgage lenders and originators more vulnerable to financial crime and money laundering than their bank counterparts. FinCEN believes that implementing appropriate, risk-based AML programs by non-bank residential mortgage lenders and originators will strengthen their existing compliance and anti-fraud programs, as well as the training and licensing programs that will be updated to comply with the S.A.F.E. Act. Moreover, a SAR reporting regulation likely would reduce the vulnerability of this sector and substantially expand FinCEN’s BSA database, thereby giving our regulatory and law enforcement partners a more complete macro and (case-specific) picture of mortgage-related financial crimes. In these and other respects, non-bank residential mortgage lenders and originators may assume an increasingly crucial role in government and industry efforts to protect consumers, mortgage finance businesses, and the United States financial system from money laundering and other financial crimes.
FinCEN seeks general comment on whether FinCEN should adopt this incremental approach or some other approach to implementation of AML program and SAR regulations for loan and finance companies.

3. How Should Persons Engaged in Non-Bank Residential Mortgage Lending or Origination Be Defined?

Most real estate finance—both residential and commercial—involves complex transactions and multiple parties whose roles are not always readily discernable by the titles and terms used to describe them in generally accepted business practices or under applicable licensing and registration regimes. The primary mortgage market in the United States is very fragmented, and even simple real estate finance transactions may involve one or more parties that may originate, fund, broker, purchase, transfer, service, securitize, and insure the mortgage loan.

FinCEN believes that the views, assumptions and guiding principles noted in the 2003 ANPRM are equally relevant to the development of AML program and SAR reporting regulations for non-bank residential mortgage lenders and originators. AML obligations should focus on those persons (i.e., individuals and business entities) that conduct the activities that place them in the best position to identify the nature of the transaction, recognize suspicious activity and prevent misuse of their services for money laundering and other financial crimes. This activities-based approach focuses on the nature of the activity conducted and its primary function in a particular residential mortgage transaction, rather than on the name or title of the person. Moreover, FinCEN believes that any regulations for non-bank residential mortgage lenders and originators should strive to avoid, to the greatest extent possible, requirements that overlap or duplicate those of other BSA rules.

FinCEN seeks comment on which participants involved in non-bank residential mortgage finance are in a position where they can effectively identify and guard against financial crime and money laundering in the transactions they conduct. Information and comment may, among other things, address both the extent to which various participants have access to information regarding the nature and purpose of the transactions at issue and the importance of the participants’ involvement to successful completion of the transactions. Comments are welcome from those involved centrally in the residential mortgage finance process (i.e., those who may act as an agent for some or all of the parties and are responsible for reviewing the form and type of payment, as well as being aware of the parties to the mortgage transaction), and those who view their involvement as more peripheral.

Various definitions in the S.A.F.E. Act may be a useful reference for comments related to the development of regulatory definitions that would affect the scope of any proposed regulations for non-bank residential mortgage lenders and originators. FinCEN seeks comment specifically on whether FinCEN should adopt a definition of “non-bank mortgage lender or originator” that would be similar to the definition of “loan originator” in the S.A.F.E. Act. FinCEN therefore seeks comment on what types of programs and practices that persons engaged in non-bank residential mortgage lending or origination have in place to prevent mortgage fraud and other illegal activities, and the applicability of such programs to the development of AML programs.

4. How Should the Anti-Money Laundering Requirements for Persons Engaged in Non-Bank Residential Mortgage Lending or Origination Be Structured?

In applying the BSA to persons engaged in non-bank residential mortgage lending and origination, FinCEN must consider the extent to which the standards for AML programs are commensurate with the size, location, and activities of such persons. FinCEN recognizes that while large businesses are engaged in mortgage finance, businesses in this industry also include smaller companies or sole proprietors. FinCEN thus seeks comment on any particular concerns smaller businesses may have regarding the implementation of an AML program. FinCEN believes that AML programs will complement the anti-fraud and general compliance programs that non-bank residential mortgage lenders and originators have established to comply with other Federal and State laws and protect their own business operations. Many non-bank residential mortgage lenders and originators may be able to integrate risk-based AML reporting programs into existing enterprise-wide anti-fraud and compliance programs in a symbiotic manner that utilizes economies of scale and enhances the effectiveness of a business’s compliance measures. FinCEN therefore seeks comment on how the AML programs for non-bank residential mortgage lenders and originators would be similar to those covered by the S.A.F.E. Act.

As FinCEN emphasized in its recent report on mortgage loan fraud trends, SARs provide a valuable tool for regulatory agencies and law enforcement seeking to isolate specific instances of potential criminal activity for further investigation, and to identify emerging money laundering and terrorism financing trends. The due diligence necessary for financial institutions to detect and report known or suspected suspicious activity greatly reduces vulnerability to the abuses of money laundering and terrorist financing.

FinCEN has promulgated SAR reporting regulations for a number of financial institutions that have AML program requirements, including mutual funds, insurance companies, futures commission merchants and introducing brokers in commodities, banks, brokers or dealers in securities, money services businesses, and casinos. FinCEN anticipates that any SAR regulation proposal applicable to persons engaged in non-bank residential mortgage lending or origination would have similar reporting standards, thresholds and procedures as those set

112 U.S.C. 5102(3).


18 31 CFR 103.15–103.21.
implement the requirements of the BSA with respect to non-bank residential mortgage lenders and originators. We also seek input on: (1) Estimates and financial projections on the likely costs of complying with AML program and SAR reporting regulations by specific types of non-bank residential mortgage lenders and originators; (2) the impact of any such regulatory requirements on industry profitability, growth and business practices; (3) the impact of these requirements on consumers seeking to obtain residential mortgages; (4) the effectiveness of examining for and enforcing compliance with these requirements; and (5) the advisability of establishing some minimum transaction threshold value or annual volume threshold below which some or all of these requirements would not apply. We also solicit comment on the impact to law enforcement and regulatory agencies. FinCEN welcomes comments on all aspects of the ANPRM, and we encourage all interested parties to provide their views.

IV. Executive Order 12866

This advance notice of proposed rulemaking is not a significant regulatory action under Executive Order 12866. Therefore, a Regulatory Assessment is not required.

William F. Baity,
Acting Director, Financial Crimes Enforcement Network

[FR Doc. E9–17117 Filed 7–20–09; 8:45 am]
BILLING CODE 4810–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2009–0395]

RIN 1625–AA08

Special Local Regulation, Swim Across the Sound, Long Island Sound, Port Jefferson, NY to Captain’s Cove Seaport, Bridgeport, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent special local regulation on the navigable waters of Long Island Sound between Port Jefferson, NY and Captain’s Cove Seaport, Bridgeport, CT for the annual Swim Across the Sound event. This special local regulation is necessary to provide for the swimmers’ safety on the navigable waters of Long Island Sound.

Under this proposed regulation, persons and vessels are prohibited from entering the regulated area during this annual event unless entry is authorized by the Captain of the Port Long Island Sound or by designated on-scene patrol personnel.

DATES: Comments and related material must be received by the Coast Guard on or before August 20, 2009.

ADDRESSES: You may submit comments identified by docket number USCG– 2009–0395 using any one of the following methods:


(2) Fax: 202–493–2251.


(4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail: Chief Petty Officer Christie Dixon, Prevention Department, USCG Sector Long Island Sound at 203–468–4459, e-mail christie.m.dixon@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to http://www.regulations.gov and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–0395), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and

19 See 31 CFR 103.22, 103.30 and 103.33.