

July 25, 2011

George W. Madison
General Counsel
United States Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Re: The Department of Treasury's Preliminary Plan for Retrospective Analysis of Existing Rules

Dear Mr. Madison:

The Office of Advocacy of the U.S. Small Business Administration (Advocacy) submits this comment on the Department of Treasury's *Preliminary Plan for Retrospective Analysis of Existing Rules*, dated May 18, 2011. Advocacy is concerned about the vague nature of the portion of the plan that was submitted by the Financial Crimes Enforcement Network (FinCEN).

The Office of Advocacy

Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration.

Executive Order 13563

On January 18, 2011, President Obama signed Executive Order 13563 (EO), entitled *Improving Regulation and Regulatory Review*. Section 6 of the E.O. states that "agencies shall consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify,

streamline, expand, or repeal them in accordance with what has been learned.” In Treasury’s plan, FinCEN states that it plans to finalize several interim rules, pending the availability of resources. Specifically, FinCEN states:

“Initially, FinCEN intends to finalize its anti-money laundering (AML) program rules for mutual funds and AML program regulations for dealers in precious metals, stones and jewels. There were a number of rules issued in 2002 following the USA PATRIOT Act that were issued as interim final rules for expediency sake. The AML rule for mutual funds is one such rule. Since their issuance, FinCEN has not had sufficient time to devote to a review of these interim final rules. With respect to the AML program rule for dealers in precious metals, stones and jewels, finalization would provide FinCEN an opportunity to incorporate an administrative ruling issued shortly after the interim final rule was published.”

Although FinCEN acknowledges that there are several interim rules, FinCEN only references the AML rule for mutual funds and the rule for dealers of precious stones. FinCEN should list specifically the plans to review along with the citations for the rules. As FinCEN noted, several interim rules were issued following the Patriot Act almost ten years ago. These rules should be reviewed considering the changes in the financial industry and the law over the last few years. In addition, FinCEN should state more specifically how it plans to review the interim rules. Although the interim rules had a comment period, will FinCEN reopen the comment period to assure that the rule reflects current conditions?

Advocacy is disturbed by the lack of a timeframe for the review and the lack of commitment to reviewing/finalizing these rules. FinCEN has had almost ten years to analyze these rules, which could be redundant or irrelevant at this point. Since they are still in place, small entities have to comply with them, even though they may be burdensome.

Advocacy recognizes that FinCEN may have budgetary constraints, however, small entities have budgetary constraints also. Advocacy believes that it is unfair to require them to continue to comply with rules that may be unnecessarily burdensome. Advocacy encourages FinCEN to develop a more definite plan for addressing the vast

number of interim final rules that are currently in place. This would comply with the letter and spirit of E.O. 13563.

If you have any questions, please feel free to contact Jennifer Smith at (202) 205-6943. Thank you.

Sincerely,

/s/

Winslow Sargeant, Ph.D.
Chief Counsel for Advocacy

/s/

Jennifer A. Smith
Assistant Chief Counsel
For Economic Regulation & Banking

Cc: The Honorable Cass Sunstein, OIRA/OMB