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**DIVISION OF BANKING**

**MEMORANDUM**

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NUMBER: 10-008

DATE: JANUARY 5, 2021

TO: SOUTH DAKOTA TRUST COMPANIES

FROM: BRET AFDAHL, Director

RE: FINANCIAL CRIMES ENFORCEMENT NETWORK FINAL RULE DATED  
SEPTEMBER 15, 2020

This Memorandum is being sent to notify all South Dakota-chartered trust companies of the publication of the Financial Crimes Enforcement Network's (FinCEN's) Final Rule dated September 15, 2020 (Final Rule), to require Customer Identification Programs (CIPs), Anti-Money Laundering (AML) Programs, and beneficial ownership requirements for banks lacking a Federal functional regulator. The Final Rule is effective November 16, 2020, and all South Dakota-chartered non-depository trust companies must comply by March 15, 2021, or 180 days from the date of publication. The Final Rule applies to both private and public trust companies.

FinCEN's Final Rule has removed all AML Program exceptions for State-chartered non-depository trust companies. Title 31 Code of Federal Regulation (CFR) Chapter X Section 1010.210 has amended the definition of "bank" to include State-chartered non-depository trust companies. Any entity meeting the definition of "bank," whether or not regulated by a Federal functional regulator, must establish an AML Program and CIP, and comply with beneficial ownership requirements. Additionally, the Final Rule removed prior AML exceptions for persons subject to supervision by a state banking authority by amending the following Sections: 31 CFR 1020.100(b), 31 CFR 1020.00(d), and 31 CFR 1010.205.

South Dakota-chartered non-depository trust companies are now legally required to implement an AML Program that includes the development of internal policies, procedures, and controls; the designation of a compliance officer; an ongoing employee training program; and an independent audit function for testing purposes. Additionally, compliance with Section 1010.230 (the Beneficial Ownership Rule) is now required. Financial institutions, including trust companies, must establish and maintain written procedures that are reasonably designed to identify and verify the beneficial owners of legal entity customers and to include such procedures in their AML Program. No other changes are required regarding CIP, accounts for non-U.S. persons, and AML risk assessments, as these specific items were previously required by either federal law or prior South Dakota Division of Banking (Division) guidance.

A copy of the updated Bank Secrecy Act Guidance and CIP Guidance can be accessed on the Division's website: <https://dlr.sd.gov/banking/trusts/default.aspx>.

In addition to the updated guidance, the following resources are available to assist in the implementation of an effective AML Program:

- FinCEN's Final Rule dated September 15, 2020;
- Link to the Federal Financial Institutions Examination Council's (FFIEC) BSA/AML Examination Manual: <https://bsaaml.ffiec.gov/manual>;
- FinCEN's Website: <https://www.fincen.gov/>.