

Client Alert

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Loan to San Bernardino Attacker Generates New Focus on Online Marketplace Lending and Terrorism Financing

By **Obrea O. Poindexter, Sean Ruff, Jeremy R. Mandell, and Calvin D. Funk**

News that an online marketplace lender extended a \$28,500 loan to Syed Rizwan Farook, one of the alleged San Bernardino attackers, just two weeks before the attack, has spurred House Financial Services Committee Chairman Jeb Hensarling (R-TX) to announce plans to propose new terrorist financing legislation in the coming months. On December 10, 2015, Chairman Hensarling announced that such legislation will be a top priority for the coming year and that a bill will be introduced in early 2016. A day earlier, the House Financial Services Committee voted to reestablish its Task Force to Investigate Terrorism Financing ("Task Force"), and the Task Force requested information from the U.S. Department of the Treasury ("Treasury") about the regulation of online lenders in the wake of the attack.

Online lending platforms, including the platform used by the alleged San Bernardino attacker, generally partner with banks to originate loans. And, loans originated by a bank through an online lending platform are subject to anti-money laundering and anti-terrorism financing obligations under the Bank Secrecy Act, USA PATRIOT Act and other federal laws that apply to such bank-originated loans. These obligations include verifying a borrower's identity, determining whether a borrower is on certain watch lists (e.g., the Office of Foreign Assets Control's Specially Designated Nationals list), and filing suspicious activity reports, where appropriate. While non-bank online lending platforms may not be directly subject to these obligations, these platforms are generally obligated by agreement to assist the originating bank in fulfilling its anti-money laundering and anti-terrorism financing obligations.

At this point, there are no indications that the bank or online lending platform committed any wrongdoing in connection with the loan to Farook. The platform has reportedly stated that "all loans originated through the [] online platform are subject to all identity verification and screening procedures required by law, including U.S. antiterrorism and anti-money laundering laws."¹ The platform also reportedly stated that, "as part of our standard procedures, we also confirm that all funds are disbursed into a verified U.S. bank account in the borrower's name."² The bank partner also has reportedly made public statements indicating that it evaluates all loan applications in accordance with legal requirements, including anti-terrorism and anti-money laundering laws.³

In response to news of the loan to Farook, the Task Force made an informal request asking the Treasury to reveal whether any suspicious activity reports regarding Farook or his wife, Tashfeen Malik, had been filed prior to

¹ Kevin Wack, *San Bernardino Attack Highlights Online Lending's Fraud Problem*, AM. BANKER, Dec. 10, 2015, <http://www.americanbanker.com/news/marketplace-lending/san-bernardino-attack-highlights-online-lendings-fraud-problem-1078264-1.html>.

² *Id.*

³ See Peter Rudegeair & Telis Demos, *San Bernardino Shooter Took Out Loan Prior to Terror Attack*, WALL ST. J., Dec. 8, 2015, <http://www.wsj.com/articles/san-bernardino-shooter-took-out-28-500-loan-prior-to-terror-attack-source-says-1449608166>.

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the San Bernardino attack. A spokesman for the Treasury's Financial Crimes Enforcement Network ("FinCEN") noted that federal law prohibits public comment about the existence of suspicious activity reports, and said that FinCEN "will certainly be appropriately responsive to inquiries from Congress."⁴

The Task Force recently completed a six-month investigation into terrorism financing, and the House Financial Services Committee voted on December 9, 2015 to reestablish the Task Force. The Task Force had begun drafting legislation on terrorism financing, but will now revisit the bill in light of the San Bernardino attack. Chairman Hensarling said the bill will be introduced "fairly early next year."⁵ When asked whether the bill would increase scrutiny of online lending, Chairman Hensarling said "everything's on the table."⁶

This scrutiny from legislators comes at a time when interest in online marketplace lenders also has increased among federal and state regulatory agencies. For example, on December 10, 2015, the California Department of Business Oversight ("DBO"), which regulates securities and lending activities in California, sent an extensive survey to fourteen marketplace lenders requesting detailed information about their lending practices, investors and business models. In the survey, the DBO asked lenders for information regarding the total number of loans, number of delinquent loans, cost of loans expressed as an annualized interest rate, and the borrower verification processes employed by the lenders. The DBO's request, which was planned before the San Bernardino attack occurred, follows the Treasury's request for information on marketplace lending earlier this year.

Contact:

Obrea O. Poindexter
(202) 887-8741
opoindexter@mofo.com

Sean Ruff
(202) 887-1530
sruff@mofo.com

Jeremy R. Mandell
(202) 887-1505
jmandell@mofo.com

Calvin D. Funk
cfunk@mofo.com

⁴ *Id.*

⁵ Reuters, *U.S. Lawmakers to Act on Terrorism Financing After California Shootings*, NEWSWEEK, Dec. 10, 2015, <http://www.newsweek.com/us-lawmakers-act-terrorism-financing-after-california-shootings-hensarling-404005>.

⁶ *Id.*

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Financial Services Team

CALIFORNIA

Michael J. Agoglia	(415) 268-6057
Alexis A. Amezcua	(415) 268-6557
Elizabeth Balassone	(415) 268-7585
Roland E. Brandel	(415) 268-7093
Kevin M. Coles	(415) 268-6132
Sarah Nicole Davis	(415) 268-7478
Henry M. Fields	(213) 892-5275
Joseph Gabai	(213) 892-5284
Angela E. Kleine	(415) 268-6214
Jim McCabe	(415) 268-7011
James R. McGuire	(415) 268-7013
Mark David McPherson	(212) 468-8263
Ben Patterson	(415) 268-6818
Sylvia Rivera	(213) 892-5734
Nicholas Alan Roethlisberger	(415) 268-7534
Grant C. Schrader	(415) 268-6635
William L. Stern	(415) 268-7637
Nancy R. Thomas	(213) 892-5561
Lauren Lynn Wroblewski	(415) 268-6458

NEW YORK

James M. Bergin	(212) 468-8033
Tiffani B. Figueroa	(212) 336-4360
David J. Fioccola	(212) 336-4069
Marc-Alain Galeazzi	(212) 336-4153
Adam J. Hunt	(212) 336-4341
Jessica Kaufman	(212) 336-4257
Mark P. Ladner	(212) 468-8035
Jiang Liu	(212) 468-8008
David H. Medlar	(212) 336-4302
Barbara R. Mendelson	(212) 468-8118
Michael B. Miller	(212) 468-8009
Judy Man Ni Mok	(212) 336-4073
Jeffrey K. Rosenberg	(212) 336-4130
Mark R. Sobin	(212) 336-4222
Joan P. Warrington	(212) 506-7307

WASHINGTON, D.C.

Leonard N. Chanin	(202) 887-8790
Rick Fischer	(202) 887-1566
Natalie A. Fleming Nolen	(202) 887-1551
Julian E. Hammar	(202) 887-1679
Ashley R. Hutto-Schultz	(202) 887-1683
Oliver I. Ireland	(202) 778-1614
Steven M. Kaufmann	(202) 887-8794
Donald C. Lampe	(202) 887-1524

WASHINGTON, D.C. (CONTINUED)

Jeremy R. Mandell	(202) 887-1505
Amanda J. Mollo	(202) 778-1609
Obrea O. Poindexter	(202) 887-8741
Ryan J. Richardson	(202) 887-8761
Joe Rodriguez	(202) 778-1610
Sean Ruff	(202) 887-1530
Trevor R. Salter	(202) 887-1527
Nathan D. Taylor	(202) 778-1644

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