



April 6, 2012

Customer Due Diligence Requirements for Financial Institutions

EXECUTIVE SUMMARY

- The Financial Crimes Enforcement Network (FinCEN) has issued an advance notice of proposed rulemaking (ANPR) to solicit comments regarding a potential new customer (member) due diligence (CDD) rule that would apply to financial institutions, including credit unions and banks.
- Specifically, FinCEN seeks comment on whether to propose an express CDD rule that would apply to all customers (members), including those that are excluded from existing customer identification program (CIP) rules, with these components:
 1. Customer identification and risk-based verification - FinCEN believes this is similar to existing Bank Secrecy Act (BSA) CIP and due diligence rules;
 2. Understanding the nature and purpose of the account, as well as the expected account activity for the purpose of assessing risk and identifying suspicious activity. FinCEN believes this is similar to existing AML/SAR rules;
 3. Identification and risk-based verification of “beneficial ownership” for all customers - This new requirement would expand the limited circumstances that currently require financial institutions to identify or verify “beneficial ownership.” FinCEN currently defines “beneficial owner” is “an individual who has a level of control over, or entitlement to, the funds or assets in the account that, as a practical matter, enables the individual, directly or indirectly, to control, manage or direct the account”; and
 4. Conducting ongoing monitoring and conducting additional CDD as appropriate - FinCEN believes this is similar to existing AML/SAR rules.
- Also, FinCEN provides a potential definition of “beneficial owners” of legal entities.
- CUNA is interested in how this potential rule would impact your credit union’s operations and compliance procedures.
- Comments on the proposal are due to FinCEN by May 4, 2012; **please submit your comments to CUNA by April 20, 2012.**
- Please e-mail your comments to Regulatory Counsel [Dennis Tsang](#) and SVP/Deputy General Counsel [Mary Dunn](#).
- For further details, please visit the Federal Register [notice](#).

Background

Under the ANPR, FinCEN is considering whether to propose an express customer (member) due diligence (CDD) rule that would apply to financial institutions, including credit unions and banks. For more information regarding existing CDD requirements that apply to credit unions, please refer to [CUNA's E-Guide on the Bank Secrecy Act](#).

FinCEN believes an express CDD rule would help protect the U.S. financial system from criminal, terrorist financing, money laundering, and other financial crimes. An express CDD rule would promote uniformity and consistency within and across industries, regarding existing and implicit AML/SAR rules, as well as “beneficial ownership” requirements. Further, the rule would clarify, consolidate and harmonize the existing federal financial rules on CDD.

Potential Express Customer Due Diligence (CDD) Rule

Under the ANPR, FinCEN seeks comment on whether to propose a CDD rule that would apply to all customers (members), including those that are excluded from existing customer identification program (CIP) rules, with these components:

1. **Customer identification and risk-based verification** - A requirement that financial institutions, including credit unions, “shall identify, and on a risk-basis verify, the identity of each customer, to the extent reasonable, such that the institution can form a reasonable belief that it knows the true identity of each customer.” FinCEN believes this provision would not create any new CIP obligations for institutions that are currently subject to and in compliance with CIP requirements. Also, FinCEN is exploring whether this requirement would be satisfied by institutions that are currently in compliance with CIP;
2. **Understanding the nature and purpose of the account** - A requirement that financial institutions, including credit unions, “shall understand the nature and purpose of the account and expected activity associated with the account for the purpose of assessing the risk and identifying and reporting suspicious activity.” FinCEN believes this provision would not impose any new or additional requirements, based on existing AML/SAR requirements. (This would also apply to those exempt from existing CIP requirements);
3. **Identification and risk-based verification of “beneficial ownership” for all customers** - A new requirement that financial institutions, including credit unions, “shall identify the beneficial owner(s) of all customers, and verify the beneficial owners’ identity pursuant to a risk-based approach.” FinCEN expects to provide additional guidance regarding the implementation of this requirement and the risk-based approach (including any exceptions).

There are limited circumstances that currently require financial institutions to obtain beneficial ownership information: 1) private banking accounts; 2) correspondent accounts for certain foreign financial institutions; and 3) individuals with authority or control over accounts for customers that are not individuals, under CIP and risk assessment requirements. FinCEN currently defines “beneficial ownership” as “an individual who has a level of control over, or entitlement to, the funds or assets in the

account that, as a practical matter, enables the individual, directly or indirectly, to control, manage or direct the account.”¹ In January 2010, NCUA issued a [Regulatory Alert](#) regarding interagency guidance on “beneficial ownership.”

FinCEN is considering this potential, additional definition for “beneficial owners” of legal entities.

“(1)(a) Each of the individual(s) who, directly or indirectly, through any contract, arrangement, understanding, relationship, intermediary, tiered entity, or otherwise, owns more than 25 percent of the equity interests in the entity; or (b) If there is no individual who satisfies (a), then the individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, intermediary, tiered entity, or otherwise, has at least as great an equity interest in the entity as any other individual; and

(2) The individual with greater responsibility than any other individual for managing or directing the regular affairs of the entity.”

4. **Conducting ongoing monitoring and conducting additional CDD as appropriate** - A requirement that financial institutions, including credit unions, “shall establish and maintain appropriate policies, procedures, and processes for conducting on-going monitoring of all customer relationships, and additional CDD as appropriate based on such monitoring for the purpose of the identification and reporting of suspicious activity.” FinCEN believes this provision would not impose any new or additional requirements, based on existing AML/SAR requirements. (This would also apply to those exempt from existing CIP requirements)

QUESTIONS TO CONSIDER REGARDING THE ANPR

General Questions

1. Does your credit union support an explicit customer (member) due diligence (CDD) rule from FinCEN and additional beneficial ownership requirements? Why or why not?

2. What types of changes and compliance costs would be required at your credit union to accommodate these proposed changes? (This rule would also apply to customers exempt from current CIP requirements.)
 - a. Customer identification and risk-based verification _____
 - b. Understanding the nature and purpose of the account _____
 - c. Identification and risk-based verification of “beneficial ownership” (see below for detailed questions) _____
 - d. Conducting CDD on an ongoing basis _____

¹ 31 C.F.R. § 1010.605(a).

3. If FinCEN does propose a CDD rule, should the rule extend to other institutions covered by FinCEN regulations (e.g., providers of prepaid access, money services businesses, non-bank mortgage lenders or originators, etc.)?
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Questions Specifically from FinCEN

1. **Customer Due Diligence** - Aside from changes related to beneficial ownership, what changes would be required in your credit union's customer due diligence (CDD) processes if FinCEN adopts an express CDD rule as described in this ANPR?
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2. **Beneficial Ownership** - What changes would be required in your credit union's CDD if FinCEN requires you to obtain (and in some cases verify) beneficial ownership from all your members?
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- Do you agree with FinCEN's suggested alternate definition of "beneficial owner" for legal entities?
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- In addition, how do financial institutions currently address money laundering risks that might be presented by the beneficial owners of assets in an account held by an intermediary? Do you have any recommendations on further guidance, risk-based approaches, or definition of beneficial ownership?
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3. Under what circumstances does your credit union currently obtain beneficial ownership information on a customer or accountholder?
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4. How does your credit union currently obtain beneficial ownership information?
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5. Is the current, primarily risk-based, approach to a CDD program requirement resulting in varied approaches across or within industries?
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6. Are there other elements of CDD that would be more effective in facilitating compliance with AML program requirements and other FinCEN obligations?
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7. What information should be required in order to identify, and verify on a risk basis, the identity of the beneficial owner?
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- Regarding account opening, FinCEN believes that in general, the individual opening the account on behalf of a legal entity customer will identify its beneficial owner, and that covered financial institutions will generally be able to rely upon

the beneficial ownership information presented by the customer, absent other information. Do you agree? _____

- Regarding risk-based verification, should there be a requirement to verify the existence of an identified beneficial owner (i.e., verifying the identity of the individual identified by the customer as the beneficial owner of an account) or verifying the status of an identified beneficial owner (i.e., verifying the individual identified by the customer as the beneficial owner is in fact the beneficial owner)?

8. Are there any products and services, or customers that should be exempted from the requirement to obtain beneficial ownership information because of:

- their current exemption from CIP rules (e.g., for legal entities);
- substantially less risk of money laundering or terrorist financing;
- limited value to mitigate money laundering or terrorist financing risks; or
- an inability to obtain the required information due to other legal requirements?

9. What financial institutions should not be covered by a CDD rule based on products and services offered?

10. What would be the impact from a FinCEN CDD rule with the elements described on members and consumers, including the underserved?
