

## New BSA Customer/Member Due Diligence Requirements – May 2016

<p><b>What are the new CDD provisions?</b></p>	<p><b>Beneficial Ownership Requirements:</b></p> <ul style="list-style-type: none"> <li>• Identification of beneficial owners of legal entity members</li> <li>• Verification of beneficial owners of legal entity members</li> <li>• Exemptions</li> <li>• Written procedures</li> <li>• Recordkeeping</li> <li>• Record retention</li> </ul> <p><b>Anti-money laundering programs:</b></p> <ul style="list-style-type: none"> <li>• A system of internal controls to assure ongoing compliance;</li> <li>• Independent testing for compliance to be conducted by credit union personnel or outside parties;</li> <li>• Designation of an individual or individuals responsible for coordinating and monitoring day-to-day compliance;</li> <li>• Training for appropriate personnel; and</li> <li>• Appropriate risk-based procedures for conducting ongoing member due diligence, to include, but not be limited to:             <ul style="list-style-type: none"> <li>○ Understanding the nature and purpose of member relationships for the purpose of developing a member risk profile; and</li> <li>○ Conducting ongoing monitoring to identify and report suspicious transactions, and,</li> <li>○ On a risk basis, maintain and update member information – including information regarding the beneficial owners of legal entity members.</li> </ul> </li> </ul>
<p><b>When is the Compliance Date?</b></p>	<p><b>May 11, 2018</b></p>

### BENEFICIAL OWNERSHIP OF LEGAL ENTITIES

<p><b>What is a beneficial owner?</b></p>	<p>The definition of beneficial owners has two prongs:</p> <p><u>Ownership criteria</u>: person owns 25% or more equity interest in the legal entity (this is a baseline threshold – credit unions are permitted to have a lower threshold);</p> <p><u>Control criteria</u>: person has significant responsibility to control the legal entity, such as senior management or other person who regularly performs similar functions.</p>
---	---

<p><b>What is a “legal entity account”?</b></p>	<p>These are accounts opened by legal entities, rather than natural person accounts. The rule defines them as a : corporation, LLC, or other entity that is created by the filing of a public document with a Secretary of State or similar office; a general partnership or similar entity.</p>
<p><b>What is NOT considered a legal entity?</b></p>	<p>Sole proprietorships, unincorporated associations (such as, Scout Troops and youth sports leagues), or natural persons opening accounts on their own behalf.</p> <p>Additionally, the rule considers the following exempt from the definition of legal entity because the information is generally available from other credible sources:</p> <ul style="list-style-type: none"> <li>• department or agency of the federal, state, or local government;</li> <li>• any entity established under the federal, state or local laws of the U.S., or any interstate compact, that exercise governmental authority on behalf of the government;</li> <li>• any entity whose common stock is listed on one of the stock exchanges;</li> <li>• any subsidiary of an entity listed on one of the stock exchanges and whose common stock is owned (at least 51 percent) by the listed entity;</li> <li>• an issuer of securities;</li> <li>• an investment company;</li> <li>• an investment advisor,</li> <li>• an exchange or clearing agency;</li> <li>• an entity registered with the SEC;</li> <li>• an entity registered with the Commodity Futures Trading Commission;</li> <li>• A bank holding company;</li> <li>• A pooled investment vehicle;</li> <li>• <b>An insurance company regulated by a State</b> (this is new, it was not included in the proposal);</li> <li>• A financial market utility;</li> <li>• A foreign financial institution, where its regulator maintains beneficial ownership information;</li> <li>• A non-U.S. governmental department, agency or political subdivision that engages only in governmental activities.</li> </ul> <p>The following entities are only subject to the control criteria prong in the definition of “beneficial owner”:</p> <ul style="list-style-type: none"> <li>• Any legal entity that is established as a non-profit corporation or similar entity and has filed its organizational documents with the appropriate State authority.</li> <li>• Any legal entity only to the extent that it opens a private banking account subject to BSA requirements.</li> </ul>

	<ul style="list-style-type: none"> <li>Any pooled investment vehicle that is not exempt.</li> </ul>
<b>How can I identify beneficial owners of legal entity accounts?</b>	<p>A credit union can identify the beneficial owners of business accounts in one of three ways:</p> <p>(1) by obtaining a “Certification Regarding Beneficial Owners of Legal Entity Customers” provided in the rule (it will also be available in electronic form);</p> <p>(2) by using the credit union’s own forms, as long as they meet the requirement in the rule; or</p> <p>(3) by obtaining the required information by any other means – provided the person opening the account and providing the information certifies that it is accurate.</p>
<b>Will I be protected by a Safe Harbor if I use FinCEN’s certification form?</b>	<p>No, FinCEN clarifies in the supplementary information to the rule that using the agency’s form DOES NOT provide you with a safe harbor in regard to compliance.</p>
<b>How can I verify the beneficial owner’s identification?</b>	<p>Credit unions must verify each identified beneficial owner of legal entity accounts. At a minimum, these procedures must include all of the elements of the credit union’s Member/Customer Identification Program (CIP or MIP).</p> <p>In regard to documentary verification, FinCEN has clarified that you may use photocopies or other reproductions of the documents. However, given the vulnerabilities inherent in the reproduction process, you are encouraged to conduct your own risk-based analyses of the types of photocopies and reproductions that you will accept, for example optical resolution threshold or digital reproductions transmitted in certain file formats.</p>
<b>Are there any legal entities that are exempt from the identification and verification requirements?</b>	<p>Yes.</p> <ul style="list-style-type: none"> <li>Private label retail credit cards established at point-of-sale, up to a limit of \$50,000 (co-branded major credit cards are not exempt);</li> <li>Entities that finance the purchase of postage, where payments are remitted by the credit union **;</li> <li>Entities that finance insurance premiums, where payments are remitted by the credit union **;</li> <li>Entities that finance the purchase or leasing of equipment, where payments are remitted by credit union **.</li> </ul> <p>** Except where the legal entity account member can make or receive payments from a 3<sup>rd</sup> party, or where a cash refund is possible.</p>

<p><b>What kind of written procedures will be required?</b></p>	<p>Credit unions are required to develop written procedures to identify and verify “beneficial owners” of “legal entity” members and include these procedures in their Anti-Money Laundering (AML) compliance programs.</p> <p>Additionally, credit union must establish procedures for making and maintaining a record of all of the identification and verification information collected.</p> <p>Credit unions are also expected to add appropriate risk-based procedures for conducting ongoing member due diligence to their anti-money laundering compliance programs.</p>
<p><b>What are the recordkeeping requirements for this identification and verification information?</b></p>	<p>At a minimum your record must include:</p> <ul style="list-style-type: none"> <li>• Any identification information obtained, including the Certification Form, if applicable;</li> <li>• A description (type, identification number, place of issuance and dates of issuance and expiration, if any) of any document relied upon;</li> <li>• Any non-documentary methods used; and</li> <li>• Any measures taken in response to any substantive discrepancies, and the results those actions.</li> <li>•</li> </ul>
<p><b>Are there record retention requirements for these new records?</b></p>	<p>Yes.</p> <ul style="list-style-type: none"> <li>• Identification related records must be retained for 5 years after the date the account is closed.</li> <li>• Verification related records must be retained for 5 years after the record is made.</li> </ul>
<p><b>ANTI-MONEY LAUNDERING PROGRAM</b></p>	
<p><b>Why do the new requirements for the anti-money laundering program (listed above) appear to be requirements I am already complying with?</b></p>	<p>Most of these requirements sounds familiar to you because NCUA’s BSA regulations require the first four items – almost verbatim. ( Internal controls, independent testing, designated BSA officer, and training.)</p> <p>FinCEN also believes that the fifth bullet (understanding the nature and purpose, monitoring &amp; updating accounts) shouldn’t be considered a new requirement either, as it reflects existing practices necessary to satisfy suspicious activity reporting (SAR) reporting obligations.</p>
<p><b>What are the new risk-based CDD requirements that I must add to my AML/BSA compliance program?</b></p>	<p>Credit unions are expected to add appropriate risk-based procedures for conducting ongoing member due diligence to their anti-money laundering compliance programs. This will include, but is not limited to:</p> <ul style="list-style-type: none"> <li>○ Understanding the nature and purpose of member relationships for the purpose of developing a member risk profile;</li> <li>○ Conducting ongoing monitoring to identify and report suspicious transactions, and,</li> </ul>

	<ul style="list-style-type: none"> <li>○ On a risk basis, maintain and update member information – including information regarding the beneficial owners of legal entity members.</li> </ul> <p>Understanding the nature and purpose of your member relationship is meant to provide a baseline against which your member’s activity is assessed for suspicious activity reporting. The profile may, but is not required to, include a system of risk ratings or categories of members.</p> <p>When you detect a change in your member’s activity, through normal monitoring, you must update your member’s information. Such changes in activity may include executing cross-border wire transfers for no apparent reason, or a significant change in the volume of activity without an explanation.</p>
<p><b>Am I now required to update member information regularly?</b></p>	<p>No. The rule DOES NOT require credit unions to update member information on a continuous or periodic basis. The updating requirement is event-driven and only occurs as a result of detecting unusual activity through normal monitoring.</p>