

Proposed Rule Summary

*Prepared by NASCUS Regulatory Affairs Department
August 2014*

FinCEN Regulatory Identification Number (RIN) 1506-AB25,

Customer Due Diligence Requirements

The Financial Crimes Enforcement Network (FinCEN) is proposing changes to the Customer Due Diligence (CDD) regulations of the BSA/AML to strengthen the BSA obligations of financial institutions by explicitly requiring enhanced CDD expectations for legal entity customers. Financial institutions would be required to establish written policies and procedures to identify and verify the beneficial owners of legal entity customers at account opening.

The complete proposed rule may be [read here](#).

Comments on the proposed rule are due to FinCEN by October 3, 2014.

Summary

FinCEN's proposed rule only covers those financial institutions subject to a CIP requirement under FinCEN regulations:

- Credit unions & banks
- brokers or dealers in securities
- mutual funds
- futures commission merchants

Beneficial Ownership

Under the proposal, financial institutions would be required to identify the natural persons who are beneficial owners of legal entity customers, subject to certain exemptions. "Beneficial owner" would be defined as a natural person. To satisfy the requirement, financial institutions would have to obtain a standard certification form from the individual opening the new account on behalf of the legal entity customer.

Note: FinCEN would only require the verification of the identity of beneficial owners consistent with CIP practices. FinCEN is not proposing to require that financial institutions verify that the natural persons identified on the form ***are in fact*** the beneficial owners.

The definition of "beneficial owner" includes an ownership prong and a control prong.

Ownership - Each individual, if any, who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25% or more of the equity interests of a legal entity customer. A financial institution must identify *each* individual who owns 25 percent or more of the equity interests. Therefore, no more than four individuals would be identified under the proposed rule. If no one individual owns 25% or more of the equity interests, then the financial institution may identify no individuals under the ownership prong.

Control - An individual with significant responsibility to control, manage, or direct a legal entity customer.

Exemptions

FinCEN proposes to exempt from the beneficial ownership requirement those types of entities that are exempt from the customer identification requirements under the CIP rules:

- financial institutions regulated by a federal functional regulator
- publicly held companies traded on certain U.S. stock exchanges
- domestic government agencies and instrumentalities and certain legal entities that exercise governmental authority
- any other “legal entity customer” exempted from CIP rules

In addition to incorporating exemptions applicable to the CIP rules, FinCEN also proposes exempting the following entities whose beneficial ownership information is generally available from other credible sources:

- An issuer of a class of securities registered under Section 12 of the Securities Exchange Act of 1934 or that is required to file reports under Section 15(d) of that Act
- Any majority-owned domestic subsidiary of any entity whose securities are listed on a U.S. stock exchange
- An investment company, as defined in Section 3 of the Investment Company Act of 1940, that is registered with the SEC under that Act
- An investment adviser, as defined in Section 202(a)(11) of the Investment Advisers Act of 1940, that is registered with the SEC under that Act
- An exchange or clearing agency, as defined in Section 3 of the Securities Exchange Act of 1934, that is registered under Section 6 or 17A of that Act
- Any other entity registered with the Securities and Exchange Commission under the Securities and Exchange Act of 1934
- A registered entity, commodity pool operator, commodity trading advisor, retail foreign exchange dealer, swap dealer, or major swap participant, each as defined in section 1a of the Commodity Exchange Act, that is registered with the CFTC
- A public accounting firm registered under section 102 of the Sarbanes-Oxley Act
- A charity or nonprofit entity that is described in Sections 501(c), 527, or 4947(a)(1) of the Internal Revenue Code of 1986, that has not been denied tax exempt status, and that is required to and has filed the most recently required annual information return with the Internal Revenue Service

Grandfathering

FinCEN would only apply the new requirements to new accounts opened after the effective date of a final rule. However, FinCEN anticipates that institutions might update beneficial owner information on existing accounts as they update information in their normal course of due diligence and risk assessment.

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