
FinCEN Clarifies Anti-Money Laundering Beneficial Ownership Rules

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The Financial Crimes Enforcement Network ("FinCEN") and six other federal regulatory bodies issued [joint guidance](#) ("the Guidance") on Friday, March 5, 2010 on obtaining beneficial ownership information for accounts and customer relationships in connection with financial institutions' Bank Secrecy Act and Anti-Money Laundering ("BSA/AML") compliance programs. While it does not mandate specific procedures, the Guidance makes clear that financial institutions must take reasonable steps to identify the beneficial owners of an account based on an institution's risk assessment of that account. Financial institutions may therefore need to reevaluate their existing Customer Identification Programs ("CIPs") and expand their comprehensive consumer due diligence ("CDD") and enhanced due diligence ("EDD") efforts to clarify procedures for determining beneficial ownership, defined as the individuals with control over, or entitlement to, the funds or assets in an account that, as a practical matter, enables them to directly or indirectly control, manage, or direct that account.

The Guidance—issued jointly by FinCEN, the Federal Reserve, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Securities and Exchange Commission, and in consultation with staff at the Commodity Futures Trading Commission—maintains the general framework that financial institutions should tailor their CDD processes according to the BSA/AML risk presented by each customer and should develop a CIP that includes procedures verifying a customer's identity to the extent reasonable and practical. The Guidance specifically notes that accounts associated with nominal account holders, but which might have other beneficial owners, pose heightened BSA/AML risk. Regulators may determine that a financial institution with a CIP that seeks only basic information about the nominal customer, and does not make inquiries about beneficial ownership, is not taking reasonable steps to know its customers and the risks they present. Even financial institutions with more rigorous CIPs may wish to reevaluate their CIP, CDD, and EDD procedures to ensure that they make reasonable attempts to identify beneficial ownership information in accordance with the risk posed by a given account.

Examples of appropriate CDD procedures according to the Guidance include:

- Determining whether the customer is acting as an agent, and, if so, obtaining information regarding the capacity in which and on whose behalf the customer is acting.
- For customers that are legal entities not publicly traded in the United States, obtaining information about the structure or ownership in order to determine whether the account poses heightened risk.
- For trustee customers, obtaining information about the trust structure to help the institution determine the persons or entities that provide the funds, have control over the funds, or have the power to remove the trustee.

In addition, accounts identified as posing a heightened risk should be subjected to EDD procedures. The Guidance does not list specific measures that must be part of an EDD program, but it states that such programs may include steps to identify and verify beneficial owners and their relationship with the nominal customer, and to reasonably understand the sources and use of the account funds. The Guidance identifies certain trusts, corporate and shell entities, and private investment companies as customers that might warrant EDD scrutiny above and beyond the CDD procedures described above. Both CDD and EDD information should be used to monitor accounts for discrepancies between an account's stated purpose and its actual use and source of funds. The Guidance suggests enterprise-wide implementation of beneficial ownership procedures, including the sharing of beneficial ownership information across entities or businesses within an enterprise, and the cross-checking of beneficial ownership information with data held for other uses, such as credit underwriting, marketing, or fraud detection.

The Guidance does not alter existing FinCEN regulations that require covered financial institutions, including banks and broker-dealers, to take reasonable steps to identify the beneficial owners of private banking accounts established, maintained, administered, or managed in the United States. Similarly, FinCEN regulations require covered financial institutions to obtain beneficial ownership information for certain, enumerated high-risk foreign banks.

The Guidance also recommends EDD procedures that covered financial institutions should adopt with respect to correspondent accounts established, maintained, administered, or managed in the United States for certain foreign banks. EDDs should, as appropriate, obtain information from the foreign bank about the identity of individuals with authority to direct transactions through payable-through correspondent accounts, as well as the source and beneficial owners of funds or other assets in a payable-through account. The Guidance suggests that covered financial institutions use a questionnaire or review transaction history for the foreign bank to collect necessary information. As with other accounts, due diligence procedures for any particular foreign correspondence account should reflect the risk posed by that account.

The full text of the Guidance can be found [here](#). For additional information regarding anti-money laundering rules, please see our prior publications below:

FinCEN Issues Anti-Money Laundering Rules on Foreign Correspondent and Private Banking
Accounts: Substantial Due Diligence Mandated for Banks, Broker-Dealers, Mutual Funds, Others

Anti-Money Laundering Rules for Insurance Companies Contain New Twists

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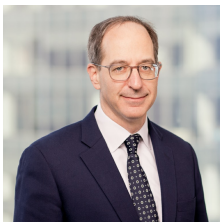
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