

FinCEN's Customer Due Diligence Rule: The Community Bank Perspective

On behalf of the nearly 5,700 community banks represented by ICBA, we thank Chairman Luetkemeyer, Ranking Member Clay, and members of the Financial Services Subcommittee on Financial Institutions and Consumer Credit for convening today's hearing on "Implementation of FinCEN's Customer Due Diligence Rule – Financial Institution Perspective." ICBA is pleased to have the opportunity to submit this statement for the hearing record.

Community bankers are committed to supporting balanced, effective measures that will prevent terrorists from using the financial system to fund their operations and prevent money launderers from hiding the proceeds of criminal activities. The Financial Crimes Enforcement Network (FinCEN) Customer Due Diligence (CDD) Rule under the Bank Secrecy Act requires "covered financial institutions" to identify the beneficial owners who own or control certain legal entity customers at the time a new account is opened. The CDD Rule's mandatory compliance date is May 11, 2018, just over two weeks from today.

In this statement, ICBA recommends certain revisions to the CDD Rule that will make it more effective in meeting its stated goal of combating money laundering and other illicit financing. Whether or not FinCEN agrees to revise the Rule, community bankers recognize their obligation to comply with the complex CDD Rule in its current form and are making every effort to do so before the mandatory compliance date. For reasons described below, **ICBA requests a one-year delay in the mandatory compliance date to May 11, 2019.**

ICBA Recommended Revisions to CDD Rule

ICBA's position is that if the government has an interest in collecting and maintaining records of beneficial ownership, such information should be collected and verified at the time a legal entity is formed, rather than requiring financial institutions to collect this information. Collecting and verifying the identity of all natural person owners of each entity by either the Internal Revenue Service or other appropriate federal agency and/or state in which the entity is formed would provide uniformity and consistency across the United States. Making the formation of an entity contingent on receiving beneficial owner information would create a strong incentive for equity owners and investors to provide such information. Additionally, periodic renewal of an entity's state registration would provide an efficient and effective vehicle for updating beneficial ownership information.

If responsibility for collecting beneficial ownership information remains with financial institutions, ICBA recommends that information collection be based on customers rather than accounts. This change would be consistent with the customer information program (CIP) set forth in the Bank Secrecy Act. A focus on customers rather than accounts would greatly facilitate information collection, alleviating community bank burden and producing more accurate information. The creation of an additional account by an existing customer or the renewal of a customer account should not trigger a new obligation to verify beneficial ownership information as long as the bank has no knowledge of facts that would reasonably call into question the reliability of the information the bank already has on file. A customer basis for the rule, combined with a risk-based approach, would obligate a financial institution to

perform additional due diligence when warranted by a higher level of risk.

Delayed Rule Guidance Warrants a Corresponding Delay in Mandatory Compliance

Despite community banks' commitment to compliance with the new Rule, recent and unexpected developments have made timely compliance unduly challenging. First, FinCEN issued Frequently Asked Questions (FAQs) to assist banks in understanding and complying with the CDD rule on April 3, 2018 – just over a month before the mandatory compliance date. These FAQs address issues on acceptable means of identifying and verifying beneficial ownership information, collecting information for direct and indirect owners, and thresholds for identifying beneficial owners. Additionally, the FAQs provide information on the requirements for obtaining this information when multiple accounts are opened or accounts are renewed (e.g., certificates of deposit or loan renewal), as well as information on monitoring and updating customer information.

The FAQ information is needed for the development of effective policies and procedures for the implementation of a complex new rule. But approximately one month is not sufficient time to adequately review policies and procedures to ensure conformity with the new information provided in the FAQs. Compliance requires systems changes followed by testing and training of employees in new policies and procedures. FinCEN took two years to develop the FAQs because of the complexity of the Rule, the ambiguity it contains, and the novel questions it raises. Community banks should have at least one year to incorporate the FAQ information into their policies and procedures.

Second, the Federal Financial Institutions Examination Council (FFIEC) has not yet released an updated exam manual incorporating the CDD Rule. The FFIEC exam manual is another critical piece of the puzzle bankers need to understand how they will actually be examined for CDD Rule compliance. The FAQs, while important, do not resolve all ambiguities regarding compliance with the Rule. Community bankers should not have to engage in guesswork and court the costly risk of error or misinterpretation when it comes to regulatory compliance. They need certainty to the last detail, and only the exam manual will provide this certainty.

The exam manual's two-year preparation period is due to the complexity of the Rule and its many ambiguities. Community bankers deserve an ample period for the development of policies and procedures based on the FAQs and the exam manual.

Compensation for Anti-Money Laundering and Anti-Terrorist Financing Efforts

For community banks, BSA compliance represents a significant expense in terms of both direct and indirect costs. BSA compliance is fundamentally a governmental, law enforcement function. As such, the costs should be borne by the government. ICBA supports the creation of a tax credit to offset the cost of BSA compliance.

Closing

Thank you again for convening today's hearing. The integrity of our financial system is among the highest concerns of America's community bankers. ICBA looks forward to continuing to work with the committee to ensure the CDD Rule is workable and to modernize the Bank Secrecy Act in a way that will strengthen critical law enforcement while rationalizing community bank compliance with this important law.