

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 Pearce, Ranking Member Perlmutter, and members of the Financial Services Subcommittee on Terrorism and Illicit Finance for convening today's hearing on "Implementation of FinCEN's Customer Due Diligence Rule – Regulator 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. Mandatory compliance with the CDD Rule began May 11, 2018. 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.

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.

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.