ICBA SUMMARY OF FINCEN'S FINAL RULE ON CUSTOMER DUE DILIGENCE REQUIRMENTS FOR BENEFICIAL OWNERS

NOVEMBER 2016

I. OVERVIEW

Anti-money laundering and Bank Secrecy Act compliance programs (collectively "AML") currently consist of four pillars: 1) written policies and procedures; (2) a designated AML compliance officer; (3) independent testing of the institution's AML program; and (4) employee training.

On May 5, 2016, the Financial Crimes Enforcement Network ("FinCEN") amended the Bank Secrecy Act ("BSA") rules to require covered financial institutions to conduct and document customer due diligence on all beneficial owners of legal entity customers that open new accounts no later than May 11, 2018, the compliance date (or, "Applicability Date"). This amendment is known as the Customer Due Diligence Final Rule ("CDD Final Rule") and is now incorporated as a fifth pillar within AML compliance programs.

Final Rule in Brief
Beginning May 11, 2018, The CDD Final Rule requires community banks to develop and implement written procedures to identify and verify the beneficial owners of legal entities – corporations, limited liability companies and partnerships -- who open new accounts.

Link to Final Rule

II. KEY DEFINITIONS[1]

Covered Financial Institutions - insured banks, federally chartered credit unions, savings associations, and other defined institution types listed in 31 CFR 1010.605(e)(1).

Legal Entity Customer - a corporation, limited liability company, or partnership formed by the filing of a public document with a Secretary of State or similar office or formed under the laws of a foreign jurisdiction.

Legal Entity Customer Exemptions - regulated financial institutions, certain governmental agencies, entities listed on stock exchanges, bank holding companies, savings and loans, and state-regulated insurance companies.

Beneficial Owners - individuals who own 25% or more of the equity interests of a legal entity customer, a single person with "significant responsibility" to manage a legal entity customer, or a trustee.

[1] Terms defined in detail at 31 CFR § 1010.605(e)(1) and § 1010.230(d).

New Account - an account opened at a covered financial institution by a legal entity customer on or after the applicability date.

III. PROVISIONS

Customer Due Diligence (CDD)

The new CDD Final Rule requires covered financial institutions to implement written procedures to identify and verify a legal entity customer's beneficial owner(s) at the time a new account is opened unless the customer or account is exempt. CDD procedures must contain required elements of a community bank's customer identification program (CIP).

Beginning May 11, 2018, community banks must comply with the CDD Final Rule either by obtaining required information on the standard certification form found at the bottom of the rule by

Record Keeping

Consistent with established CIP recordkeeping requirements, covered financial institutions must maintain all beneficial ownership records obtained from legal entity customers. Records used for identification must be retained for five years after the date the account is closed. Records used for verification must be retained for five years after the record is created.[2]

[2] See 31 CFR 1010.230(i)(2) for more information on record retention and a description of records to retain.