

May 2, 2012

Financial Crimes Enforcement Network  
Department of the Treasury  
P.O. Box 39  
Vienna, VA 22183

Attention: Customer Due Diligence for Financial Institutions

This is in response to the February 29, 2012 advanced notice of proposed rulemaking on customer due diligence for financial institutions. The Financial Crimes Enforcement Network (FinCEN) issued the ANPRM to solicit public comment on a wide range of questions pertaining to the possible application of an explicit customer due diligence (CDD) obligation on financial institutions, including a requirement for financial institutions to identify beneficial ownership of their accountholders.

The Association of Certified Anti-Money Laundering Specialists (ACAMS) is filing this comment letter on behalf of individual members who have asked questions regarding the parameters of the ANPRM during a webinar we held on April 25, 2012 and included 1500 sites. ACAMS is **not** taking a position on the request; we are simply providing information to FinCEN from affected ACAMS members.

ACAMS is an international membership organization dedicated to enhancing the knowledge and skills of anti-money laundering (AML) and financial crime prevention professionals from a wide range of industries and government agencies. ACAMS serves close to 13,000 members in more than 160 countries.

As mentioned above, ACAMS provides training and raises awareness to our members on many issues related to anti-money laundering, financial crime, sanctions and corruption. To that end, we frequently hold programs to inform our members about regulatory proposals or guidance.

As ACAMS represents both the private and public sector, we felt it would be useful to FinCEN's regulatory process by providing the questions raised by our members during the call.

The following are the questions we received:

1. I do not see any reference to how often beneficial ownership would need to be verified after initial account opening. Has FinCEN made any indication in this regard?

2. With respect to commercial clients and many layers of beneficial ownership/shareholder (25%) to what degree should we be identifying the BO/SH - is it satisfactory to eliminate all the corporation/numbered companies and only identify the ultimate individual
3. Beneficial ownership is good for CDD. But with all states especially DE & WY allowed to open LLC's without any ownership documentation, why is FinCEN starting with the banks not the govt. and how can we comply without the Fed complying?
4. Are precious metals dealers covered?
5. Do Articles of Incorporation or Articles of Organization require disclosure of beneficial owners in addition to officers and directors?
6. Should the commentary include a timeline for the completion of the information shared, for e.g. beneficiaries of accounts investigation?
7. Is there an appetite for reliance on the Sec of State documents for their due diligence and review prior to allowing a business to have a license in that state?
8. What are the acceptable types of documents should an FI obtain as proof of beneficial ownership during the CIP process?
9. Does the term beneficial owner include Power of Attorneys
10. How will the proposed requirements on beneficial ownerships affect IOLTA accounts?
11. When I worked at a multinational company, we had to perform CDD worldwide. The BEST place I found and the most useful was the UK's Companies House. Is / Can the US look into something similar on a federal level rather than state?
12. Are verbal surveys to CDD questions acceptable or should they be in writing?
13. Are there any particular implications to Credit Unions?
14. Is a PEP question a requirement or not (on a basis that a customer could lie)?
15. It appears that the ANPR does NOT cover BD's on a per se basis. A BD would ONLY be within scope of this ANPR if it is a "covered financial institution" as defined under 31 CFR 1010.605(e)(1) - Thus, UNLESS a BD offers private banking or correspondent accounts, it will NOT be considered within scope of this rule. Thoughts?
16. With regards to trusts, CDD is not a "cut & dry" issue. Who, in your opinion, is the beneficial owner of an irrevocable trust? Some say the trust itself is the beneficial owner. Others say the underlying beneficiaries who may be immediate or remain dormant.
17. For publicly traded companies whose shares are solely listed in South America Stock Exchanges are beneficial ownership must be obtained with more than 10% even though the stock exchanges are no U.S. or Europe?

18. How can banks verify beneficial ownership information if we are not given access to the beneficial ownership documents filed with each state?
19. Shouldn't the individual states be required to obtain beneficial ownership information when a business entity is established?
20. What CDD requirements will there be for secondary account holders and also for prepaid loyalty card members (OFAC screening, and 23A requests as well) and what obligations will an institution have for Bill Pay transactions from a customer's account?
21. The big issue here is definition of BO and if it applies to Trustees of Trusts, Power of Attorneys on accounts, and Persons in Charge for corporate accounts... in other words... If the rule is defining BO to apply to "agents" of accounts.... then the BD world will have a huge problem with this!
22. Currently, CIP/CDD is completed on each signer of a corporation holding an account. For those individual listed on the corporate documents but not signers, will we be required to conduct cip/cdd on these individuals? Similar? re: trusts
23. Isn't it true that beneficial ownership can also be subject to layering, where corporations can own corporations, and use "stooges" to hide who are the true owners? Financial institutions can't be obliged to trace the layers.

The questions above were only edited for space and grammatical purposes and do not reflect the position of ACAMS as we are neutral on regulatory proposals. If you have any additional questions on how these questions were compiled, feel free to contact me at [jbyrne@acams.org](mailto:jbyrne@acams.org).

Sincerely,

A handwritten signature in black ink, appearing to read "John J. Byrne". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

John J. Byrne, Esq., CAMS  
Executive Vice President  
Association of Certified Anti-Money Laundering Specialists (ACAMS)