KPMG

Regulatory Alert

Regulatory Insights for Financial Services



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Customer Due Diligence: FinCEN Proposed Rule

KPMG Regulatory Insights:

Flexibility: *Introduces flexibility by codifying exceptive relief related to when to collect and obtain certification of beneficial owner information, while also permitting reliance on third-party data.*

Risk-Based: *Aligns with FinCEN's recent proposals to emphasize a risk-based approach for AML/CFT programs; would explicitly permit use of additional information, including citizenship and work-authorization status, when risk indicators are present.*

Operational Challenge: *Precludes the use of ITINs for purposes of the CDD Rule though still allowed for CIP; no direction or transition guidance provided; watch for potential parallel changes to CIP.*

The Department of the Treasury's (Treasury) Financial Crimes Enforcement Network (FinCEN) has issued a proposal to amend the Customer Due Diligence (CDD) Rule under the Bank Secrecy Act (BSA). The proposal implements the directive to Treasury in Executive Order 14406, Restoring Integrity to America's Financial System, to propose changes to applicable BSA regulations to strengthen risk-based CDD requirements. FinCEN adds that the proposal supports Treasury's efforts to further the "Administration's efforts to modernize the AML/CFT [anti-money laundering/countering the financing of terrorism] regime by making it more effective, risk-based, and focused on the greatest threats to national security, while reducing unnecessary regulatory burden."

Key components of the proposed amendments are focused on a covered financial institution's* ability to verify the identities of beneficial owners of legal entity customers, including provisions specifically directed toward timing, information collection, information sources, certification, and verification.

Comments. FinCEN requests comments on all aspects of the proposed changes by January 19, 2027. If finalized as proposed, the rule would take effect 90 days after publication of the final rule in the Federal Register.

**As defined in the CDD Rule to include banks, brokers and dealers in securities, mutual funds, and futures commission merchants and introducing brokers in commodities.*

To ensure that covered financial institutions have risk-based information collection and verification requirements that allows them to focus on "higher risk" customers and activities (e.g., illicit finance, sanctions evasion, fraud, and other unlawful activity) as well as obtain additional information when warranted by risk indicators or

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supervisory concerns, FinCEN proposes amendments to the following elements of the CDD Rule:

Timing

The current rule requirement for covered financial institutions to collect beneficial ownership information (BOI) every time a new account is opened would be eliminated. FinCEN proposes to incorporate previously provided exceptive relief that would allow a covered financial institution to continue collecting BOI at each account opening but would only require the covered financial institution to identify the beneficial owner(s) of a legal entity customer:

- At the time a legal entity customer establishes its first account with the covered financial institution
- Any time thereafter when the covered financial institution has knowledge of facts that would reasonably call into question the reliability of BOI previously obtained about the legal entity customer.
- As needed, based on the covered financial institution's risk-based procedures for conducting ongoing customer due diligence.

Information Collection

Given the policy goal of collecting information sufficient to reasonably identify the beneficial owners of legal entity customers for the specific purpose of assessing risks related to illicit finance, sanctions evasion, fraud, or other unlawful activity, the proposal includes two changes related to information collection:

- **Required Information:** At a minimum, a covered financial institution would be required to obtain the beneficial owner's name, date of birth, address, and identifying number. For a U.S. person, the identifying number would include a Social Security number. For a non-U.S. person, permissible identifiers would include a Social Security number; passport number and country of issuance; alien identification card number; or another qualifying government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard. Notably, the proposal specifies that an Individual Taxpayer Identification Number (ITIN) would not be an acceptable substitute for a Social Security number.
- **Additional Information:** Where warranted by other risk indicators or supervisory concerns, a covered financial institution may obtain additional information necessary to mitigate indicated risk or address supervisory concerns, including when relevant to assessing risks associated with fraud, identity misrepresentation, sanctions evasion, or other illicit financial activity, lawful immigration status or employment authorization in the United States.

Information Sources

The proposal would permit a covered financial institution to obtain the required BOI from a third-party source, subject to the applicable certification requirements. Use of a third-party source would not alter the covered financial institution's obligation to identify beneficial owners when it has knowledge of facts that would reasonably call into question the reliability of the BOI previously obtained about the legal entity customer.

Certification

To provide more flexibility around when a covered financial institution must obtain a new certification for an existing legal entity customer, the proposal would provide that:

- When a legal entity customer first opens an account with a covered financial institution, the covered financial institution must obtain a certification from the individual opening the account on behalf of the legal entity customer that the information is accurate to the best of the individual's knowledge.
- When obtaining information on beneficial owners when warranted by risk indicators, a covered financial institution may rely on BOI previously obtained from a certification provided in connection with the initial account opening, provided a representative of the legal entity customer provides either oral or written confirmation that such information is up to date and accurate to the best of the individual's knowledge.

Verification

The proposal seeks to clarify the relationship between the BOI that is required by the CDD Rule and similar requirements in the Customer Identification Program (CIP) rules, which are cross-referenced in the CDD Rule. In particular, the proposal would clarify that a covered financial institution must have CDD verification procedures that reflect the requirements of that covered financial institution's CIP rule, but also that covered financial institutions must adhere to the information to be collected in the CDD Rule (as proposed). Importantly, unlike the proposed amendments to the CDD Rule, the existing CIP rule allows financial institutions to accept an ITIN for verification purposes.

FinCEN states that the proposed revision is intended to clarify, rather than alter, the CDD Rule's adoption of CIP verification procedural standards while recognizing the information that can be used to verify identity will be different under CIP and CDD obligations.

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General Clarification

Finally, consistent with Executive Order 14406's emphasis on assessing the risk associated with beneficial owners, the proposed language would clarify that covered financial institutions are required to establish and maintain written procedures reasonably designed to identify and verify "*the identity of*" beneficial owners of legal entity customers. FinCEN notes that adding "the identity of" is intended to clarify that covered financial institutions must collect and verify identifying information about a beneficial owner (i.e., verify the individual's existence and identity) rather than verify whether the individual is in fact a beneficial owner of the legal entity customer.

Request for Comment

FinCEN seeks comment on all aspects of the proposed amendments but asks specific questions related to:

- Triggers for identification and verification of beneficial owners when the covered financial institution has knowledge of facts that would reasonably call into question the reliability of BOI previously obtained about the legal entity customer.
- Challenges related to the prohibition against the use of an ITIN, and whether FinCEN should consider alternatives to the prohibition.
- Cross-references between the CDD Rule and the CIP rule, and whether they should be deleted.
- Potential flexibility for covered financial institutions to adjust their due diligence efforts with respect to legal entity customers and their beneficial owners downward with decreased risk.

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