



MISSOURI CREDIT UNION ASSOCIATION

October 3, 2014

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

**RE: Don Cohenour - Customer Due Diligence Requirements for Financial Institutions;  
[RIN 1506-AB25]**

Dear Policy Division:

On behalf of the 1.3 million credit union members, the Missouri Credit Union Association (MCUA) would like to take this opportunity to express our views on the Financial Crimes Enforcement Network's (FinCEN's) proposed rule to strengthen and clarify customer (member) due diligence (CDD) obligations of financial institutions, including credit unions, following a related advance notice of proposed rulemaking (ANPR) from 2012. Under the proposed rule, the key elements for CDD would include: 1) identifying and verifying the identity of customers; 2) identifying and verifying the identity of "beneficial owners" of "legal entity" customers (i.e., natural persons who own or control "legal entities"); 3) understanding the nature and purpose of customer relationships; and 4) conducting ongoing monitoring to maintain and update customer information and to identify and report suspicious transactions.

While MCUA supports the objective to improve the tracking of money laundering and terrorist financing, we continue to have significant concerns that the rule would impose additional regulatory compliance costs on credit unions and smaller financial institutions. Such costs are likely to outweigh the purported benefits to FinCEN. We are especially concerned about the proposed expansion of the "beneficial ownership" requirements that would result in procedures taking up to 30 minutes or more for each "legal entity" account opening. Instead of new regulatory requirements, we encourage FinCEN to continue to work with the federal financial regulators to issue specific guidance to address particular problem areas and to clarify the current BSA/AML rules. If the agency proceeds with a final rule, we urge FinCEN to minimize regulatory burdens for credit unions and smaller financial institutions, and adopt the changes that we recommend in this letter.

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## Minimizing Regulatory Burdens for Credit Unions

As FinCEN and federal financial regulators have noted, identifying the “beneficial ownership” of entities can be challenging and costly for financial institutions, as discussed in the March 2010 joint interagency guidance to clarify and consolidate regulatory expectations on obtaining “beneficial ownership” for financial institutions. We acknowledge that the agency has reduced the scope of requirements that could have been even more burdensome under the 2012 ANPR. However, even with the scaled-down approach, the impact of the proposal will be negative for smaller institutions and affect them disproportionately. Approximately 3,000 credit unions have five or fewer full-time employees that must comply with numerous existing and upcoming regulatory requirements, including the BSA/AML rules, as well as regulatory changes related to the Dodd-Frank Act. Because credit unions are not-for-profit cooperatives that are owned by their members, any additional compliance burdens and costs also reduce the availability of resources to their member consumers and the underserved.

The additional time needed for account openings would include time to receive and verify the information provided on the new certification form. The proposed certification form under Appendix A would be required to be completed by the person opening a new account on behalf of a “legal entity customer” to help identify the “beneficial owners.” Other aspects of the proposed rule would also require a financial institution to establish and maintain written CDD procedures that are reasonably designed to identify and verify “beneficial owners” of “legal entity customers” (e.g., corporation, limited liability company, partnership, or other similar business entity). Financial institutions may have difficulty verifying the “beneficial ownership” information on the new certification form, based on existing risk-based CIP practices. These practices may be more appropriate and effective for other types of accounts in which the person opening the account for himself or herself will likely have additional identification documents on hand, or where the accountholder is the person opening the account. Because of these challenges, we urge FinCEN to remove the verification requirement. If FinCEN must require verification, then it should not require a financial institution to verify the status of an identified “beneficial owner.”

Before proceeding to a final rule, FinCEN should provide greater justification on the proposed rule’s purported benefits in relation to the expected compliance burdens and costs on credit unions and other financial institutions. The supplementary information notes that “estimating the amount of illicit funds flow facilitated through legal entities used to mask beneficial ownership would be difficult,” while the proposed rule would clarify the definition of a “beneficial owner” and provide more information to law enforcement. Executive Orders 13563 and 12866 direct FinCEN and other federal agencies to assess all costs and benefits of available regulatory alternatives, including the alternative of not promulgating additional regulations.

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## Exemptions

MCUA supports appropriate exemptions from any new requirements for financial institutions, including exemptions for entities that are currently exempt from CIP, existing customers prior to the effective date of the rule, trusts, entities where their “beneficial ownership” information is generally available from other sources, and other lower-risk accounts. These exemptions would help minimize additional compliance burdens and costs on credit unions and smaller financial institutions. Regarding intermediary or pooled accounts, we also believe the rule should minimize compliance burdens, and financial institution should have no CIP obligations on an intermediary or pooled account’s underlying clients.

## Proposed Definition for “Beneficial Owners”

FinCEN has proposed this definition of “beneficial owners” of “legal entities,” which includes any person that satisfies either the 1) ownership or 2) control prongs:

“1. Each individual, if any, who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25% or more of the equity interests of a legal entity customer; and

2. A single individual with significant responsibility to control, manage, or direct a legal entity customer, including (i) An executive officer or senior manager (e.g., a Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, or Treasurer); or another individual who regularly performs similar functions.”

79 Fed. Reg. 45,157 (August 4, 2014). The number of individuals that may meet the definition of a “beneficial owner” could vary. Under the ownership test, up to four individuals may need to be identified, while under the control test, only one individual must be identified.

MCUA believes the proposed definition for “beneficial owners” of “legal entities” is too broad and would present challenges for financial institutions, especially smaller credit unions, as they attempt to determine relationships and to obtain the relevant documents to identify and verify this information. The agency should minimize the number of individuals that must be identified and consider narrowing the definitions for both the ownership and control prongs. Also, because of challenges with identifying the proper individual under a very broad definition for the control prong, the agency should consider removing the second prong.

## Other Issues and Concerns

Credit unions also have concerns about increased costs to monitor for potential changes to “beneficial owners” that have been identified. Financial institutions should not be required to update or refresh periodically the “beneficial ownership” information. In addition, credit unions have questions about the effect on OFAC screening. We ask FinCEN to clarify how the names of the “beneficial owners” should be handled for OFAC screening and to provide additional information to help with compliance. The certification form would include information associated with the name, address, date of birth, and social security number (or passport number or similar information for foreign persons) for “beneficial owners.” We have concerns that this information could be potentially more accessible by a number of persons in addition to the “beneficial owner” and could be at a greater risk of inappropriate access to the information, especially if persons are opening accounts on behalf of “beneficial owners.” FinCEN should fully consider how the new information collection could impact customer confidentiality, privacy, fiduciary, information security, and other legal protections or responsibilities.

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## Delayed Effective Date

Even with the changes we recommend, we urge FinCEN to provide a delayed effective date that is more than 18 months from the issuance of the final rule. Institutions will need this time to incorporate the new “beneficial ownership” requirements into their BSA/AML programs and to modify their account opening processes. Credit unions and other financial institutions may have to increase staffing and training resources, and make other compliance, software, and system changes to implement the rule. A delayed effective date is especially beneficial for credit unions and smaller financial institutions that are complying with numerous existing and upcoming regulatory requirements. In addition, some credit unions will need additional time to consider whether they will continue to offer certain types of “legal entity” accounts in light of new requirements under the final rule.

## Additional Coordination

As discussed, MCUA strongly urges FinCEN to minimize regulatory burdens for credit unions and smaller financial institutions. Before finalizing the rule, we urge FinCEN to continue to engage and coordinate with the National Credit Union Administration, other federal and state financial institution regulators, and law enforcement authorities to minimize regulatory burdens for all financial institutions.

We also urge FinCEN to coordinate on potential legislative changes, given the uncertainty and complexity with potential legislative changes regarding the tracking of “beneficial ownership” information at the state level. We understand these potential legislative changes have raised many concerns from various parties on the tracking of “beneficial ownership” and related information.

As always, we appreciate the opportunity to respond to this proposal. We will be happy to respond to any questions regarding these comments.

Sincerely,



Don Cohenour  
President

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