

FinCEN - ISSUES - FINAL CUSTOMER DUE DILIGENCE RULE

On May 11, 2016, the Financial Crimes Enforcement Network ("FinCEN") released in the Federal Register, the text of its long awaited Final Customer Due Diligence Rule (the "[Final Rule](#)").

The salient points of the Final Rule are as follows:

- The Final Rule is effective on July 11, 2016 but compliance is not mandatory until May 11, 2018, two (2) years hence.
- The Final Rule requires Banks to develop written procedures for gathering information to identify and verify the beneficial owners of legal entities, i.e. corporations, partnerships, LLCs, when an entity opens a "new" account, i.e. one opened after the Final Rule's effective date. As such, both identifying and verifying the beneficial owner is required.
- A "beneficial owner" of an entity is an individual who owns more than a 25% equity interest in the entity or one individual who has significant control or responsibility for managing the entity. Note well, a president or CEO of an entity likely exercises control even though he is not a 25% shareholder, member or partner.
- As to identification, a Bank may comply by obtaining the required information (name, address, date of birth, social security number) on a standard certification form (set out in the Final Rule) or by any other means that complies with the requirements of this specific obligation.
- As to verification, Bank must follow the procedures used for individual customers under its CIP program, except that the financial institution may rely on copies of identity documents, i.e. driver's licenses, passports, etc. Verification must be completed within a reasonable time after the account is opened.
- The theory behind the Final Rule is that cyber-thieves and/or criminals are using legal entities as a shield or mask behind which to hide their ill-gotten gains or to access financial systems anonymously. Disclosure of beneficial owner will address this weakness and may provide information to assist law enforcement.
- The information as to beneficial owners need not be updated by the Bank on a continuous or periodic basis, but rather, need only be updated as and when it comes to the attention of the Bank as a result of normal monitoring.
- The Final Rule does not apply to accounts already in existence. Further, the Final Rule does not apply to the following accounts: estates and trusts; plans under ERISA; federal, state or local government entities or agencies; all non-profit entities (whether or not tax exempt); insurance companies; financial institutions; public accounting firms; bank holding companies; any entity registered with the SEC; certain private label credit card accounts; and certain other accounts

established for a limited purpose. Note: While non-profits are exempt from the identification requirement as to beneficial owners, the control prong still applies.

- The information obtained by the Bank may be retained electronically and incorporated into existing data bases as part of a Bank's overall management of customer files. This information can be integrated into existing systems and processes.
- The Final Rule does not specify who is an appropriate person to sign off on the certification form. However, an officer of a corporation, a member or manager of an LLC or a partner of a partnership would seem to qualify.
- Information provided to the Bank is to be based upon the provider's personal knowledge and does not need to be notarized nor is board approval required for the certification. Rather, the information need only be accurate to the best of the provider's knowledge.

Miscellaneous:

Update/Reminder. The hotline number for the Department of Financial and Professional Regulation that must be included in Grace Period Notices (GPN) given to delinquent homeowners in Illinois has been changed to 844-768-1718. GPN needs to be updated accordingly.

Talent Shortage? A study by *Bank Director* magazine indicates that there is a national shortage of qualified commercial loan officers (who would think they would be in demand!) Apparently, Banks are having a difficult time finding qualified commercial lending officers and this is slowing the growth of loan portfolios. Recruiting commercial lenders is a priority for many Banks in 2016. The difficulty: millennials do not want to work for Banks, a fallout perhaps from the financial "crisis" and the incessant political and media drumbeat that Banks were the bad guys and caused the crisis. To fill this need, Banks are willing to pay top dollar for qualified commercial loan officers. This presents an opportunity for some but also a risk for their current Bank employers.

Interesting Fact: For the mathematically inclined - $111,111,111 \times 111,111,111 = 12,345,678,987,654,321$.

The foregoing is not intended to be legal advice, but rather, to provide accurate information regarding banking law and regulatory matters. For more information regarding any of the foregoing items, please contact any member of our banking practice group: James A. Rapp (jrapp@srm.com), William M. McCleery, Jr. (wmccleery@srm.com), Michael A. Bickhaus (mbickhaus@srm.com), Christopher W. Pratt (cpratt@srm.com), Natalie L. Oswald (noswald@srm.com) or Joseph B. Ott (jot@srm.com), at (217) 223-3030 or visit us on the web at www.srm.com. We invite and welcome all questions and comments.