



MEMO

TO: South Dakota Trust Association

FROM: Elizabeth McMorrow

RE: New FinCEN Beneficial Ownership, CIP, AML Rule

Last week the Financial Crimes Enforcement Network (FinCEN) issued a Final Rule mandating financial institutions (FIs) which do not have a federal regulator to establish a Customer Identification Program (CIP), Anti-Money Laundering (AML) Program, and Beneficial Ownership (BO) requirements. Specifically, the Final Rule will implement sections 352, 326 and 312 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (“USA PATRIOT Act”) which is part of the Bank Secrecy Act (BSA).

Purpose

Prior to the Final Rule, criminals were able to exploit the gap in regulation among U.S. FIs. The Final Rule plugs that gap by requiring minimum standards be followed by FIs that were previously not subject to a specific federal functional regulator’s oversight such as:

- State-chartered non-depository trust companies
- Non-federally insured credit unions
- Non-federally insured state-chartered banks and savings and loan or building and loan associations
- Private banks
- International banking entities

Given that FIs without a federal functional regulator were already required to comply with certain BSA obligations, it is likely that the new Final Rule will not create an onerous burden. South Dakota FIs should be able to leverage existing policies, procedures, and internal controls to comply with the Final Rule.

Roles of Regulatory Authorities

Although FinCEN issued the Final Rule, the Internal Revenue Service (IRS) is the examining authority for South Dakota FIs covered by the Final Rule. The IRS plays this role when an FI is subject to FinCEN regulations but does not have a specific federal functional regulator.

FinCEN worked with state bank supervisory authorities in developing the Final Rule, so the South Dakota Division of Banking is well aware of the expansion of BSA requirements within the South Dakota financial industry.

AML

An FI's AML program should include:

- Development of internal policies, procedures, and controls.
- Designation of a compliance officer.
- Ongoing employee training program.
- Independent audit function to test programs.
- Approval of the AML program by the FI's board of directors or equivalent governing body.

It is important to develop the policies and procedures and document associated steps such as compliance officer appointment, employee training and board approval.

CIP

An FI's CIP should include written procedures which:

- Verify the identity of each new customer.
- Make and maintain a record of all information obtained under the CIP.
- Determine whether a new customer appears on any list of known or suspected terrorist organizations issued by the federal government.
- Provide customers adequate notice that the financial institution is requesting information to verify their identities.

BO

The FI should establish a written program as part of its AML policies and procedures to reasonably identify and verify the identity of the BOs of its legal entity customers. The program should include:

- Obtain and maintain identifying information for each BO from each legal entity customer opening a new account, including name, address, date of birth, and identification number.
- Verify the identity of each BO with documentary or non-documentary methods.
- Determine if the BO appears on any federal government lists of known or suspected terrorists or terrorist organizations.
- Maintain records for 5 years a description of
 - Any document relied on for verification,
 - Any such non-documentary methods and results of such measures undertaken, and

- The resolution of any substantive discrepancies discovered in verifying the identification information.

Consistent with the overall AML program, the CIP and BO policies and procedures are a means to identify the source of funds to prevent money laundering and report suspicious transactions. The programs must also include enhanced scrutiny of accounts requested or maintained for, or on behalf of, senior foreign political figures (including family members or close associates).

Deadline

The compliance date for AML programs, CIPs, and BO requirements for FIs that lack a federal functional regulator is March 15, 2021.

Next Steps

The goal of the above outline is to provide a general understanding of the Final Rule. FinCEN expects that an FI will take a risk-based approach to tailor its compliance programs to fit its own size, needs, and operational risks. To assist you in determining your organization's compliance approach to the Final Rule, we recommend you:

- Review your policies and procedures.
- Check your training records.
- Read the Final Rule: 31 CFR Parts 1010 and 1020, Financial Crimes Enforcement Network; Customer Identification Programs, Anti-Money Laundering Programs, and Beneficial Ownership Requirements for Banks Lacking a Federal Functional Regulator: <https://www.govinfo.gov/content/pkg/FR-2020-09-15/pdf/2020-20325.pdf>
- Check with outside counsel for amendments to your policies and procedures and to schedule additional staff training.