



# Final Rule on Customer Due Diligence

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- A professional services firm with three distinct business lines
  - Wealth Advisory
  - Outsourcing
  - Audit, Tax, and Consulting
- 4,500 employees
- Offices coast to coast
- Serve more than 1,450 financial institutions



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# Speaker Introduction

## John Zasada

John Zasada is a principal with the CliftonLarsonAllen LLP (CliftonLarsonAllen) Financial Institutions Group specializing in all aspects of financial institution compliance. John has over 20 years experience assisting financial institutions nationwide in complying with consumer protection regulations including establishing regulatory compliance programs, conducting compliance assessments, training staff on federal consumer protection regulations, performing website compliance assessments, and BSA/AML/OFAC independent testing. Prior to joining CliftonLarsonAllen, John was employed by a large consulting firm as Managing Director.

John is a frequent speaker on regulatory compliance trends, BSA/AML, compliance management, advertising compliance, social media compliance and website compliance. John has also been the lead instructor for the National Credit Union Administration (NCUA) Regulatory Compliance School and trained over 300 examiners on regulatory compliance.

John attended Utica College of Syracuse University, University of Colorado at Boulder, University of Copenhagen, Denmark, and Vermont Law School.



# Learning Objectives

- At the end of this session, you will be able to:
  - Recognize the new requirements and the impact on financial institutions
  - State when the rule changes will become effective
  - Implement the new requirements to be in compliance with the new rules



# CDD Final Rule

- May 6<sup>th</sup> 2016
- ANPR 2012
- Proposal 2014
- Compliance required by May 11, 2018





# Reasons for New Rule

- Law enforcement investigations
- Criminal account identification
- Risk mitigation
- CDD consistency
- Enhanced financial transparency



# Costs of Final Rule

- 29,000 institutions impacted
- FinCEN estimates first years costs of \$370m-\$520m
- 10 year training costs \$1.15b-\$2.15b
- It will take an additional 15-30 minutes to open a legal entity account



# Changes

- Identify and verify beneficial owners
- Explicitly have risk-based CDD procedures and customer/member risk profile



# Covered Financial Institutions

- Banks
- Credit unions
- Securities brokers and dealers
- Commodities brokers
- Others might be added later
- No exemption for smaller FIs



# Original Four Pillars

- Internal controls
- Independent testing
- BSA officer
- Training



# New Fifth Pillar

- Risk-based procedures for conducting ongoing customer due diligence, including:
  - Customer risk profiles
  - Ongoing monitoring



# Impact

- Customer risk profiles based on each customer relationship
- Ongoing monitoring
- Do not wait until 2018



# Core Elements of CDD

- Customer identification and verification
- Beneficial ownership identification and verification
- Customer risk profile
- Ongoing monitoring





# Only Beneficial Ownership New

- Customer identification and verification already an existing AML program requirement
- New final rule makes beneficial ownership identification a requirement
- Last two elements currently implicitly required



# Beneficial Ownership

- Two parts – ownership and control
  - Directly or indirectly own 25 percent or more of a legal entity customer; and
  - A single individual with significant responsibility to control, manage, or direct a legal entity customer
- Possible to have up to 5 beneficial owners



# Prong Issues

- Evading the 25% threshold
- Lower than 25%?
- One control person required
- More detail on control not forthcoming



# Legal Entity Customer

- Corporation
- Limited liability company
- General partnership
- Similar foreign entities



# Exceptions

- Beneficial ownership information already available
- Financial institutions
- Accounting firms
- Insurance firms, etc.



# Exemptions continued

- State and Federal departments and agencies
- Entities listed on stock exchanges
- Investment advisers and companies
- Bank holding company



# Exempted activities

- Credit accounts opened at the point of sale that can be used solely to purchase goods and services from the retailer, such as private-label credit cards, as long as the credit limit does not exceed \$50,000



# New Account

- Account opened at a covered financial institution by a legal entity customer on or after May 11, 2018
- Not applied retroactively to accounts opened before May 11, 2018
- Does apply to existing customers who open new accounts on or after May 11, 2018





# Identify

- Identify beneficial owners of accounts each time a new account opens
- Does not apply to accounts opened before compliance date



# Two Options

- #1 – use model form
  - Appendix A
- #2 – Any other method to capture same information as that on the model form
- Most FIs will use #1 option



# Who Can Certify Identity

- Who can certify the identification of beneficial owners?
- FinCEN prescribed no specific requirements
- No board approval requirement for certification



# Verify

- Use risk-based procedures to verify identity of each beneficial owner
- Same steps as CIP
- Can use photocopies for documentary verification
- Can rely on customer provided information



# Procedures and Privacy

- Identification and verification procedures
- Where to place them?
- Stand-alone?
- Include in AML program
- Privacy



# Periodic Updates

- Required?
- Events-based approach
- Update beneficial ownership information if during normal monitoring process relevant customer risk information detected



# Overall Risk-Based Approach?

- Final rule does not permit FIs to take a risk-based approach to the entire identification and verification requirement
- The requirement is categorical
- Must be done every time
  - FIs must identify beneficial owners of accounts each time a new account is opened



# Verifying Status

- No centralized resource to verify beneficial ownership status
- Why collect it then?





# Using Beneficial Ownership Information

- OFAC
- CTRs
- SARs
- Risk-based procedures



# Record Retention

- Retain ID information for 5 years after the date account closed
- Retain verification documents relied on for 5 years after the record is made



# Third Party Reliance

- Reliance is reasonable
- Other FI subject to the CDD rule
- Other FI enters into a contract to certify annually that it has an anti-money laundering program and it will comply with CDD requirements



# Section 314(a)

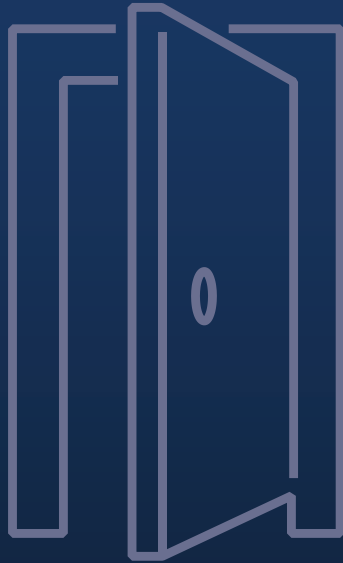
- Additional 314(a) responsibilities?
- No
- 314(a) requests do not require beneficial ownership information



# OFAC Software

- Beneficial owners information
- CIP
- Run through software





# Thank you!

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