



October 3, 2014

Policy Division  
Financial Crimes Enforcement Network  
P.O. Box 39  
Vienna, VA 22183

**RE: Customer Due Diligence Requirements for Financial Institutions,  
Docket No. FINCEN-2014-0001**

VIA ELECTRONIC MAIL: [www.regulations.gov](http://www.regulations.gov)

To Whom It May Concern:

The Michigan Credit Union League (MCUL), the statewide trade association representing 97% of the credit unions located in Michigan and their 4.5 million members, appreciates the opportunity to comment on the Financial Crimes Enforcement Network's (FinCEN) proposal on enhancing customer due diligence (CDD) requirements.

The proposal addresses the need to collect beneficial owner information on the natural persons behind legal entities by proposing a new, separate requirement to identify and verify the beneficial owners of legal entity customers. The proposal also contains explicit CDD requirements for understanding the nature and purpose of customer relationships, and conducting ongoing monitoring as components in each covered financial institution's core Anti-Money Laundering (AML) program requirements.

The MCUL is generally supportive of enhanced due diligence requirements for beneficial owners of legal entities, as well as FinCEN's efforts to enhance the verification process for such entity customers in order to provide additional tracking of money laundering and terrorist financing. However, there are flaws within the current proposal. While the overall goals of the proposal are laudable, we are concerned that in their current form, the proposed rules will not achieve the desired outcome.. The MCUL is also concerned with the proposed expansion of "beneficial ownership" requirements as they would result in additional time as well as increased compliance and operational costs.

### Beneficial Ownership

FinCEN proposes a new requirement that financial institutions identify the natural persons who are beneficial owners of legal entity customers. The definition of beneficial owner proposed requires that the person(s) identified as beneficial owner be a natural person (as opposed to another legal entity). To satisfy this requirement FinCEN is proposing legal entity customers complete a certification form found under Appendix A of the proposal. The proposed certification form would be required to be completed by the person opening the account on behalf of the "legal entity customer" to help identify the "beneficial owners."

FinCEN has proposed the definition of “beneficial owner” 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.”

The “ownership” and “control” prongs are necessary and understandable in order to properly identify those individuals presenting themselves to open an account on behalf of a legal entity. However, when ownership is layered within an entity, identifying beneficial owners may be difficult. As such, the number of individuals that may meet the definition of “beneficial owner” could vary. Under the ownership test a number of individuals may need to be identified, while under the control test, one individual must be identified.

Credit unions that open accounts for legal entities require a significant amount of documentation prior to opening an account. It is a common practice for credit unions to run the individual(s) that are opening an account through their entire member identification process in accordance with the USA Patriot Act. This is coupled with obtaining signatures for all individuals authorized to conduct business on behalf of the entity. Credit unions in Michigan also access the State of Michigan’s database to verify legal entities registered to do business in the State of Michigan. The database provides the name(s) of individuals who own and have registered and established the EIN/TIN number for the legal entity. To ask credit unions to complete yet another form, particularly when the information requested may not be available, would add undue burden on credit unions.

The MCUL believes the proposed definition for “beneficial owners” of legal entities is too broad. The potential level of complexity that credit unions will have to work through with their members to attempt to determine ownership structures, and to obtain the relevant documents to identify and verify this information, will challenge credit unions, and in particular smaller institutions. While supportive of a model form, we encourage the agency to look into ways to minimize the number of individuals that must be identified and should also consider narrower definitions for both prongs. In addition, because of challenges with identifying the proper individual under a very broad definition, the agency should also consider removing or modifying the second prong.

### Existing Accounts

Given the complexity of certain legal entities it would cause an additional burden to credit unions to validate and obtain “beneficial owner” information on all existing accounts for which a relationship is established. As previously discussed, credit unions obtain the identification and conduct due diligence verification on those individuals presenting to open an account for a legal entity. Credit unions, especially smaller credit unions that do not have the internal resources to perform this, would be faced with significant costs, staff time and resources to accomplish this.

## Certification Form

The MCUL is generally supportive of a model form as this assists credit unions in determining what type of information they are to collect. However, this will require institutions, which may not have the sophistication or resources, to conduct CDD and determine beneficial ownership when they are simply not equipped to do so. As a result they may not be able to service their membership and be faced with potential restricted growth.

The proposed regulation does not indicate who should sign the certification beyond; “the person opening the account.” That is, it does not suggest that the person must be an owner, member, partner, officer or even an employee of the entity. Moreover, the attestation clause indicates only that the signatory is making a statement “to the best of my knowledge.”

U.S. taxpayers opening interest bearing bank accounts must certify the accuracy of their taxpayer identification number “under penalties of perjury.” (The IRS even has rules about who can certify the TIN on behalf of an entity.) This certification looks frivolous in comparison.

The majority of credit unions request a resolution adopted by the entity’s governing body; i.e. its board of directors, partners, members, etc. to assist them in verifying who is responsible for the accuracy of the information provided. The casual nature of a form that can be filled out and signed by a functionary with no specific responsibilities does not make much of an impression

If this type of certification form is adopted in the final rule, the MCUL encourages FinCEN to realign the time frames under which the certification should be obtained from “at the time of account opening” to that of the existing CIP regulation, to state “prior to opening the account” and “within a reasonable time after opening the account” as these are commonly understood among financial institutions. Either of these terms should be applied instead of the ambiguous term contained within the proposal.

## Exemptions

The MCUL is supportive of 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, and 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.

## Additional Areas of Concern

As discussed throughout this letter, the MCUL has heard from credit unions about their concerns with the increased costs to monitor for potential changes to “beneficial owners” identified at account opening, or thereafter. Many credit unions do not have the capacity to update the “beneficial ownership” information periodically. Depending on the size and complexity of the credit union and its membership base as well as the number of legal entity

accounts credit unions would potentially need to hire additional full time equivalents (FTEs) to satisfy the monitoring and updating of the beneficial ownership of such accounts.

Another concern the MCUL seeks clarification on is the effect on OFAC screening of said “beneficial owners.” FinCEN should clarify how the names of the “beneficial owners” should be handled for OFAC screening purposes as well as provide guidance to aid 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.” The MCUL and CUNA share similar concerns that this information could potentially be more accessible to persons other than the beneficial owner (especially if the beneficial owner is not directly opening the account), raising privacy issues. FinCEN should fully consider how the new information collection could impact member and customer confidentiality, privacy, fiduciary, information security, and other legal protections or responsibilities.

### Delayed Effective Date

The MCUL urges FinCEN to provide a delayed effective date at least 18 months from the issuance of the final rule to provide adequate time for financial institutions to incorporate the new “beneficial ownership” requirements into their BSA/AML program and to modify their account opening processes. Credit unions and other financial institutions have to increase staffing and training resources, and make other compliance, software and system changes in order to meet the changes of this proposal.

A delay in the effective date would be especially beneficial to those smaller credit unions that are already struggling to comply with numerous existing and upcoming regulatory requirements by the various agencies such as the NCUA and the CFPB. In addition, some credit unions will need additional time to determine whether they have the capacity to offer certain types of legal entity accounts if the proposal is enacted in its current form.

### Conclusion

While the MCUL is supportive of FinCEN’s efforts to strengthen methods of identifying terrorist financing and money laundering, we urge FinCEN to evaluate the burden the proposal would have on smaller institutions. Additionally, the MCUL urges FinCEN to continue to engage and coordinate with the NCUA and other federal and state financial institution regulators and law enforcement authorities to minimize regulatory burden but still obtain pertinent information to aid in any investigation as done with SAR filings.

The MCUL also questions why the proposed rule does not extend to check cashing facilities. FinCEN should continue to strengthen the BSA/AML rules, including CDD, on financial services entities that are not financial institutions. Credit unions rank among the most heavily regulated entities with specific requirements that must be adhered to under FinCEN’s regulations, and consistency in application to other providers may very well be appropriate for FinCEN’s overall goals.

The MCUL respectfully asks FinCEN to consider our comments in developing a final rule to enhance customer due diligence requirements. We understand the importance of such rules but wish to assist credit unions in alleviating undue regulatory burden.

Sincerely,

A handwritten signature in black ink, appearing to be 'K.R.', written in a cursive style.

Ken Ross  
Executive Vice President & Chief Operating Officer