



Law Enforcement can Follow the Money thanks to the Fifth Pillar of the Final CDD Rule

Under the Bank Secrecy Act (BSA), the Financial Crimes Enforcement Network (FinCEN) issued a “Fifth Pillar” of the Final Customer Due Diligence (CDD) Rule on May 2016. The covered financial institutions (Banks; Brokers or Dealers in securities; Mutual Funds; and Futures Commission Merchants and introducing Brokers in Commodities) must comply with these rules by May 11, 2018.

The fifth pillar of the Final CDD Rule requires legal entities opening new accounts at covered financial institutions to disclose and verify identification of the entity’s beneficial owner. The definition of beneficial owner consists of both ownership and control prongs. The ownership prong is each individual who, directly or indirectly, owns 25 percent or more of the equity interests of a legal entity. The control prong is a single individual with responsibility to control, manage or direct a legal entity customer. This includes the CEO, CFO, COO, a managing member, a general partner a VP or a Treasurer or any other individual who regularly performs similar functions.

A global perception has been that the U.S. lacks regulatory requirements transparency at the State level through not collecting beneficial ownership information during company formation. The lack of transparency and the use of shell companies by criminal organizations to launder illicit proceeds has been a long standing concern of law enforcement. Lax company formation requirements at the State level have signaled the U.S. as a safe haven destination.

In its quest to enhance transparency and help safeguard the financial system against illicit use, FinCEN states that the Final CDD rule serves many purposes by:

- (i) enhancing the availability of beneficial ownership information to law enforcement, Federal functional regulators, and Self-Regulatory Organizations (SROs);
- (ii) increasing the ability of financial institutions, law enforcement, and the intelligence community to identify the assets and accounts of terrorist organizations, drug kingpins, and financial criminals;
- (iii) helping financial institutions to assess and mitigate risk and comply with existing BSA and related authorities;
- (iv) facilitating reporting and investigations in support of tax compliance, and advancing commitments made in connection with the Foreign Account Tax Compliance Act; and

- (v) promoting consistency in implementing and enforcing CDD regulatory expectations across and within financial sectors.

Before the CDD Final rule, law enforcement had to allocate resources to search for beneficial ownership information. Having beneficial ownership information accessible to law enforcement assists Agencies with aligning their efforts efficiently and increases the rate at which investigations result in prosecutions.

Law enforcement will be able to:

- Reduce search costs. Beneficial ownership information will be provided by covered financial institutions. The information will be accessible to law enforcement through a subpoena process.
- Have access to Suspicious Activity Reports (SARs) and Currency Transaction Reports (CTRs) filed by covered financial institutions which include beneficial ownership information.
- Use erroneous beneficial financial information as a proof of guilt when it is submitted at account opening.
- Benefit from deterrence factors as it becomes more challenging to maintain anonymity during account opening due to the collection and verification requirement.
- Follow the financial trails of transactions such as cross-border wire transfers for no evident reason.
- Examine financial activity changes in an account without explanation to the covered financial institution.
- Obtain key details about suspected criminals who use legal structures to conceal illicit activity and assets.
- Have access to identification information such as name, date of birth, and Social Security number.

The inclusion of law enforcement in FinCEN's Final rule allows law enforcement to identify the assets and accounts of terrorist organizations, corrupt actors, money launderers, drug kingpins, proliferators of weapons of mass destruction, and other national security threats. As corporate entities become more transparent they become less attractive to criminals and those who assist them.

Don't be a victim of your own making. Financial Institutions are required to comply with the Final CDD Rule and disclose beneficial owners - the true owners of assets. Law enforcement will rely on the information collected by Financial Institutions. Providing inaccurate information demonstrates unlawful intent.