



SINCE 1902

CONFERENCE OF STATE BANK SUPERVISORS

October 3, 2014

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

Re: Customer Due Diligence Requirements for Financial Institutions
RIN 1506-AB25

To Whom It May Concern:

The Conference of State Bank Supervisors welcomes the opportunity to comment on the Financial Crimes Enforcement Network's (FinCEN) notice of proposed rulemaking (NPRM) on explicit customer due diligence requirements for covered financial institutions.¹ State regulatory agencies license and regulate a diverse supervisory portfolio that includes banks, credit unions, money services businesses, and other non-depositories (State Regulated Entities) that are required to comply with the Bank Secrecy Act (BSA) and associated regulations.

Current customer identification program (CIP) requirements for State Regulated Entities are risk-based and include procedures to identify and verify customers. The NPRM proposes new requirements to identify beneficial owners of covered financial institution customers. Additionally, it attempts to clarify expectations on understanding the nature and purpose of customer relationships and conducting ongoing monitoring to maintain and update customer information.

State regulators are concerned that the additional requirements and clarified expectations imposed on the covered financial institutions could impose additional cost burden, increased regulatory scrutiny, and exacerbate the growing trend of non-depository account closures.

The NPRM proposes a two prong approach for defining beneficial owners that includes identifying both ownership and control. Additionally, covered financial institutions will be required to identify and verify the "status" of the person identified as the beneficial owner. In this respect, the requirements in the proposed rule would be inconsistent with existing CIP requirements, given that CIP must include procedures to verify identity. Further, the NPRM states that FinCEN does not intend to require the verification of the "status" of beneficial ownership, but does not define "status." We are uncertain whether these inconsistencies are intentional or an oversight. Regardless, the inconsistency would create an uncertain regulatory environment, and at a minimum, FinCEN should further define the term "status."

¹ Covered financials are defined in the NPRM as banks, brokers or dealers in securities, mutual funds, and futures commission merchants and introducing brokers in commodities.

Additionally, there is a proposed certification form that is recommended for covered financial institutions to incorporate into account opening processes. The NPRM should provide for additional time or alternative methods to incorporate the new requirements into existing systems. Without such flexibility, covered financial institutions may incur higher than necessary compliance costs.

The NPRM proposes to clarify the requirements for a covered financial institution to understand the nature and purpose of customer relationships, conduct ongoing monitoring to maintain and update customer information, and identify and report suspicious activity. State regulators agree that a covered financial institution should understand the nature and purpose of customer relationships and monitor these accounts.

We are observing cases where non-depository customers are designated as higher risk and that designation leads to the loss of the customer's account relationships. We are concerned that the proposal will exacerbate the inappropriate loss of customer account relationships.

Additionally, the expectation for ongoing monitoring may result in a heightened responsibility for banks to assess a customer's customer due diligence program. Guidance issued in 2005 was created to provide banking organizations with flexibility in banking certain financial services providers.² However, state regulators are concerned that the requirements in the NPRM reverses this flexibility and exposes covered financial institutions to even greater regulatory risk.

Most non-depository financial services providers are licensed and supervised by state regulatory agencies and are required to implement Anti-Money Laundering (AML) programs, comply with BSA requirements, and file reports and maintain records. State regulators are concerned that the NPRM will codify regulatory expectations for depositories that are not only costly, but are also duplicative of existing state regulatory requirements.³

FinCEN's proposal has the potential to create significant burden for covered financial institutions and potentially have a disproportionate impact on smaller depository institutions. In addition, state regulators are concerned that banks are being pushed towards severing their relationships with non-depository entities due to customers being designated as higher risk and heightened costs of compliance. State regulators have a unique perspective on the factors that foster business while also ensuring effective supervision, including BSA/AML compliance. Rather than impose costly and unclear requirements on depository institutions, state regulators encourage FinCEN to continue to work with the state regulatory agencies to assist in improving BSA/AML compliance of non-depository institutions.

² 2005 Interagency Interpretative Guidance on Providing Banking Services to Money Services Businesses Operating in the United States.

³ In the spring of 2012, the Nationwide Multi-State Licensing System (NMLS) was expanded to accommodate other financial services providers, such as money transmitters, consumer finance lenders, and debt collectors regulated at the state level. Currently, 31 state agencies use NMLS to register non-depository financial services industries other than mortgage, including 27 states using NMLS to license money transmitters. Licensing information on NMLS is publicly available on NMLS Consumer Access where license status and state regulatory action information can be searched for all individuals and companies licensed on NMLS.

We thank you for the opportunity to comment on the NPRM on explicit customer due diligence requirements for covered financial institutions.

Sincerely,

A handwritten signature in black ink, appearing to read "John W. Ryan". The signature is fluid and cursive, with a prominent initial "J" and a long, sweeping underline.

John W. Ryan
President & CEO