



Financial Services Management

Beneficial-Ownership Reporting and System Standards

Cite

Financial Crimes Enforcement Network (FinCEN), Advance Notice of Proposed Rulemaking (ANPR), Beneficial Ownership Information Reporting Requirements

Recommended Distribution

AML, Compliance, Risk Management, Audit/Examination, Legal, Government Relations

Website

<https://www.federalregister.gov/documents/2021/04/05/2021-06922/beneficial-ownership-information-reporting-requirements>

Impact Assessment

- FinCEN is contemplating a wide range of standards that could provide extensive KYC information to financial institutions, law enforcement, and regulators.
- Compliance with AML and related standards will be considerably facilitated, enhancing enforcement and providing information that could reduce de-risking.

Overview

Following enactment late last year of legislation establishing Federal standards for the disclosure of corporate beneficial-ownership information designed to prevent shell companies from evading anti-money laundering (AML) and related law,¹ FinCEN has begun to implement these new disclosures and its own actions related to storing and disclosing them. Mindful of Congress' instructions to minimize burden and enhance efficiency, FinCEN's approach nonetheless appears intended to ensure its own objectives – expansive and current beneficial-ownership information – are achieved. Financial institutions will thus find this system of considerable assistance, perhaps not only with direct benefit to AML compliance, but also in other arenas where accurate beneficial-ownership information is also essential.

¹ See **AML133**, *Financial Services Management*, January 12, 2021.

Impact

B Banks and other regulated U.S. financial institutions subject to the Bank Secrecy Act (BSA) and related laws have long agreed with U.S. and global AML agencies that beneficial-ownership information is a crucial tool in the fight against illicit and terrorist finance. The U.S. has been a laggard on this front in large part because several states and Native American tribes allow companies – sometimes called shells – to obtain charters that then permit far-flung operations with little, if any, information on who benefits from company earnings. Many of these shells are established for tax-reduction or even -evasion reasons, but they also permit an array of other criminal activities that pose many risks.

Banks and regulated companies in the U.S. are often caught in the middle between regulators and these companies because of know-your-customer (KYC) and customer due-diligence (CDD) requirements mandating that they obtain the beneficial-ownership information that facilitates law enforcement via the suspicious activity reports (SARs) and other filings required of them.² When beneficial-ownership information is not available or cannot be reliably verified, banks often cease doing business with such entities, leading to “de-risking” of customers who, with more information readily on hand, might well be profitable and generate economic growth.

An additional factor behind the new beneficial-ownership requirements affects the extent to which law enforcement can obtain this information. Even if banks have it, their files are not easily accessible by law enforcement. As FinCEN notes, this opacity further inhibits law enforcement, especially in smaller cases where extensive data investigations may not be warranted. Sometimes, seemingly small cases may raise large illicit-finance or terrorism risks, risks the new system is intended to reduce by greater transparency under tight disclosure controls.

What's Next

FinCEN issued this ANPR on April 1; comment is due May 5. While only the rules addressing reporting requirements must be issued by January 1, 2022, FinCEN seeks comment on when to issue standards for related database use-and-maintenance disclosure requirements. It promises a “reasonable time” will be allowed for implementation. Rules related directly to bank CDD standards will be the subject of a separate rulemaking for which no timing information is provided.

Analysis

As noted, this ANPR covers the new law’s reporting requirements and FinCEN’s procedures related to them. Specific CDD issues will be separately addressed, but FinCEN notes that these reporting and systems requirements may affect CDD, noting that comment on them may thus also be appropriate here. Questions address:

² See LAUNDER121, *Financial Services Management*, May 31, 2016.

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- An array of definitions that, as finalized, will govern the scope of requisite filings and related requirements;
 - The content of required reporting, including with regard to parents, affiliates, intermediaries, and other related parties;
 - Filing methodology;
 - The types of filings and certifications to be required of otherwise-exempt investment vehicles;
 - How FinCEN identifiers should be structured and governed;
 - The scope of the statutory safe harbor;
 - How reporting accuracy may be ensured and enforced;
 - The manner in which FinCEN should disclose filings to state, local and tribal law enforcement and to federal functional regulators of covered financial institutions; and;
 - How best to make filings available to financial institutions subject to CDD requirements. Questions here address issues such as the extent to which beneficial-ownership information could be used by these institutions for other purposes, whether filing companies could pre-authorize financial-institution access, and the timing by which FinCEN should require itself to provide needed information. Questions also address how FinCEN should provide updated information to financial institutions and how FinCEN can make all of these processes efficient.