Beneficial Ownership Rule –
Will You Be Ready???
True or False

- Accounts opened prior to the rule effective date of May 2018 are exempt from the regulation.
True or False

● Violation of the beneficial ownership rule could be a pillar violation and subject the institution to fines and to a possible consent order.
Pillars of the BSA

- Designation of BSA Officer
- Training
- Internal Controls
- Independent review
- Beneficial Ownership as part of Customer Due Diligence
Beneficial Ownership Rule

- The US is part of FATF – The Financial Action Task Force Committee
  - The FATF identifies jurisdictions with strategic deficiencies in their frameworks to combat money laundering and the financing of terrorism and proliferation.
  - The US has been deficient in not obtaining beneficial ownership on related entities.
Beneficial Ownership Rule

- Final rule published on May 11, 2016.
- Mandatory compliance effective May 11, 2018.
The final rule creates section 31 CFR 1010.230, to address the new beneficial owner requirement in the Code of Federal Regulations (CFR) and makes adjustments to the Anti-Money Laundering program requirements for financial institutions regulated by a Federal functional regulator (banks, savings associations, credit unions) found in 31 CFR 1020.210.
Beneficial Ownership Rule

The main goals of obtaining beneficial owner information are to:

- Know the member’s source of wealth (income/revenue);
- Know who you’re doing business with;
- Determine if there is any reputation risk; and,
- Check if they are on any government or sanctions list (OFAC, PEP, etc.).
Beneficial Ownership Rule Requirements

- Written procedures reasonably designed to identify and verify the beneficial owners of legal entities
- Risk-based procedures for conducting ongoing CDD to understand the nature and purpose of member relationships
  - This includes conducting ongoing monitoring to identify and report suspicious transactions and to maintain and update member information
Beneficial Ownership Rule – Key Elements

- Identifying and verifying the identity of Credit Union members.
- Identifying and verifying the identity of beneficial owners with 25% or more equity interest of the Credit Union’s legal entity members.
- Understanding nature and purpose of member relationships.
- Conducting ongoing monitoring to maintain and update member information & to identify & report suspicious transactions.
Beneficial Ownership Rule

- Affects corporations, LLCs, partnerships
- It will be a legal requirement to obtain additional information on beneficial owners
- Failure to comply would be a violation
Beneficial Ownership Rule

- Covered financial institutions must collect and verify the beneficial ownership information of each person who meets the definition under the ownership prong, and of one person under the control prong.

- A legal entity will have a total of between one and five beneficial owners (i.e., one person under the control prong and zero to four persons under the ownership prong).
Beneficial Ownership Rule

**Ownership Prong**
- Would apply to any natural person that has 25% or more equity interest in an entity
- There can be no more than four beneficial owners

**Control Prong**
- Any natural person that has significant responsibility in the control, management, or direction of the entity, such as the CEO, CFO, President, Managing Partner
- There can be only one listed
Ownership Prong

- Defined as each individual who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25% or more of the equity interests of a legal entity.

- FinCEN expects that Credit Unions will generally be able to rely on the representations of the member when it identifies its beneficial owners.
Ownership Prong

- FinCEN does not expect Credit Unions to “affirmatively investigate” whether equity holders are attempting to structure their holdings to evade the 25% threshold for reporting.

- However, FinCEN expects that if a Credit Union knows, suspects, or has reason to suspect that such behavior is occurring, it may, depending on the circumstances, be required to file a SAR.
Ownership Prong

- FinCEN confirmed that Credit Unions are required only to verify the *identity* of the individual identified as a beneficial owner (*i.e.*, to verify the individual’s existence), and not his or her *status* as a beneficial owner.
Control Prong

- Defined as a single individual with significant responsibility to control, manage, or direct a legal entity.
- FinCEN stated “the control prong provides for a straightforward test: the legal entity must provide identifying information for one person with significant managerial control.”
Beneficial Ownership

- FinCEN recognized that, under the ownership prong, depending on the factual circumstances, as few as zero and as many as four individuals may need to be identified.
- All entities, however, would be required to identify one beneficial owner under the control prong.
- It is possible that in some circumstances the same person or persons might be identified under both the ownership and the control prongs.
Existing members are exempt from the rule, unless they open an additional business account relationship covered by the rule, in which case beneficial ownership information must be obtained.
Beneficial Ownership Rule

- FinCEN specifically states exemptions do not apply if accounts are transaction accounts through which a legal entity can make payments to, or receive payments from, third parties.
- With respect to agents, the rule does not specifically mention them, but the expectation is that financial institutions don’t have to dig through multiple layers of ownership.
Beneficial Ownership Rule

Excluded are:

- Those that are already exempt from CIP (i.e. federally regulated financial institutions; listed Phase I entities)
- Natural persons opening an account on their own behalf
- Investment companies or advisors
- Securities exchange and clearinghouses
- Commodities operators, advisors or dealers
- Public accounting firms
Beneficial Ownership Rule

Excluded (continued):

• Attorney escrows and client trust escrows (i.e. Premium Trust Accounts)
• Private label credit card accounts
• Certain special use accounts such as postage accounts
• Insurance companies regulated by the State
• Finance or purchase of leasing equipment
Beneficial Ownership Rule

● Excluded (continued):
  • Trusts (other than statutory trusts created by a filing with a Secretary of State or similar office)
Beneficial Ownership Rule Special Circumstances

- If a trust owns directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, 25% or more of the equity interests of a legal entity, the beneficial owner for purposes of the ownership prong shall mean the trustee.

- The Final Rule also specifies that where one of the entities holding 25% or more of the equity interests of a legal entity is itself excluded from the definition of a “legal entity customer,” no individual need be identified under the control prong.
The following are subject only to the Control prong of the beneficial ownership requirement. No individual need be identified under the control prong.

- A pooled investment vehicle that is operated or advised by a financial institution that is not excluded from the definition of “legal entity customer”.
- Any legal entity that is established as a nonprofit corporation or similar entity and has filed its organizational documents with the appropriate State authority as necessary.
Beneficial Ownership Certification

- Beneficial owners must have the four requirements of CIP:
  - Name
  - address
  - date of birth and
  - social security number

In addition, that information must be verified – generally with a government issued ID.
Beneficial Ownership Certification

- A Certification Form may be signed by the individual opening the account, at the time of account opening or the Credit Union may use other means to comply with the requirements of the rule or items listed on the Certification Form.

- CIP must be performed on all beneficial owners; however, you may rely on copies of identity documents.
II. CERTIFICATION OF BENEFICIAL OWNER(S)

Persons opening an account on behalf of a legal entity must provide the following information:

a. Name of Person Opening Account:

b. Name of Legal Entity for Which the Account is Being Opened:

c. The following information for each individual, if any, who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25 percent or more of the equity interests of the legal entity listed above:

   (If no individual meets this definition, please write “Not Applicable.”)
Beneficial Ownership Certification

(If no individual meets this definition, please write “Not Applicable.”)

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<tr>
<th>Name</th>
<th>Date of Birth</th>
<th>Address</th>
<th>For U.S. Persons: Social Security Number</th>
<th>For Foreign Persons: Passport Number and Country of Issuance, or other similar identification number</th>
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d. The following information for one individual with significant responsibility for managing the legal entity listed above, such as:
   
   - An executive officer or senior manager (e.g., Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, Treasurer); or
   
   - Any other individual who regularly performs similar functions.

   (If appropriate, an individual listed under section (c) above may also be listed in this section (d)).
# Beneficial Ownership Certification

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Beneficial Ownership Certification

I, ________________ (name of person opening account), hereby certify, to the best of my knowledge, that the information provided above is complete and correct.

Signature: ___________________________________________ Date: ______________

1 In lieu of a passport number, foreign persons may also provide an alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.
Beneficial Ownership Recordkeeping

● At a minimum, the Credit Union must retain the following:

  • For identification, any identifying information obtained by the Credit Union, including without limitation the certification (if obtained).

  • For verification, a description of any document relied on (noting the type, any identification number, place of issuance and, if any, date of issuance and expiration), of any non-documentary methods and the results of any measures undertaken, and of the resolution of each substantive discrepancy.
Beneficial Ownership Recordkeeping

- Retain the records made for five years after the date the account is closed (identification records) and after the record is made (verification records).
CDD Programs

• Required to implement and maintain appropriate risk-based procedures for conducting ongoing customer due diligence, to include:
  - understanding the nature and purpose of the member relationships; and
  - conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update member information.
CDD Programs

An effective CDD program should be designed to:

1. Gather information about the member;
2. Assess and mitigate the risks associated with your members (risk profile);
3. Monitor accounts; and,
4. Evaluate activity to determine if it is unusual or suspicious.
Beneficial Ownership Rule Implementation

- Compliance with CIP requirements
- Compliance with the OFAC regulations
- CTR aggregation requirements
- Suspicious activity monitoring requirements
- Must establish risk-based procedures for conducting ongoing due diligence, including member risk profiles – the 5th Pillar
Action Plan

- Update policies:
  - BSA
  - OFAC
  - CIP
  - CDD
  - Risk assessment?
Action Plan

● Update procedures:
  • New account opening
  • OFAC scanning
  • CTR aggregation
  • Suspicious activity monitoring
Action Plan

- Update forms:
  - CDD worksheet
  - Signature card
  - Certification form
Action Plan

● Core system considerations:
  • Number of lines allowed on relationship
  • Relationship code updates
  • CTR aggregation reports
  • Structuring aggregation reports
  • OFAC scans on non account owners
  • Automated surveillance monitoring system parameters
Action Plan

- Training:
  - All employees
  - BOD
  - Members
Questions?