

## Compliance News

### Week One of Our 2019 Supervisory Priority Highlight: Bank Secrecy Act Compliance

Examiners will perform more in-depth reviews of credit unions' Bank Secrecy Act and anti-money laundering policies, procedures and processes to assess compliance with regulatory requirements for customer due diligence and for identifying and verifying beneficial owner(s) of legal entity members. New Customer Due Diligence regulations for Financial Institutions (31 CFR 1010.230) became effective May 11, 2018. Examiners began assessing credit unions' efforts to comply with the new regulations during the second half of 2018.

Your credit union should use the guidelines established in the [BSA Anti-Money Laundering Examination Manual](#) to help ensure you are meeting the minimum examination expectations. There are five pillars associated with a BSA compliance program: Internal Controls, Independent Testing, BSA Compliance Officer, Training of Personnel, & Customer Due Diligence (Beneficial Ownership).

#### Internal Controls

Your program should include policies, procedures, and processes that:

Identify higher-risk banking operations (products, services, customers, entities and geographic locations); provide for periodic updates to the credit union's risk profile, and provide for a BSA/AML compliance program tailored to manage risks.

Inform the board of directors and senior management of compliance initiatives, identified compliance deficiencies, SARs filed and corrective action taken.

Identify a person or persons responsible for BSA/AML compliance.

Provide for program continuity despite changes in management or employee composition or structure.

Meet all regulatory requirements, meet recommendations for BSA/AML compliance, and provide for timely updates to implement changes in regulations.

Implement risk-based CDD policies, procedures and processes.

Identify reportable transactions and accurately file all required reports, including SARs, CTRs and CTR exemptions. (Credit unions should consider centralizing the review and report-filing functions within the organization.)

Provide for dual controls and the segregation of duties to the extent possible. For example, employees who complete the reporting forms (such as SARs,



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## Compliance Video

### Compliance Connection Video

[In this video](#), League InfoSight CEO Glory LeDu talks about the highlights from the 4th Quarter of 2018 and the 1st Quarter of 2019.

When S.2155, the Economic Growth, Regulatory Relief, and Consumer Protection Act, passed in 2018 there was a lot to understand! Glory LeDu, League InfoSight CEO, provides [Part 1 in this short video](#) to break it down for you.

Compliance videos can be found on YouTube at the [Compliance Connection](#) channel, where they are generally updated quarterly.

## Compliance Calendar

**February 2019**

**February 18th**

CTRs, and CTR exemptions) generally should not also be responsible for the decision to file the reports or grant the exemptions.

Provide sufficient controls and monitoring systems for the timely detection and reporting of suspicious activity.

Provide for adequate supervision of employees who handle currency transactions, complete reports, grant exemptions, monitor for suspicious activity or engage in any other activity covered by the BSA and its implementing regulations.

Train employees to be aware of their responsibilities under the BSA regulations and internal policy guidelines.

Incorporate BSA compliance into job descriptions and performance evaluations of appropriate personnel.

Your internal responsibilities should be clear and procedures should adhere to secure standards. Pay close attention to dual control requirements and segregation of duties. Mandated reporting is a key factor of AML regulations; ensure that if your system cannot generate the reports needed to manage your program, you have adequately trained your staff to manage accordingly. Record keeping, documentation and retention are also critical functions.

#### *Independent Testing*

A common principle of risk management is to include an independent third party not involved with the credit union's BSA/AML compliance staff to review your program periodically. It is your responsibility to evaluate the qualification of the third party performing the testing to assess whether you can rely on their findings and conclusions. Your testing should be comprehensive, accurate, adequate and timely. There are several components that the testing should address; click [here](#) to see those in more detail.

#### *BSA Compliance Officer*

Make sure that your board of directors designates a BSA/AML compliance officer. This person should be knowledgeable in BSA/AML regulations and have the ability, training and resources to manage your program. Your compliance area should be staffed sufficiently based on overall risk, size and compliance needs. Make sure your appointee has no conflict of interest with this position and that staff is given adequate time to execute the demands of your program.

#### *Training*

Your employees should be trained in appropriate parts of the BSA/AML program. In general, the anti-money laundering responsibility of the organization should be communicated to every employee, and those people whose jobs place them in a specific risk category should be aware of how mandated reporting and responsibilities apply. This training should be reviewed periodically, especially as employees change positions.

The Compliance Officer should be fully trained and given frequent opportunities for refreshers. Senior management should receive enough training to model a "culture of compliance" and understand the importance of the internal reviews, audits, and compliance reports they receive. All training should be documented and retained for verification purposes.

#### Presidents Day

[Click here for upcoming compliance dates.](#)

#### Compliance Training

**January 22, 2019**

[Successful Skip Tracing Techniques for Locating Borrowers & Recovering Collateral](#)

**3:00 pm - 4:30 pm ET**

**January 23, 2019**

[Determining Cash Flow from Personal Tax Returns After 2018 Tax Reform Part 1: Schedules A, B & C](#)

**3:00 pm - 4:30 pm ET**

**January 24, 2019**

[2018 HMDA Submission Due March 1, 2019, Part 2: Requirements, Clearing Edits, Exempt Fields & More](#)

**3:00 pm - 4:30 pm ET**

**January 29, 2019**

[Real Estate Loan Collection Rules for Lenders & Mortgage Servicers](#)

**3:00 pm - 4:30 pm ET**

**January 30, 2019**

[Credit Analysis & Underwriting Series: Analyzing Financial Statements for the Credit Analyst](#)

**3:00 pm - 4:30 pm ET**

**January 31, 2019**

[Teller Training Series: Frontline Fraud Prevention: Stopping Fraud at the Teller Line](#)

**February 5, 2019**

[Right of Setoff on Deposit Accounts & Loans: Legal Issues](#)

**3:00 pm - 4:30 pm ET**

**February 6, 2019**

[C-Suite Series: CAMELS Rating for Executives](#)

**3:00 pm - 4:30 pm ET**

**February 7, 2019**

## *Customer Due Diligence (Beneficial Ownership)*

In [May 2018](#), new member due diligence and beneficial ownership requirements became effective. Some credit unions are still confused about the expectations surrounding beneficial ownership and think that it is not applicable to their credit union because they do not "open" business accounts. Even though your credit union does not advertise business accounts, there may be times when one is opened as a favor to a member, or is an old account left on the books from years back. Either way, these accounts need to be managed accordingly.

A credit union cannot have a strong BSA compliance program without risk-based customer due diligence policies, procedures, and processes for all members, even more so for those that present a higher risk for money laundering and terrorist financing. The objective of CDD is for the credit union to understand the nature and purpose of member relationships, which includes understanding the types of transactions your members are likely to engage in. This process aids in helping to determine when transactions may be suspicious.

At a minimum, you must establish risk-based CDD procedures that:

Provide an understanding of the nature and purpose of the member relationship in order to develop a customer risk profile.

Enable you to conduct ongoing monitoring for the purpose of identifying and reporting suspicious transactions and, on a risk basis, to maintain and update member information, including information regarding the beneficial owner(s) of legal entity customers.

In addition, the credit union's risk-based CDD policies, procedures, and processes should:

Be commensurate with your BSA/AML risk profile, with increased focus on higher-risk members.

Contain a clear statement of management's and staff's responsibilities, including procedures, authority and responsibility for reviewing and approving changes to a member's risk profile, as applicable.

Provide standards for conducting and documenting analysis associated with the due diligence process, including guidance for resolving issues when insufficient or inaccurate information is obtained.

Under the Beneficial Ownership Rule, your credit union must establish and maintain written procedures that are reasonably designed to identify and verify beneficial owner(s) of legal entity customers and to include such procedures in its anti-money laundering compliance program.

Legal entities can be used to facilitate money laundering and other crimes because their true ownership can be concealed. The collection of beneficial ownership information about legal entity members can provide law enforcement with key details about suspected criminals who use legal entity structures to conceal their illicit activity and assets. Requiring legal entities to disclose identifying information, such as the name, date of birth, and Social Security number of natural persons who own or control them, will make such entities more transparent and thus less attractive to criminals and those who assist them.

[ACH Specialist Series: ACH Tax Refund Exceptions, Posting & Liabilities](#)

**3:00 pm - 4:30 pm ET**

**February 12, 2019**

[Teller Training Series: Risks & Precautions for Endorsements & Other Negotiable Instruments](#)

**3:00 pm - 4:30 pm ET**

**February 13, 2019**

[Board Reporting Series: Board Secretary Procedural & Compliance Responsibilities](#)

**3:00 pm - 4:30 pm ET**

**February 14, 2019**

[Prepaid Cards: Your Credit Union's Responsibilities Under the New Rules, Effective April 1, 2019](#)

**3:00 pm - 4:30 pm ET**

**February 19, 2019**

[Determining Cash Flow from Personal Tax Returns After 2018 Tax Reform Part 2: Schedules D, E & F](#)

**3:00 pm - 4:30 pm ET**

**February 20, 2019**

[Credit Analysis & Underwriting Series: Debt Service Coverage Calculations in Underwriting](#)

**3:00 pm - 4:30 pm ET**

**February 21, 2019**

[The New NIST Digital Identity Guidelines: Impact on Passwords, Security Questions & Account Lockouts](#)

**3:00 pm - 4:30 pm ET**

**February 25, 2019**

[Debit Card Chargebacks: Understanding Visa Claims Resolution](#)

**3:00 pm - 4:30 pm ET**

**February 27, 2019**

[ACH Specialist Series: ACH Dispute Resolution](#)

**3:00 pm - 4:30 pm ET**

**February 28, 2019**

These procedures must contain the elements required for verifying the identity of customers that are individuals under the regulation. You are not required to establish the accuracy of every element of identifying information obtained but must verify enough information to form a reasonable belief that you know the true identity of the beneficial owner(s) of the legal entity. Your credit union's procedure must describe when it uses documentary or non-documentary methods or a combination.

The credit union should also establish policies, procedures and processes for circumstances in which you cannot form a reasonable belief that it knows the true identity of the beneficial owner(s) of a legal entity customer. These policies, procedures and processes should describe:

Circumstances in which the credit union should not open an account.  
The terms under which a member may use an account while the credit union attempts to verify the identity of the beneficial owner(s) of a legal entity.  
When the credit union should close an account, after attempts to verify the identity of the beneficial owner(s) of a legal entity have failed.  
When the credit union should file a SAR in accordance with applicable law and regulation.

Adhering to this rule involves satisfying a two-part test: an ownership test and a control test. First, credit unions must collect information pertaining to individuals who, "directly or indirectly," have at least a 25 percent interest in the equity of the legal entity customer, and secondly, credit unions must collect and verify information for a single individual who has "significant responsibility to control, manage, or direct a legal entity customer," such as a CEO, president, or similar "executive officer or senior manager."

This is particularly important for credit unions engaged in member business lending where the borrower is not a natural person but a business entity like K-Corp, LLC, etc. If the person opening the account owns 25 percent or more of the entity, the credit union must comply with the rule and collect and verify information for this individual. Taking out a new loan is the same as opening a new account, so lenders that are not used to complying with customer identification requirements (CIP) need to also adhere to this rule.

For a list of exclusions and exemptions from the definition of a Legal Entity Customer, click [here](#).

There is no requirement in the rule to update beneficial ownership information on an ongoing or scheduled basis. The requirement is to verify beneficial ownership information with the legal entity member if, through the course of normal monitoring you determine its needed or a triggering event occurs.

Triggering events include:

Auto-renewing CDs

If an existing business account holder makes a change to a loan account

Loan modifications

Loan renewals

Loan extensions

[Flood Insurance Compliance Update & FAQs](#)

**3:00 pm - 4:30 pm ET**

**BSA Training Opportunities through GCUA**

[Click here for details](#)

Some triggering events may require a new beneficial ownership certification - for instance, those events identified through either manual or automated monitoring that are red flags or high-risk events that may warrant a SAR, including:

- Increase in CTR filings for the legal entity or any beneficial owners;
- A filing of a SAR;
- A 314(a) match;
- Law enforcement subpoenas;
- Changes in business ownership;
- Transaction monitoring alerts for unexpected activity;
- Changes in authorized signers.

Your policy should define what your credit union deems as a triggering event. Once defined, ensure your staff is made aware and trained accordingly.

### **Beneficial Ownership Scenarios**

**S1:** Mr. and Mrs. Smith each hold a 50 percent equity interest in the "Mom & Pop, LLC." Mrs. Smith is President of Mom & Pop, LLC and Mr. Smith is its Vice President. Mom & Pop, LLC is required to provide the personal information of both Mr. & Mrs. Smith under the ownership prong. Under the control prong, Mom & Pop, LLC is also required to provide the personal information of one individual with significant responsibility to control Mom & Pop, LLC; this individual could be either Mr. or Mrs. Smith, or a third person who otherwise satisfies the definition.

Thus, in this scenario, Mom & Pop, LLC would be required to identify at least two, but up to three distinct individuals, both Mr. & Mrs. Smith under the ownership prong, or both Mr. & Mrs. Smith under the ownership prong, and a third person with significant responsibility under the control prong.

**S2:** Acme, Inc. is a closely held private corporation. John Roe holds a 35 percent equity stake; no other person holds a 25 percent or higher equity stake. Jane Doe is the President and Chief Executive Officer.

Acme, Inc. is required to provide John Roe's beneficial ownership information under the ownership prong, as well as Jane Doe's (or that of another control person) under the control prong.

**S3:** Quentin, Inc. is owned by the five Quentin siblings, each of whom holds a 20 percent equity stake. Its

Quentin, Inc. is required to provide Benton Quentin's beneficial ownership information under the control prong, but no other beneficial ownership information under the ownership prong, because no sibling has a 25 percent stake or greater.

### **Beneficial Ownership Q&As**

**Q:** Are sole proprietorships formed by spouses or other unincorporated associations considered legal entity customers under the Rule?

**A:** No. Sole proprietorships, individual or spousal and unincorporated associations are not legal entity customers as defined by the Rule, even though such businesses may file with the Secretary of State in order to register a trade name or establish a tax account. This is because neither a sole proprietorship

nor an unincorporated association is a separate legal entity from the associated individual(s), and therefore beneficial ownership is not inherently obscured.

**Q:** It's Girls Scout cookie season again. Are the Girl Scouts of America, Inc. exempt from the new CDD beneficial ownership requirements?

**A:** There has been a lot of confusion surrounding FinCEN's "Scout troop" example in the final rule as noted below:

"FinCEN notes that as a general matter, small local community organizations, such as Scout Troops and youth sports leagues, are unincorporated associations rather than legal entities and therefore not subject to the beneficial ownership requirement." ([Federal Register / Vol.81, No. 91 / Wednesday, May 11, 2016 / page 29416](#))

If a Scout troop opening an account at your credit union meets the definition of "legal entity," then the beneficial ownership requirements do apply:

A legal entity customer is defined as a corporation, limited liability company or other entity that is created by the filing of a public document with a Secretary of State or similar office, a general partnership, and any similar entity formed under the laws of a foreign jurisdiction that opens an account." (31 CFR 1010.230(e)(1))

Since the Girl Scouts of America, Inc. is an incorporated organization, beneficial ownership information will be required.

**Q:** My credit union does not open business accounts. Does this rule apply to us? If, so who is responsible for filling out the form?

**A:** Under the Customer Due Diligence (CDD), rule credit unions are required to identify and verify the beneficial owners of business-type accounts. One way to accomplish this is by using the Beneficial Owner Certification Form.

This form must be completed by the person opening the new account on behalf of a legal entity. It must be a natural person authorized to open the account, it cannot be the entity itself.

Legal entities include:

Corporations  
Limited liability companies (LLC)  
Other entities that are created by filing a public document with a Secretary of State or similar office  
General Partnerships  
Similar entities formed under the laws of a foreign jurisdiction that opens an account.

This requirement does not apply to:

Sole proprietorships  
Trusts other than those that may be created through a state filing  
Unincorporated associations (Scout Troops and youth sports leagues)

## Natural persons opening accounts on their own behalf

This form requires the person opening the account to provide their name and title, as well as the name, address, date of birth and identification number for the "beneficial owners" of the entity.

**Q:** How should the certification form be filled out if there isn't anyone who meets the 25 percent ownership threshold?

**A:** The certification form can be filled out without a beneficial owner who meets the ownership criteria, but there must be at least one beneficial owner who meets the control criteria - CEO, CFO, VP or other member of the senior management team or a person who regularly performs similar functions. Additionally, the credit union is permitted (encouraged if the entity is considered higher-risk) to require a lower ownership threshold.

Additional Resources:

Click [here](#) to access NCUA Letter, Examination Guidance for Bank Secrecy Act Customer Due Diligence and Beneficial Ownership Compliance for additional guidance.

Covered financial institutions may obtain a fillable and non-fillable copy of the optional Certification Form in Appendix A of the CDD Rule at <https://www.fincen.gov/resources/filing-information>.

[FinCEN FAQ's on CDD Requirements for Financial Institutions](#)

### **Federally Non-Compliant State IDs and MIP**

As a result of the REAL ID Act, some states are issuing identification cards that note across the top, for example, "not effective for federal purposes" or "not acceptable for identification purposes." Are these cards acceptable for purposes of your credit union's Member Identification Programs (MIP)?

According to FinCEN, that is going to depend on whether the credit union has included the acceptance of these IDs in its written MIP program. Credit unions may determine, by written policy, the type of IDs it will, or will not, accept based upon the credit union's risk.

The REAL ID Act, passed by Congress in 2005, enacted the 9/11 Commission's recommendation that the Federal Government "set standards for the issuance of sources of identification, such as driver's licenses." The Act established minimum security standards for license issuance and prohibits Federal agencies from accepting non-compliant state issued identification cards for certain purposes. The purposes covered by the Act are: accessing Federal facilities, entering nuclear power plants and boarding federally regulated commercial aircraft. Since the list of purposes does not include the Bank Secrecy Act compliance programs, you are not prohibited from accepting these identification cards.

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### **Your CU Should Know**

#### **Consumer & Community Context - New Fed Series**

The Federal Reserve Board recently [announced](#) the launch of a new article

series, "Consumer & Community Context," that features original analysis about the financial conditions and experiences of consumers and communities, including traditionally underserved and economically vulnerable households and neighborhoods. The [inaugural issue](#) focuses on student loans, and includes articles on the effect that rising student loan debt levels may have on homeownership rates among young adults; and the relationship between the amount of student loan debt and individuals' decisions to live in rural or urban areas.

### **Bureau Adjusts CMPs for Inflation**

The Consumer Financial Protection Bureau has posted an [announcement of a Final Rule](#) adjusting for inflation the maximum amount of each civil penalty within the Bureau's jurisdiction. The inflation adjustments mandated by the Inflation Adjustment Act serve to maintain the deterrent effect of civil penalties and to promote compliance with the law. The [Final Rule](#) will be effective on publication in the Federal Register. The adjustments represent a 2.522 percent increase over the limits published for 2018. The Bureau's CMP limits are found in its "Civil Penalty Adjustments" regulation at 12 CFR Part 1083.

### **CFPB Assessment of ATR/QM and Mortgage Servicing Rules**

The Bureau has [released](#) reports assessing the effectiveness of its [Ability to Repay and Qualified Mortgage Rule](#) and of its [Mortgage Servicing Rule](#).

The Dodd-Frank Act requires the Bureau to conduct an assessment of each significant rule or order adopted by the Bureau and to publish a report of its assessment no later than five years after the effective date of the significant rule or order. The assessment must address, among other relevant factors, the effectiveness of the rule in meeting the purposes and objectives of the Dodd-Frank Act and the specific goals stated by the Bureau in issuing the rule in question. The Bureau expects that the findings in these reports will inform stakeholders, policy makers, and the general public about developments in the mortgage market and the effects of the rules on consumers.

### **Financial Institutions Encouraged to Work with Customers During Shutdown**

The Federal Reserve, FDIC, OCC, NCUA, CFPB and Conference of State Bank Supervisors have issued a [joint press release](#) encouraging financial institutions to work with consumers affected by the federal government shutdown.

### **FRB Services Announces Quality Improvement Initiative**

The [January 15 issue of FED360°](#) introduced a quality improvement initiative for Federal Reserve Check Adjustment Services. The Federal Reserve Banks will charge a quality fee to depositing institutions for quality issues within work deposited with the Federal Reserve Banks. Additionally, the Federal Reserve Banks will charge a quality fee for cases submitted with incorrect or incomplete information that resulted in the prevention of automatic resolution of the request. These quality fees are designed to encourage greater efficiency through proper case submission and improved deposit practices.

A per-item fee of \$0.50 will be charged to a depositing bank when an adjustment case is opened with the Reserve Banks for an item that was either incorrectly encoded or deposited more than once by the same institution. A fee of \$2.50 will be imposed on a financial institution that provides incorrect or incomplete information when opening an adjustment case with the Reserve Banks. The fee is only applicable to adjustment cases that would have resolved automatically



had the case been submitted correctly. The fees apply to items processed on or after January 2, 2019, and any adjustment cases received on or after January 14, 2019.

**Credit Unions Making a Difference**

America's credit unions are embodying their structure and mission to ensure that their members affected by the government shutdown have access to low- or no-interest loans with generous repayment terms. An estimated 800,000 federal employees and their families are facing financial uncertainty because they aren't being paid during the shutdown.

Credit Union National Association (CUNA) is currently collecting information regarding the assistance credit unions across the nation are providing. Some of the furlough assistance programs include:

- Zero percent APR interest for 12 months signature relief loan;
- Pay Disruption Assistance Program with mortgage loan forbearances, loan and credit card payment deferments, and short-term low rate loans;
- Online member portals with special furlough loans;
- Preexisting loan deferred payment opportunities for up to 60 days, and
- Cash advances of up to 90 percent of a federal employee's regular monthly pay.

Credit unions are also helping federal employees who are not yet members have access to these services by welcoming eligible members across the country.

"Credit unions across the country are stepping up to help federal employees and families affected by the government shutdown. Relief programs offering low rates and deferred payments will aid members who are struggling to make ends meet," according to CUNA Chief Advocacy Officer Ryan Donovan. "This is what we mean when we say that credit unions are people helping people."

[Learn more about how credit unions are putting people over profits.](#)

**Pending Regulatory Comment Calls**

For more information regarding these proposals, please follow the links below:

Issues	Comment Period Deadline	Agency	CUNA Staff Contact
<a href="#">Fidelity Bonds</a>	Jan. 22, 2019	NCUA	<a href="#">Mitria Wilson</a>
<a href="#">FHLB Housing Goals Amendment</a>	Jan. 31, 2019	FHFA	<a href="#">Mitria Wilson</a>
<a href="#">Availability of Funds and Collection of Checks (Reg CC)</a>	Feb. 8, 2019	BCFP	<a href="#">Alexander Monterrubio</a>
<a href="#">Policy on No-Action Letters and the BCFP Product Sandbox</a>	Feb. 11, 2019	BCFP	<a href="#">Alexander Monterrubio</a>
<a href="#">Validation and Approval of Credit Score Models</a>	Mar. 21, 2019	BCFP	<a href="#">Mitria Wilson</a>

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The [CUNA Advocacy Update](#) keeps you on top of the most important changes in Washington for credit unions - and what CUNA is doing to monitor, analyze, and influence government agencies and federal law. You can view the current report and past reports from the archive.

Click [here](#) to request to be added to the mailing list for this and/or other GCUA email publications.

### **Bookmark InfoSight**

No need to go through the Georgia Credit Union Affiliates home page to access InfoSight. Simply add the following link to your bookmarks: <http://ga.leagueinfosight.com/>.

Need a BSA, ACH or Website review? Email [compliance@gcu.org](mailto:compliance@gcu.org).