

Private Banking Due Diligence Program (Non-U.S. Persons) — Overview

Objective. *Assess the bank’s compliance with the statutory and regulatory requirements to implement policies, procedures, and controls to detect and report money laundering and suspicious activity through private banking accounts established, administered, or maintained for non-U.S. persons. Refer to the expanded sections of the manual for discussions and examination procedures regarding specific money laundering risks associated with private banking.*

Private banking can be broadly defined as providing personalized financial services to wealthy clients. Section 312 of the USA PATRIOT Act added subsection (i) to 31 USC 5318 of the BSA. This subsection requires each U.S. financial institution that establishes, maintains, administers, or manages a private banking account in the United States for a non-U.S. person to take certain AML measures with respect to these accounts. In particular, a bank must establish appropriate, specific, and, where necessary, EDD policies, procedures, and controls that are reasonably designed to enable the bank to detect and report instances of money laundering through such accounts. In addition, section 312 mandates enhanced scrutiny to detect and, if appropriate, report transactions that may involve proceeds of foreign corruption for private banking accounts that are requested or maintained by or on behalf of a senior foreign political figure or the individual’s immediate family and close associates. On January 4, 2006, FinCEN issued a final regulation (31 CFR 1010.620) to implement the private banking requirements of 31 USC 5318(i).

The overview and examination procedures set forth in this section are intended to evaluate the bank’s due diligence program concerning private banking accounts offered to non-U.S. persons. Additional procedures for specific risk areas of private banking are included in the expanded examination procedures, “Private Banking,” page 278.

Private Banking Accounts

For purposes of 31 CFR 1010.620 a “private banking account” is an account (or any combination of accounts) maintained at a bank that satisfies all three of the following criteria:

- Requires a minimum aggregate deposit of funds or other assets of not less than \$1 million.
- Is established on behalf of or for the benefit of one or more non-U.S. persons who are direct or beneficial owners¹³² of the account.

¹³² “Beneficial owner” of an account means an individual who has a level of control over, or entitlement to, the funds or assets in the account that, as a practical matter, enables the individual, directly or indirectly, to control, manage, or direct the account. The ability to fund the account or the entitlement to the funds of the account alone, however, without any corresponding authority to control, manage, or direct the account (such as in the case of a minor child beneficiary), does not cause the individual to be a beneficial owner (31 CFR 1010.605(a)). [Guidance on Obtaining and Retaining Beneficial Ownership Information](#), was issued by FinCEN, Board of Governors of the Federal Reserve System (Federal Reserve), Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration (NCUA), Office of the Comptroller of the Currency (OCC), Office of Thrift Supervision (OTS), and Securities and Exchange Commission (SEC), in consultation with the U.S.

- Is assigned to, or is administered by, in whole or in part, an officer, employee, or agent of a bank acting as a liaison between a financial institution covered by the regulation and the direct or beneficial owner of the account.

With regard to the minimum deposit requirement, a “private banking account” is an account (or combination of accounts) that *requires* a minimum deposit of not less than \$1 million. A bank may offer a wide range of services that are generically termed private banking, and even if certain (or any combination, or all) of the bank’s private banking services do not *require* a minimum deposit of not less than \$1 million, these relationships should be subject to a greater level of due diligence under the bank’s risk-based BSA/AML compliance program but are not subject to 31 CFR 1010.620. Refer to the expanded overview section, “Private Banking,” page 273, for further guidance.

Due Diligence Program

A bank must establish and maintain a due diligence program that includes policies, procedures, and controls that are reasonably designed to detect and report any known or suspected money laundering or suspicious activity conducted through or involving any private banking account for a non-U.S. person that is established, maintained, administered, or managed in the United States by the bank. The due diligence program must ensure that, at a minimum, the bank takes reasonable steps to do each of the following:

- Ascertain the identity of all nominal and beneficial owners of a private banking account.
- Ascertain whether the nominal or beneficial owner of any private banking account is a senior foreign political figure.
- Ascertain the source(s) of funds deposited into a private banking account and the purpose and expected use of the account.
- Review the activity of the account to ensure that it is consistent with the information obtained about the client’s source of funds, and with the stated purpose and expected use of the account, and to file a SAR, as appropriate, to report any known or suspected money laundering or suspicious activity conducted to, from, or through a private banking account.

Risk Assessment of Private Banking Accounts for Non-U.S. Persons

The nature and extent of due diligence conducted on private banking accounts for non-U.S. persons likely vary for each client depending on the presence of potential risk factors. More extensive due diligence, for example, may be appropriate for new clients; clients who operate in, or whose funds are transmitted from or through, jurisdictions with weak AML controls; and clients whose lines of business are primarily currency-based (e.g., casinos or currency exchangers). Due diligence should also be commensurate with the size of the account. Accounts with relatively more deposits and assets should be subject to greater due diligence. In addition, if the bank at any time learns of information that casts doubt on previous information, further due diligence would be appropriate.

Commodity Futures Trading Commission, in May 2010. The guidance consolidates existing regulatory expectations for obtaining beneficial ownership information for certain accounts and customer relationships.

Ascertaining Source of Funds and Monitoring Account Activity

Banks that provide private banking services generally obtain considerable information about their clients, including the purpose for which the customer establishes the private banking account. This information can establish a baseline for account activity that enables a bank to better detect suspicious activity and to assess situations where additional verification regarding the source of funds may be necessary. Banks are not expected, in the ordinary course of business, to verify the source of every deposit placed into every private banking account. However, banks should monitor deposits and transactions as necessary to ensure that activity is consistent with information that the bank has received about the client's source of funds and with the stated purpose and expected use of the account. Such monitoring facilitates the identification of accounts that warrant additional scrutiny.

Enhanced Scrutiny of Private Banking Accounts for Senior Foreign Political Figures

For the purposes of private banking accounts under 31 CFR 1010.605(p), the regulation defines the term “senior foreign political figure” to include one or more of the following:

- A current or former:
 - Senior official in the executive, legislative, administrative, military, or judicial branches of a foreign government (whether elected or not).
 - Senior official of a major foreign political party.
 - Senior executive of a foreign-government-owned commercial enterprise.¹³³
- A corporation, business, or other entity that has been formed by, or for the benefit of, any such individual.
- An immediate family member (including spouses, parents, siblings, children, and a spouse's parents and siblings) of any such individual.
- A person who is widely and publicly known (or is actually known by the relevant bank) to be a close associate of such individual.

Senior foreign political figures as defined above are often referred to as “politically exposed persons” or PEPs. Refer to the expanded overview section, “Politically Exposed Persons,” page 290, for additional guidance, in particular with respect to due diligence on accounts maintained for PEPs that do not meet the regulatory definition of “private banking account” set forth in 31 CFR 1010.605(m).

For private banking accounts for which a senior foreign political figure is a nominal or beneficial owner, the bank's due diligence program must include enhanced scrutiny that is reasonably designed to detect and report transactions that may involve the proceeds of foreign corruption. The term “proceeds of foreign corruption” means any asset or property that is acquired by, through, or on behalf of a senior foreign political figure through

¹³³ For purposes of this definition, the terms “senior official” or “senior executive” mean an individual with substantial authority over policy, operations, or the use of government-owned resources.

misappropriation, theft, or embezzlement of public funds, the unlawful conversion of property of a foreign government, or through acts of bribery or extortion, and includes any other property into which any such assets have been transformed or converted.¹³⁴ In those cases when a bank files a SAR concerning a transaction that may involve the proceeds of foreign corruption, FinCEN has instructed banks to include the term “foreign corruption” in the narrative portion of the SAR.¹³⁵

Enhanced scrutiny of private banking accounts for senior foreign political figures should be risk-based. Reasonable steps to perform enhanced scrutiny may include consulting publicly available information regarding the home country of the client, contacting branches of the U.S. bank operating in the home country of the client to obtain additional information about the client and the political environment, and conducting greater scrutiny of the client’s employment history and sources of income. For example, funds transfers from a government account to the personal account of a government official with signature authority over the government account may raise a bank’s suspicions of possible political corruption. In addition, if a bank’s review of major news sources indicates that a client may be or is involved in political corruption, the bank should review the client’s account for unusual activity.

Identifying Senior Foreign Political Figures

Banks are required to establish policies, procedures, and controls that include reasonable steps to ascertain the status of an individual as a senior foreign political figure. Procedures should require obtaining information regarding employment and other sources of income, and the bank should seek information directly from the client regarding possible senior foreign political figure status. The bank should also check references, as appropriate, to determine whether the individual holds or has previously held a senior political position or may be a close associate of a senior foreign political figure. In addition, the bank should make reasonable efforts to review public sources of information regarding the client.

Banks applying reasonable due diligence procedures in accordance with 31 CFR 1010.620 may not be able to identify in every case individuals who qualify as senior foreign political figures, and, in particular, their close associates, and thus may not apply enhanced scrutiny to all such accounts. If the bank’s due diligence program is reasonably designed to make this determination, and the bank administers this program effectively, then the bank should generally be able to detect, report, and take appropriate action when suspected money laundering is occurring with respect to these accounts, even in cases when the bank has not been able to identify the accountholder as a senior foreign political figure warranting enhanced scrutiny.

¹³⁴ Additional red flags regarding transactions that may be related to the proceeds of foreign corruption are listed in *Guidance on Enhanced Scrutiny for Transactions That May Involve the Proceeds of Foreign Official Corruption*, issued by the U.S. Treasury, Federal Reserve, FDIC, OCC, OTS, and the U.S. Department of State, January 2001.

¹³⁵ Refer to [Guidance to Financial Institutions on Filing Suspicious Activity Reports regarding the Proceeds of Foreign Corruption](#), FIN-2008-G005, April 17, 2008.

Special Procedures When Due Diligence Cannot Be Performed

A bank's due diligence policies, procedures, and controls established pursuant to 31 CFR 1010.620(a) must include special procedures when appropriate due diligence cannot be performed. These special procedures must include when the bank should:

- Refuse to open the account.
- Suspend transaction activity.
- File a SAR.
- Close the account.