CDD and Beneficial Ownership Update

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IOWA BANKERS ASSOCIATION

Compliance Conference

November 13, 2018

Customer Due Diligence and Beneficial Ownership Update

IOWA BANKERS ASSOCIATION **Compliance Conference**

November 13, 2018

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AML Framework

Program	Applies	Primary purposes
CIP	At onboarding only	Bank to form a reasonable belief it knows a customer's true identity.
CDD	At onboarding and throughout the relationship	Develop the "customer risk profile", determine potentially higher risk customers for EDD, monitor for and report suspicious activity.
EDD	At onboarding when customer identified at "higher risk", and throughout the life of the relationship	More information, documentation, and monitoring. Customer risk profile subject to review and updating. Special attention is given as warranted.

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What is customer due diligence?

Customer Due Diligence

- **FATF 40 Recommendations.**
- **Regulation issued May 11, 2016.**
- **Requires CDD program and beneficial ownership.**
- **Mandatory compliance May 11, 2018.**
- **FAQs issued July 19, 2016 and April 3, 2018.**

CDD is the 5th Pillar

(5) Appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to:

(i) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and

CDD is the 5th Pillar

(ii) Conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information. For purposes of this paragraph (b)(5)(ii),customer information shall include information regarding the beneficial owners of legal entity customers (as defined in §1010.230 of this chapter)*;…*

CDD on consumers

There are three types of consumer account customers subject to Expanded Overview in the BSA/AML Examination Manual. They are:

- **nonresident aliens (NRAs),**
- **politically exposed person (PEPs), and**
- **professional service providers (PSPs) - individuals.**

CDD on fiduciaries

- **Court appointment.**
- **Federal agency appointment.**
- **Self-appointed agent.**

Note: Beneficial ownership is NOT applicable to fiduciaries, except IOLTA and escrow opened by a legal entity.

CDD on commercial customers

- Sole proprietors – NOT a legal entity.
- Partnerships – General, Limited and Limited liability.
- Limited Liability Companies – SMLLC, MMLLC and Series LLC.
- Corporations – For Profit, Non profit, and PC.

CDD on commercial customers

- Is this a current customer?
- Is the business "active" on the SOS website?
- Identify the agent authorized on the resolution to open the account on the account.
- Obtain beneficial ownership – not applicable to sole proprietors, but required for SMLLC.

CDD: Beneficial Ownership

- There are two rounds of FAQs. The April 2018 guidance is the most helpful.
- There are two primary goals: beneficial ownership and customer risk profile.
- Beneficial ownership scope – required <u>each time</u> a new account is opened for a legal entity customer.

CDD: Beneficial Ownership

- CDD FAQ (7/16) – definition of account = CIP definition.
- CIP FAQs (2005) – CD renewal = new account.
- The question of automatically renewing CDs and safe deposit boxes was answered on September 7, 2018.
- Beneficial ownership is not required at renewal, modification or extension in most cases.

CDD: Beneficial Ownership

A bank officer is not permitted to waive the requirement or otherwise allow a loan to be made or a deposit account opened without first obtaining certified beneficial ownership information.

CDD: Beneficial Ownership

- Legal entity = registered with SOS and a general partnership.
- Exclusions and exemptions.
- Beneficial owner defined as individuals.
- Ownership Prong – only if applicable. Not required for non profit entities.
- Control Prong – always required.

CDD: Beneficial Ownership

- Procedures required: Use the "General Instructions" with the customer.
- Do you use a paper form or your system?
- Verify identity. Can you use a copy of an ID?
- Not required to verify ownership or %.
- Record retention and use of BO information.

CDD: FAQs issued April 3, 2018

- Question 3 – complex ownership structures.
- Questions 7, 9, and 10 – using existing information if up-to-date and accurate.
- Always required to recertify or reconfirm – documentation is critical.
- Question 12 is overruled!

CDD: FAQs issued April 3, 2018

- Question 16 – updating beneficial ownership information.
- Questions 19 and 20 – trusts as beneficial owners.
- Question 21 – verification of excluded entities.
- Questions 32 and 33 – BO effect on CTRs.

CDD: Customer risk profile

- Established at onboarding.
- Questions, questions and more questions.
- Identify potentially high-risk entities.
- Identify use of high-risk products and services.
- Identify high-risk geographies.

CDD: Customer risk profile

- Verify CDD information.
- Two site visits?
- Assess/assign risk.
- Monitor for and report suspicious activity.

Exam procedures

- FFIEC issued May 5, 2018.
- Provides the examiner summary.
- Focuses on the banks risk-based policies, procedures and processes.
- It's like having a copy of the test!

INTERNATIONAL STANDARDS
ON COMBATING MONEY LAUNDERING
AND THE FINANCING OF
TERRORISM & PROLIFERATION

The FATF Recommendations

Updated October 2018

E. TRANSPARENCY AND BENEFICIAL OWNERSHIP OF LEGAL PERSONS AND ARRANGEMENTS

24. Transparency and beneficial ownership of legal persons *

Countries should take measures to prevent the misuse of legal persons for money laundering or terrorist financing. Countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities. In particular, countries that have legal persons that are able to issue bearer shares or bearer share warrants, or which allow nominee shareholders or nominee directors, should take effective measures to ensure that they are not misused for money laundering or terrorist financing. Countries should consider measures to facilitate access to beneficial ownership and control information by financial institutions and DNFBPs undertaking the requirements set out in Recommendations 10 and 22.

25. Transparency and beneficial ownership of legal arrangements *

Countries should take measures to prevent the misuse of legal arrangements for money laundering or terrorist financing. In particular, countries should ensure that there is adequate, accurate and timely information on express trusts, including information on the settlor, trustee and beneficiaries, that can be obtained or accessed in a timely fashion by competent authorities. Countries should consider measures to facilitate access to beneficial ownership and control information by financial institutions and DNFBPs undertaking the requirements set out in Recommendations 10 and 22.

Title 31: Money and Finance: Treasury
PART 1020—RULES FOR BANKS
Subpart B—Programs

§1020.210 Anti-money laundering program requirements for financial institutions regulated only by a Federal functional regulator, including banks, savings associations, and credit unions.

A financial institution regulated by a Federal functional regulator that is not subject to the regulations of a self-regulatory organization shall be deemed to satisfy the requirements of 31 U.S.C. 5318(h)(1) if the financial institution implements and maintains an anti-money laundering program that:

(a) Complies with the requirements of §§1010.610 and 1010.620 of this chapter;

(b) Includes, at a minimum:

(1) A system of internal controls to assure ongoing compliance;

(2) Independent testing for compliance to be conducted by bank personnel or by an outside party;

(3) Designation of an individual or individuals responsible for coordinating and monitoring day-to-day compliance;

(4) Training for appropriate personnel; and

(5) Appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to:

(i) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and

(ii) Conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information. For purposes of this paragraph (b)(5)(ii), customer information shall include information regarding the beneficial owners of legal entity customers (as defined in §1010.230 of this chapter); and

(c) Complies with the regulation of its Federal functional regulator governing such programs.

[81 FR 29457, May 11, 2016]

§1010.230 Beneficial ownership requirements for legal entity customers.

(a) *In general.* Covered financial institutions are required to establish and maintain written procedures that are reasonably designed to identify and verify beneficial owners of legal entity customers and to include such procedures in their anti-money laundering compliance program required under 31 U.S.C. 5318(h) and its implementing regulations.

(b) *Identification and verification.* With respect to legal entity customers, the covered financial institution's customer due diligence procedures shall enable the institution to:

(1) Identify the beneficial owner(s) of each legal entity customer at the time a new account is opened, unless the customer is otherwise excluded pursuant to paragraph (e) of this section or the account is exempted pursuant to paragraph (h) of this section. A covered financial institution may accomplish this either by obtaining a certification in the form of appendix A of this section from the individual opening the account on behalf of the legal entity customer, or by obtaining from the individual the information required by the form by another means, provided the individual certifies, to the best of the individual's knowledge, the accuracy of the information; and

(2) Verify the identity of each beneficial owner identified to the covered financial institution, according to risk-based procedures to the extent reasonable and practicable. At a minimum, these procedures must contain the elements required for verifying the identity of customers that are individuals under §1020.220(a)(2) of this chapter (for banks); §1023.220(a)(2) of this chapter (for brokers or dealers in securities); §1024.220(a)(2) of this chapter (for mutual funds); or §1026.220(a)(2) of this chapter (for futures commission merchants or introducing brokers in commodities); provided, that in the case of documentary verification, the financial institution may use photocopies or other reproductions of the documents listed in paragraph (a)(2)(ii)(A)(*1*) of §1020.220 of this chapter (for banks); §1023.220 of this chapter (for brokers or dealers in securities); §1024.220

of this chapter (for mutual funds); or §1026.220 of this chapter (for futures commission merchants or introducing brokers in commodities). A covered financial institution may rely on the information supplied by the legal entity customer regarding the identity of its beneficial owner or owners, provided that it has no knowledge of facts that would reasonably call into question the reliability of such information.

(c) *Account.* For purposes of this section, *account* has the meaning set forth in §1020.100(a) of this chapter (for banks); §1023.100(a) of this chapter (for brokers or dealers in securities); §1024.100(a) of this chapter (for mutual funds); and §1026.100(a) of this chapter (for futures commission merchants or introducing brokers in commodities).

(d) *Beneficial owner.* For purposes of this section, *beneficial owner* means each of the following:

(1) 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 a legal entity customer; and

(2) A single individual with significant responsibility to control, manage, or direct a legal entity customer, including:

(i) An executive officer or senior manager (*e.g.,* a Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, or Treasurer); or

(ii) Any other individual who regularly performs similar functions.

(3) If a trust owns directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, 25 percent or more of the equity interests of a legal entity customer, the beneficial owner for purposes of paragraph (d)(1) of this section shall mean the trustee. If an entity listed in paragraph (e)(2) of this section owns directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, 25 percent or more of the equity interests of a legal entity customer, no individual need be identified for purposes of paragraph (d)(1) of this section with respect to that entity's interests.

NOTE TO PARAGRAPH (d): The number of individuals that satisfy the definition of “beneficial owner,” and therefore must be identified and verified pursuant to this section, may vary. Under paragraph (d)(1) of this section, depending on the factual circumstances, up to four individuals may need to be identified. Under paragraph (d)(2) of this section, only one individual must be identified. It is possible that in some circumstances the same person or persons might be identified pursuant to paragraphs (d)(1) and (2) of this section. A covered financial institution may also identify additional individuals as part of its customer due diligence if it deems appropriate on the basis of risk.

(e) *Legal entity customer.* For the purposes of this section:

(1) *Legal entity customer* means 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.

(2) *Legal entity customer* does not include:

(i) A financial institution regulated by a Federal functional regulator or a bank regulated by a State bank regulator;

(ii) A person described in §1020.315(b)(2) through (5) of this chapter;

(iii) An issuer of a class of securities registered under section 12 of the Securities Exchange Act of 1934 or that is required to file reports under section 15(d) of that Act;

(iv) An investment company, as defined in section 3 of the Investment Company Act of 1940, that is registered with the Securities and Exchange Commission under that Act;

(v) An investment adviser, as defined in section 202(a)(11) of the Investment Advisers Act of 1940, that is registered with the Securities and Exchange Commission under that Act;

(vi) An exchange or clearing agency, as defined in section 3 of the Securities Exchange Act of 1934, that is registered under section 6 or 17A of that Act;

(vii) Any other entity registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934;

(viii) A registered entity, commodity pool operator, commodity trading advisor, retail foreign exchange dealer, swap dealer, or major swap participant, each as defined in section 1a of the Commodity Exchange Act, that is registered with the Commodity Futures Trading Commission;

(ix) A public accounting firm registered under section 102 of the Sarbanes-Oxley Act;

(x) A bank holding company, as defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) or savings and loan holding company, as defined in section 10(n) of the Home Owners' Loan Act (12 U.S.C 1467a(n));

(xi) A pooled investment vehicle that is operated or advised by a financial institution excluded under paragraph (e)(2) of this section;

(xii) An insurance company that is regulated by a State;

(xiii) A financial market utility designated by the Financial Stability Oversight Council under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010;

(xiv) A foreign financial institution established in a jurisdiction where the regulator of such institution maintains beneficial ownership information regarding such institution;

(xv) A non-U.S. governmental department, agency or political subdivision that engages only in governmental rather than commercial activities; and

(xvi) Any legal entity only to the extent that it opens a private banking account subject to §1010.620 of this chapter.

(3) The following legal entity customers are subject only to the control prong of the beneficial ownership requirement:

(i) A pooled investment vehicle that is operated or advised by a financial institution not excluded under paragraph (e)(2) of this section; and

(ii) 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.

(f) *Covered financial institution.* For the purposes of this section, *covered financial institution* has the meaning set forth in §1010.605(e)(1) of this chapter.

(g) *New account.* For the purposes of this section, *new account* means each account opened at a covered financial institution by a legal entity customer on or after the applicability date.

(h) *Exemptions.* (1) Covered financial institutions are exempt from the requirements to identify and verify the identity of the beneficial owner(s) set forth in paragraphs (a) and (b)(1) and (2) of this section only to the extent the financial institution opens an account for a legal entity customer that is:

(i) At the point-of-sale to provide credit products, including commercial private label credit cards, solely for the purchase of retail goods and/or services at these retailers, up to a limit of $50,000;

(ii) To finance the purchase of postage and for which payments are remitted directly by the financial institution to the provider of the postage products;

(iii) To finance insurance premiums and for which payments are remitted directly by the financial institution to the insurance provider or broker;

(iv) To finance the purchase or leasing of equipment and for which payments are remitted directly by the financial institution to the vendor or lessor of this equipment.

(2) *Limitations on Exemptions.* (i) The exemptions identified in paragraphs (h)(1)(ii) through (iv) of this section do not apply to transaction accounts through which a legal entity customer can make payments to, or receive payments from, third parties.

(ii) If there is the possibility of a cash refund on the account activity identified in paragraphs (h)(1)(ii) through (iv) of this section, then beneficial ownership of the legal entity customer must be identified and verified by the financial institution as required by this section, either at the time of initial remittance, or at the time such refund occurs.

(i) *Recordkeeping.* A covered financial institution must establish procedures for making and maintaining a record of all information obtained under the procedures implementing paragraph (b) of this section.

(1) *Required records.* At a minimum the record must include:

(i) For identification, any identifying information obtained by the covered financial institution pursuant to paragraph (b) of this section, including without limitation the certification (if obtained); and

(ii) 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.

(2) *Retention of records.* A covered financial institution must retain the records made under paragraph (i)(1)(i) of this section for five years after the date the account is closed, and the records made under paragraph (i)(1)(ii) of this section for five years after the record is made.

(j) *Reliance on another financial institution.* A covered financial institution may rely on the performance by another financial institution (including an affiliate) of the requirements of this section with respect to any legal entity customer of the covered financial institution that is opening, or has opened, an account or has established a similar business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions, provided that:

(1) Such reliance is reasonable under the circumstances;

(2) The other financial institution is subject to a rule implementing 31 U.S.C. 5318(h) and is regulated by a Federal functional regulator; and

(3) The other financial institution enters into a contract requiring it to certify annually to the covered financial institution that it has implemented its anti-money laundering program, and that it will perform (or its agent will perform) the specified requirements of the covered financial institution's procedures to comply with the requirements of this section.

APPENDIX A to § 1010.230-- CERTIFICATION REGARDING BENEFICIAL OWNERS OF LEGAL ENTITY CUSTOMERS

I. GENERAL INSTRUCTIONS

What is this form?

To help the government fight financial crime, Federal regulation requires certain financial institutions to obtain, verify, and record information about the beneficial owners of legal entity customers. Legal entities can be abused to disguise involvement in terrorist financing, money laundering, tax evasion, corruption, fraud, and other financial crimes. Requiring the disclosure of key individuals who own or control a legal entity (i.e., the beneficial owners) helps law enforcement investigate and prosecute these crimes.

Who has to complete this form?

This form must be completed by the person opening a new account on behalf of a legal entity with any of the following U.S. financial institutions: (i) a bank or credit union; (ii) a broker or dealer in securities; (iii) a mutual fund; (iv) a futures commission merchant; or (v) an introducing broker in commodities.

For the purposes of this form, a **legal entity** includes a corporation, limited liability company, or other entity that is created by a filing of a public document with a Secretary of State or similar office, a general partnership, and any similar business entity formed in the United States or a foreign country. **Legal entity** does not include sole proprietorships, unincorporated associations, or natural persons opening accounts on their own behalf.

What information do I have to provide?

This form requires you to provide the name, address, date of birth and Social Security number (or passport number or other similar information, in the case of Non-U.S. Persons) for the following individuals (*i.e.*, the **beneficial owners**):

(i) Each individual, if any, who owns, directly or indirectly, 25 percent or more of the equity interests of the legal entity customer (*e.g.*, each natural person that owns 25 percent or more of the shares of a corporation); **and**

(ii) An individual with significant responsibility for managing the legal entity customer (*e.g.*, a Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, or Treasurer).

The number of individuals that satisfy this definition of "beneficial owner" may vary. Under section (i), depending on the factual circumstances, up to four individuals (but as few as zero) may need to be identified. Regardless of the number of individuals identified under section (i), you must provide the identifying information of one individual under section (ii). It is possible that in some circumstances the same individual might be identified under both sections (*e.g.*, the President of Acme, Inc. who also holds a 30% equity interest). Thus, a completed form will contain the identifying information of at least one individual (under section (ii)), and up to five individuals (*i.e.*, one individual under section (ii) and four 25 percent equity holders under section (i)).

The financial institution may also ask to see a copy of a driver's license or other identifying document for each beneficial owner listed on this form.

II. CERTIFICATION OF BENEFICIAL OWNER(S)

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

a. Name and Title of Natural Person Opening Account:

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b. Name, Type, and Address of Legal Entity for Which the Account is Being Opened:

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c. *The following information for <u>each</u> 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:*

Name	Date of Birth	Address (Residential or Business Street Address)	*For U.S. Persons:* Social Security Number	*For Non-U.S. Persons*: Social Security Number, Passport Number and Country of Issuance, or other similar identification number[1]

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

d. *The following information for <u>one</u> 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)).

[1] In lieu of a passport number, Non-U.S. Persons may also provide a Social Security Number, 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.

Name/Title	Date of Birth	Address (Residential or Business Street Address)	*For U.S. Persons:* Social Security Number	*For Non-U.S. Persons*: Social Security Number, Passport Number and Country of Issuance, or other similar identification number[1]

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

Signature: _____ Date: _____

Legal Entity Identifier _____ (Optional)

[81 FR 29451, May 11, 2016, as amended at 82 FR 45183, Sept. 28, 2017]

UNITED STATES DEPARTMENT OF THE TREASURY

FinCEN

FINANCIAL CRIMES ENFORCEMENT NETWORK

Guidance

FIN-2016-G003
Issued: July 19, 2016
Subject: Frequently Asked Questions Regarding Customer Due Diligence Requirements for Financial Institutions

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The Financial Crimes Enforcement Network ("FinCEN") is issuing these FAQs to assist covered financial institutions in understanding the scope of the Customer Due Diligence Requirements for Financial Institutions," published on May 11, 2016 (the "CDD Rule"), available at https://www.gpo.gov/fdsys/pkg/FR-2016-05-11/pdf/2016-10567.pdf. These FAQs provide interpretive guidance with respect to the CDD rule. FinCEN intends to issue additional FAQs or guidance as appropriate.

Frequently Asked Questions (FAQs)

Question 1: Purpose of CDD Rule

Q: Why is FinCEN issuing the CDD Rule?

A. FinCEN is issuing the CDD Rule to amend existing BSA regulations in order to clarify and strengthen customer due diligence requirements for certain financial institutions. The CDD Rule outlines explicit customer due diligence requirements and imposes a new requirement for these financial institutions to identify and verify the identity of beneficial owners of legal entity customers, subject to certain exclusions and exemptions. Within this construct, as stated in the preamble to the Rule, FinCEN intends that the legal entity customer identify its ultimate beneficial owner or owners and not "nominees" or "straw men."

Question 2: Rule application

Q: Does the CDD Rule apply to all financial institutions?

A: No. The CDD Rule applies to covered financial institutions.

UNITED STATES DEPARTMENT OF THE TREASURY

FinCEN

FINANCIAL CRIMES ENFORCEMENT NETWORK

Guidance

FIN-2018-G001

Issued: April 3, 2018

Subject: Frequently Asked Questions Regarding Customer Due Diligence Requirements for Financial Institutions

The Financial Crimes Enforcement Network (FinCEN) is issuing these Frequently Asked Questions to assist covered financial institutions in understanding the scope of the Customer Due Diligence Requirements for Financial Institutions, published on May 11, 2016, as amended on September 29, 2017 ("CDD Rule" or "Rule"), available at https://www.fincen.gov/resources/statutes-regulations/federal-register-notices/customer-due-diligence-requirements. On July19, 2016, FinCEN published FAQs, available at https://www.fincen.gov/resources/statutes-regulations/guidance/frequently-asked-questions-regarding-customer-due-diligence. FinCEN may issue additional FAQs, guidance, or grant exceptive relief as appropriate.

A covered financial institution with notice of or a reasonable suspicion that a customer is evading or attempting to evade beneficial ownership or other customer due diligence requirements should consider whether it should not open an account, close an account, or file a suspicious activity report, regardless of any interpretations below.

Frequently Asked Questions (FAQs)

Question 1: Beneficial ownership threshold

Can a covered financial institution adopt and implement more stringent written internal policies and procedures for the collection of beneficial ownership information than the obligations prescribed by the Beneficial Ownership Requirements for Legal Entity Customers (31 CFR 1010.230)?

A. Yes. Covered financial institutions may choose to implement stricter written internal policies and procedures for the collection and verification of beneficial ownership information than the requirements prescribed by the Rule.

Transparency in beneficial ownership provides highly valuable information that supports law enforcement, tax, regulatory or counterterrorism investigations. The Rule sets forth the standard for collecting such valuable information at 25 percent of beneficial ownership. Therefore, covered financial institutions will meet their beneficial ownership obligations by collecting information on individuals, if any, who hold directly or indirectly, 25 percent or more of the equity interests in and one individual who has managerial control of a legal entity customer. A covered financial institution may choose, however, to collect such information on natural persons who own a lower percentage of the equity interests of a legal entity customer as well as information on more than one individual with managerial control.

Question 2: Interaction of the beneficial ownership threshold with other AML program obligations

Are there circumstances where covered financial institutions should consider collecting beneficial ownership information at a lower equity interest threshold under the anti-money laundering (AML) program rules with regard to certain customers?

A. There may be circumstances where a financial institution may determine that collection and verification of beneficial ownership information at a lower threshold may be warranted, based on the financial institution's own assessment of its risk relating to its customer.

Transparency in beneficial ownership, however, is only one aspect of a covered financial institution's customer due diligence obligations. A financial institution may reasonably conclude that collecting beneficial ownership information at a lower equity interest than 25 percent would not help mitigate the specific risk posed by the customer or provide information useful to the financial institution in analyzing the risk. Rather, any additional heightened risk could be mitigated by other reasonable means, such as enhanced monitoring or collecting other information, including expected account activity, in connection with the particular legal entity customer.

In all cases, however, it is important that covered financial institutions establish and maintain written procedures that are reasonably designed to identify and verify the identity of beneficial owners of legal entity customers and to include such procedures in their AML compliance program.[1]

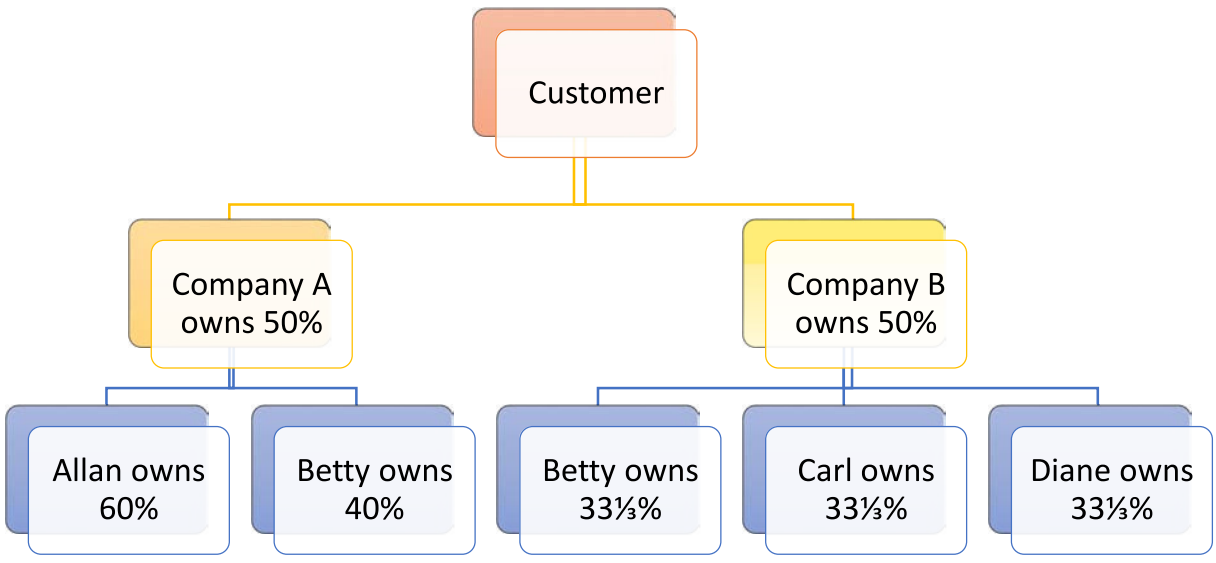
1. *See* 31 U.S.C. § 5318(h); 31 CFR 1010.230(a).

Question 3: Collection of beneficial ownership information for direct and indirect owners: Legal entity customers with complex ownership structures

When a legal entity is identified as owning 25 percent or more of a legal entity customer that is opening an account, is it necessary for a covered financial institution to request beneficial ownership information on the legal entity identified as an owner?

A. Under the Rule's beneficial ownership identification requirement, a covered institution must collect, from its legal entity customers, information about any individual(s) that are the beneficial owner(s) (unless the entity is excluded or the account is exempted). Therefore, covered financial institutions must obtain from their legal entity customers the identities of individuals who satisfy the definition, either directly or indirectly through multiple corporate structures, as illustrated in the following example.

For purposes of the Rule, Allan is a beneficial owner of Customer because he owns indirectly 30 percent of its equity interests through his direct ownership of Company A. Betty is also a beneficial owner of Customer because she owns indirectly 20 percent of its equity interests through her direct ownership of Company A plus 16⅔ percent through Company B for a total of indirect ownership interest of 36⅔ percent. Neither Carl nor Diane is a beneficial owner because each owns indirectly only 16⅔ percent of Customer's equity interests through their direct ownership of Company B.



A covered financial need not independently investigate the legal entity customer's ownership structure and may accept and reasonably rely on the information regarding the status of beneficial owners presented to the financial institution by the legal entity customer's representative, provided that the institution has no knowledge of facts that would reasonably call into question the reliability of the information.

Question 4: Identification and Verification: Methods of verifying beneficial ownership information

What means of identity verification are sufficient to reliably confirm beneficial ownership under the CDD Rule?

A. Covered financial institutions must verify the identity of each beneficial owner according to risk-based procedures that contain, at a minimum, the same elements financial institutions are required to use to verify the identity of individual customers under applicable Customer Identification Program ("CIP") requirements. This includes the requirement to address situations in which the financial institution cannot form a reasonable belief that it knows the true identity of the legal entity customer's beneficial owners.[2] Although the CDD Rule's beneficial ownership verification procedures must contain the same elements as existing CIP procedures, they are not required to be identical to them.[3] For example, a covered financial institution's policies and procedures may state that the institution will accept photocopies of a driver's license from the legal entity customer to verify the beneficial owner(s)' identity if the beneficial owner is not present, which is not permissible in the CIP rules. (See Question 6.)

A financial institution's CIP must contain procedures for verifying customer identification, including describing when the institution will use documentary, non-documentary, or a combination of both methods for identity verification.[4] Covered financial institutions may use the same methods to verify the identity of the beneficial owner of a legal entity customer. In addition, in contrast to the CIP rule, the CDD Rule expressly authorizes covered financial institutions to use photocopies or other reproduction documents for documentary verification.[5]

2. Under the CIP rules, a financial institution's CIP must include procedures for responding to circumstances in which the financial institution cannot form a reasonable belief that it knows the true identity of a customer. These procedures should describe: (1) when the institution should not open an account; (2) the terms under which a customer may use an account while the institution attempts to verify the customer's identity; (3) when it should close an account, after attempts to verify a customer's identity have failed; and (4) when it should file a Suspicious Activity Report in accordance with applicable laws and regulations. *See, e.g.*, 31 CFR 1020.220(a)(2)(iii).
3. *See* 31 CFR 1020.220(a)(2); 31 CFR 1023.220(a)(2); 31 CFR 1024.220(a)(2); or 31 CFR 1026.220(a)(2).
4. *See* 31 CFR 1020.220 (a)(2)(ii).
5. *See* 31 CFR 1010.230(b)(2).

Documentary verification may include unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport.[6] Non-documentary methods of verification may include contacting a beneficial owner; independently verifying the beneficial owner's identity through the comparison of information provided by the legal entity customer (or the beneficial owner, as appropriate) with information obtained from other sources; checking references with other financial institutions; and obtaining a financial statement.[7]

Financial institutions should conduct their own risk-based analysis to determine the appropriate method(s) of verification and the appropriate documents or types of photocopies or reproductions to accept in order to comply with the beneficial owner verification requirement.

Question 5: Collection of beneficial ownership information: Required addresses

What address should be obtained for a legal entity customer's beneficial owner(s) to comply with the certification requirement – residential or business?

A. The address requirements for certification under the CDD Rule are the same as those outlined in the CIP rule. For an individual beneficial owner, covered financial institutions must obtain either a residential or a business street address. If neither is available, acceptable substitutes may include an Army Post Office (APO) or Fleet Post Office (FPO) box number, or the residential or business street address of next of kin or of another contact individual.[8]

Question 6: Identification and verification: Legal entity customer representative

What process should a covered financial institution use to identify and verify the identity of a beneficial owner of a legal entity customer when the beneficial owner is unavailable to appear in person during the opening of a new account and chooses to provide to the legal entity's representative a copy of a driver's license?

A. A covered financial institution may identify the beneficial owner(s) of a legal entity customer either by obtaining a completed Certification Form or equivalent information from the legal entity customer's representative and may rely on such information, provided that it has no knowledge of facts that would reasonably call

6. *See* 31 CFR 1020.220 (a)(2)(ii)(A).
7. *See* 31 CFR 1020.220 (a)(2)(ii)(B).
8. *See* 31 CFR 1020.220(a)(2)(i)(3); 31 CFR 1023.220(a)(2)(i)(3); 31 CFR 1024.220(a)(2(i)(3)); 31 CFR 1026.220(a)(2)(i)(3).

into question the reliability of such information.[9] Furthermore, covered financial institutions may verify the identity of a beneficial owner who does not appear in person, through a photocopy or other reproduction of a valid identity document, or by non-documentary means described in response to Question 4 above.

Question 7: Identification and verification: Existing customers as beneficial owners of new legal entity customer accounts

If an individual named as a beneficial owner of a new legal entity account is an existing customer of the covered financial institution subject to the financial institution's CIP, is a covered financial institution still required to identify and verify the identity of this individual, or may it rely on the CIP identification and verification of the individual that it previously performed?

A. In general, covered financial institutions must identify and verify the identity of the beneficial owner(s) of legal entity customers at the time each new account is opened. However, if the individual identified as the beneficial owner is an existing customer of the financial institution and is subject to the financial institution's CIP, a financial institution may rely on information in its possession to fulfill the identification and verification requirements, provided the existing information is up-to-date, accurate, and the legal entity customer's representative certifies or confirms (verbally or in writing) the accuracy of the pre-existing CIP information.

   For example, a representative of X Corp opens a new account for the company at a covered financial institution and identifies John Doe, who has a personal account at the institution, as a 25 percent equity owner of X Corp. As required under the CIP rule, the institution identified and verified John Doe's identity at the time the personal account was established. In this situation, a covered financial institution may rely on the pre-existing CIP identification and verification information it maintains for John Doe, provided that X Corp's representative certifies or confirms (verbally or in writing) the accuracy of the pre-existing information on John Doe in order to comply with the Rule. The covered financial institution's records of beneficial ownership for the new account could cross-reference the relevant CIP records and the verification of information would not need to be repeated.

Question 8: Location of Certification Form or Appendix A to the final rule

Are covered financial institutions required to use the beneficial ownership Certification Form (Appendix A to the Rule) and if so, how can they obtain a copy of the Form?

9. *See* 31 CFR 1010.230(b)(1).

A. There is no requirement that covered financial institutions use the Certification Form. Rather, the form is optional and provided for the convenience of covered financial institutions as one possible method to obtain the required beneficial ownership information. Financial institutions may choose to comply with the requirements of the Rule by using another method, such as through the institutions' own forms, or any other means that comply with the substantive requirements of this obligation. Covered financial institutions should retain the form and not file it with FinCEN.

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.

Question 9: Retention of beneficial ownership information: Multiple sets of beneficial ownership certification documents

If a covered financial institution has updated the beneficial ownership information on the account(s) of a legal entity customer, and subsequently a new account is opened on behalf of the same legal entity customer, is the institution required to retain all sets of beneficial ownership documentation, thereby retaining up to three sets of information: the original set collected at account opening, the updated set, and a third, a duplicate of the second (updated) set for the new account?

A. Yes. Covered financial institutions are required to retain all beneficial ownership information collected about a legal entity customer. Identifying information, including the Certification Form or its equivalent, must be maintained for a period of five years after the legal entity's account is closed.[10] However, all verification records must be retained for a period of five years after the record is made.[11] Therefore, whether a financial institution must retain a set of identification or verification records is dependent upon the date an account is opened and closed, or the date a record is made. For example, if a covered financial institution relies on pre-existing beneficial ownership information in its possession as true and accurate identification information when opening a new account for a legal entity customer, the financial institution should maintain the original records, and any updated information, including a record of **any verbal or written confirmation** of pre-existing information (for example, as described in Questions 7 and 10), until five years after the closing of the new account in order to comply with the recordkeeping requirements in the regulation. Covered financial institutions must also retain a description of every document relied on for verification, any non-

10. *See* 31 CFR 1010.230(i)(2).

11. *Id.*

documentary methods and results of measures undertaken for verification, as well as the resolution of any substantive discrepancies discovered in identifying and verifying the identification information for five years after the record is made.

Question 10: Identification and verification: Certification when a single legal entity customer opens multiple accounts

If a legal entity customer opens multiple accounts at a covered financial institution (whether or not simultaneously), must the financial institution identify and verify the customer's beneficial ownership for each account?

A. Generally, covered financial institutions must identify and verify the legal entity customer's beneficial ownership information for each new account opening, regardless of the number of accounts opened or over a specific period of time. However, an institution that has already obtained a Certification Form (or its equivalent) for the beneficial owner(s) of the legal entity customer may rely on that information to fulfill the beneficial ownership requirement for subsequent accounts, provided the customer certifies or confirms (verbally or in writing) that such information is up-to-date and accurate at the time each subsequent account is opened and the financial institution has no knowledge of facts that would reasonably call into question the reliability of such information. The institution would also need to maintain a record of such certification or confirmation, including for both verbal and written confirmations by the customer.

Question 11: Identification and verification: Accounts for internal recordkeeping or operational purposes

FinCEN understands that after a covered financial institution (particularly in the securities and futures industries) opens a new account for a legal entity customer and identifies its beneficial ownership, the financial institution may subsequently open one or more additional accounts or subaccounts for that customer – for the institution's own recordkeeping or operational purposes and not at the customer's specific request – so that the customer may, for example invest in particular products or implement particular trading strategies. Would such accounts fall within the definition of "new accounts" for purposes of the beneficial ownership requirement?

A. The beneficial ownership requirement applies to a "new account," which is defined to mean "each account *opened … by a legal entity customer*"[12] [emphasis added]. An account (or subaccount) relating to a legal entity customer will not be considered a "new account" or an "account" for purposes of the Rule when a financial institution creates such an account (or subaccount) for its own

12. See 31 CFR 1010.230(g). In addition, the term "account" is defined by reference to the definition in the CIP rules. 31 CFR 1010.230(c).

administrative or operational purposes and not at the customer's request—such as to accommodate a specific trading strategy—and the financial institution has already collected beneficial ownership information on such legal entity customer. The distinction between such accounts opened by customers and those opened solely by the financial institution is consistent with the Rule's purpose to mitigate the risks related to the obfuscation of beneficial ownership when a legal entity tries to access the financial system through the opening of a new account.[13]

This interpretation is limited to accounts (or subaccounts) created solely to accommodate the business of an *existing* legal entity customer that has previously identified its beneficial ownership. Thus, the following accounts (or subaccounts) would *not* fall within this interpretation:

- accounts (or subaccounts) created to accommodate a trading strategy being carried out by a *separate* legal entity, including a subsidiary of the existing legal entity customer; and,
- accounts (or subaccounts) through which the customer of a financial institution's existing legal entity customer carries out trading activity directly through the financial institution without intermediation from the existing legal entity customer.

Question 12: Collection of beneficial ownership information: Product or service renewals

Are financial institutions required to have their legal entity customers certify the beneficial owners for existing customers during the course of a financial product renewal (*e.g.*, a loan renewal or certificate of deposit)?

A. Yes. Consistent with the definition of "account" in the CIP rules and subsequent interagency guidance,[14] each time a loan is renewed or a certificate of deposit is rolled over, the bank establishes another formal banking relationship and a new account is established. Covered financial institutions are required to obtain information on the beneficial owners of a legal entity that opens a new account, meaning (in the case of a bank) for each new formal banking relationship established, even if the legal entity is an existing customer. For financial services or products established before May 11, 2018, covered financial institutions must obtain certified beneficial ownership information of the legal entity customers of

13. *See* 68 FR at 25093 (The preamble to the CIP rules provides that "Treasury and the Agencies note that the [USA PATRIOT] Act provides that the regulations shall require reasonable procedures for 'verifying the identity of any person seeking to open an account.' Because these transfers are not initiated by customers, these accounts do not fall within the scope of section 326.")

14. *See* "Interagency Interpretive Guidance on Customer Identification Program Requirements under Section 326 of the USA PATRIOT Act, FAQs: Final CIP Rule," p. 8 (April 28, 2005).

such products and services at the time of the first renewal following that date. At the time of each subsequent renewal, to the extent that the legal entity customer and the financial service or product (*e.g.*, loan or CD) remains the same, the customer certifies or confirms that the beneficial ownership information previously obtained is accurate and up-to-date, and the institution has no knowledge of facts that would reasonably call into question the reliability of the information, the financial institution would not be required to collect the beneficial ownership information again. In the case of a loan renewal or CD rollover, because we understand that these products are not generally treated as new accounts by the industry and the risk of money laundering is very low, if at the time the customer certifies its beneficial ownership information, it also agrees to notify the financial institution of any change in such information, such agreement can be considered the certification or confirmation from the customer and should be documented and maintained as such, so long as the loan or CD is outstanding.

Question 13: Collection of beneficial ownership information: Existing accounts

Are covered financial institutions required to collect or update beneficial ownership information on customers with accounts opened prior to May 11, 2018, the Rule's applicability date?

A. Financial institutions are not required to conduct retroactive reviews to obtain beneficial ownership information from customers with accounts opened prior to May 11, 2018. The obligation to obtain or *update* beneficial ownership information on legal entity customers with accounts established before May 11, 2018, is triggered when a financial institution becomes aware of information about the customer during the course of normal monitoring relevant to assessing or reassessing the risk posed by the customer, and such information indicates a possible change of beneficial ownership.[15]

Question 14: Obligation to solicit or update beneficial ownership information absent specific risk-based concerns

Are covered financial institutions required to obtain or update beneficial ownership information during routine periodic reviews of existing accounts, absent risk-based concerns; that is, are such reviews a trigger for the application of the Rule's beneficial ownership requirements?

A. No. Covered financial institutions do not have an obligation to solicit or update beneficial ownership information as a matter of course during regular or periodic reviews, absent specific risk-based concerns. Financial institutions are required to

15. See 81 FR at 29421.

develop and implement risk-based procedures for conducting ongoing customer due diligence, including regular monitoring to identify and report suspicious activity and, on a risk basis, to maintain and update customer information. Thus, periodic reviews are not by themselves a trigger to obtain or update beneficial ownership information. As stated in response to Questions 13 and 16, the obligation to obtain or update information is triggered when, in the course of normal monitoring, a financial institution becomes aware of information about a customer or an account, including a possible change of beneficial ownership information, relevant to assessing or reassessing the customer's overall risk profile. Absent such a risk-related trigger or event, collecting or updating of beneficial ownership information is at the discretion of the covered financial institution. Financial institutions may exercise this discretion to collect or update beneficial ownership information on customers as often as they deem appropriate.

Question 15: Processes for monitoring and updating customer information

Are covered financial institutions required to implement different processes than currently established to comply with the Rule's ongoing monitoring and updating requirement?

A. To the extent that a covered financial institution has monitoring processes in place that allow the institution to meet the Rule's requirements, such institution may use its existing monitoring processes to comply with customer due diligence monitoring and updating obligations. As the preamble to the Rule states, "current industry practice to comply with existing expectations for SAR reporting should already satisfy this proposed requirement."[16]

Question 16: Updating beneficial ownership information

If an update to beneficial ownership information is required, can the change(s) be made in a covered financial institution's databases without physically obtaining and re-certifying the information?

A. It depends. A covered financial institution must develop written internal policies, procedures, and internal controls with respect to collecting, maintaining, and updating a legal entity's beneficial ownership information. The Rule requires that covered financial institutions monitor and, on a risk-basis, update the customer information, including the beneficial ownership information, and does not require re-certification when the information is up-

16. 81 FR 29420.

to-date and accurate.[17] Covered financial institutions may therefore update their records to reflect a change of information for an existing beneficial owner using the same or similar processes the institution implemented to record account information it obtains from customers in connection with the institution's account opening processes. For example, if the update were only to a change of address for an existing beneficial owner whose identity information has already been collected and verified, then full re-certification would likely not be required. In this circumstance, it may be reasonable for the covered financial institution to communicate verbally with the legal entity customer to confirm the accuracy of the change of address and reflect such information in its databases. If, however, the updated information were a change of beneficial ownership, then the new beneficial owner's identity would need to be collected, certified, and verified.

Question 17: Beneficial ownership information: Identifying and verifying at account opening compared to updating after a risk-related trigger

Does FinCEN distinguish between the requirements for identifying and verifying beneficial owner information at the time of a new account opening and at the time of a triggering event?

A. No. Whether a covered financial institution identifies and verifies the identity of the beneficial owner at the time a legal entity initially opens a new account or at the time of a triggering event, the fundamental elements of identification and verification are the same. That is, covered financial institutions must identify each beneficial owner by obtaining their name, date of birth, address, and identifying number (such as a social security number or other identifying number permissible under the CIP rule), and verify their identities. However, financial institutions' written policies, procedures, and processes, as well as the sum of information, may differ with respect to the collection of information at the time a legal entity customer initially opens a new account or at the time an existing account is updated after a triggering event.

On or after May 11, 2018, when a legal entity customer initially opens a new account or an existing account is updated to incorporate beneficial ownership information for the first time in response to a triggering event, covered financial institutions must identify and verify the identity of beneficial owners as set forth in section 1010.230(b).

17. *See e.g.*, 31 CFR 1020.210(b)(5)(ii) (for banks); 1023.210(b)(5)(ii) (for brokers or dealers in securities), 1024.210 (b)(5)(ii) (for mutual funds), 1026.210(b)(5)(ii) (for futures commission merchants and introducing brokers in commodities).

In contrast, the breadth of information collected as the result of a triggering event during the normal course of monitoring to identify and report suspicious activity and to maintain and update customer information should be determined by what information has changed. That is, only the information that has changed must be updated (*e.g.*, changing the address of the beneficial owner). To the extent that the triggering event results in a determination that the beneficial ownership of the legal entity may have changed entirely, the identity of any new beneficial owner(s) must be collected, certified, and verified, consistent with section 1010.230(b).

Question 18: Collection of beneficial ownership information: Pooled Investment Vehicles whose operators or advisers are not excluded from the definition of legal entity customer

Are covered financial institutions required to identify and verify the identity of the beneficial owners that own 25 percent or more of the ownership interests of a pooled investment vehicle whose operators or advisers are not excluded from the definition of legal entity customer?

A. No. Although the Rule requires covered financial institutions to collect and verify the identity of beneficial owners who own 25 percent or more of the equity interests of a legal entity customer, in general, institutions are not required to look through a pooled investment vehicle to identify and verify the identity of any individuals who own 25 percent or more of its equity interests. Because of the way in which ownership of a pooled investment vehicle fluctuates, it would be impractical for covered financial institutions to collect and verify ownership identity for this type of entity. Therefore, there is no requirement that the financial institution should request the customer to look through the pooled investment vehicle to determine and report any individual's equity interest. However, covered financial institutions must collect beneficial ownership information for the pooled investment vehicle under the control prong to comply with the Rule (*i.e.*, an individual with significant responsibility to control, manage, or direct the vehicle; such individuals could be, *e.g.*, a portfolio manager, commodity pool operator, commodity trading advisor, or general partner of the vehicle).[18]

Question 19: Collection of beneficial ownership information: Trusts with multiple trustees

When 25 percent or more of the equity interests of a legal entity customer are owned by a trust that is overseen by co-trustees (multiple trustees), are covered financial institutions required to identify and verify the identity of all co-trustees?

18. In cases where such manager, operator or advisor is itself an entity, then it would be necessary to identify an individual with responsibility to control, manage or direct the manager, operator, advisor or general partner. *See* 31 CFR 1010.230(e)(3)(i), 81 FR at 29415.

A. No. If a trust owns directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, 25 percent or more of the equity interests of a legal entity customer, the beneficial owner under the ownership/equity prong is the trustee. Where there are multiple trustees or co-trustees, financial institutions are expected to collect and verify the identity of, at a minimum, one co-trustee of a multi-trustee trust who owns 25 percent or more of the equity interests of a legal entity customer that is not subject to an exclusion. A covered financial institution may choose to identify additional co-trustees as part of its customer due diligence, based on its risk assessment and the customer risk profile and in accordance with the institution's account opening procedures.

Question 20: Collection of beneficial ownership information: Trustee entity as a beneficial owner

If a legal entity is the trustee (*e.g.*, law firm, bank trust department, etc.) of a trust that owns 25 percent or more of the equity interests of a legal entity customer, can that entity be identified as a beneficial owner under the ownership/equity prong or does a natural person need to be so identified?

A. If a trust owns directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise, 25 percent or more of the equity interests of a legal entity customer, the beneficial owner for purposes of the *ownership/equity prong* is the trustee, regardless of whether the trustee is a natural person or a legal entity.[19] In circumstances where a natural person does not exist for purposes of the ownership/equity prong, a natural person would not be identified. However, a covered institution should collect identification information on the legal entity trustee as part of its CIP, consistent with the covered institution's risk assessment and the customer risk profile. In addition to the *ownership/equity prong*, covered financial institutions are also required to identify and verify a natural person as the beneficial owner of the legal entity customer under the *control prong* to comply with the Rule.[20]

The ownership/equity and control prongs, although related, are independent requirements. Thus, satisfaction of, or exclusion from, regulatory obligations under one prong does not mean a covered financial institution's obligations under the other prong are also satisfied or excluded.

19. *See* 31 CFR 1010.230(d)(3).

20. *See* 31 CFR 1010.230(d)(2).

Question 21: Verification of claims of exclusion from the definition of "legal entity customer"

What methods should covered financial institutions use to verify eligibility for exclusion from the definition of a "legal entity customer"?

A. Several types of legal entity customers are excluded from the collection and verification requirements of the Rule, under section 1010.230(e)(2), because, for example, their regulators require the reporting of beneficial ownership information or such information is publicly available. A financial institution may rely on information provided by the legal entity customer to determine whether the legal entity is excluded from the definition of a legal entity customer, provided that it has no knowledge of facts that would reasonably call into question the reliability of such information. Whether a financial institution has such knowledge would depend on the facts and circumstances at the time an account is opened. Covered financial institutions must establish and maintain written risk-based procedures reasonably designed to identify and verify the identity of the beneficial owners of all legal entity customers at the time a new account is opened, unless the customer is otherwise excluded from the definition of legal entity customer. Covered financial institutions are expected to address and specify, in their risk-based written policies and procedures, the type of information they will obtain and reasonably rely upon to determine eligibility for exclusions.

Question 22: Definition of legal entity customer: Sole proprietorship and unincorporated associations

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.[21]

Question 23: Definition of charities, non-profits or similar entities

Are covered financial institutions limited to the Internal Revenue Code (IRC) definitions of charities, non-profits, or similar entities when assessing their eligibility for exclusion from the definition of legal entity customer?

21. *See* 81 FR, 29398, 29412 (May 11, 2016).

A. No. The exclusion from the definition of legal entity customer for charities and non-profit entities is not limited to those entities that meet the definition or description of charitable, nonprofit, or similar entities under the IRC. The Rule does not rely on the tax-exempt status of an entity as described in the IRC. All nonprofit entities—whether or not tax-exempt—that are established as a nonprofit, or nonstock corporation, or similar entity that has been validly organized with the proper State authority are excluded from the *ownership/equity prong* of the requirement because nonprofit entities generally do not have ownership interests.[22] Financial institutions, however, are required to collect beneficial ownership information under the *control prong* from any such entity.[23]

Question 24: Definition of legal entity customer: Publicly traded companies and entities listed on foreign exchanges.

Are companies publicly traded in the United States and entities listed on foreign exchanges excluded from the definition of legal entity customer and, therefore, excluded by the Rule?

A. Companies traded publicly in the United States are excluded from the definition of legal entity customer. Specifically, the Rule excludes from the definition of legal entity customer certain entities that are considered "exempt persons" under 31 CFR 1020.315(b). This includes any company (other than a bank) whose common stock or analogous equity interests are listed on the New York Stock Exchange, the American Stock Exchange (currently known as NYSE American), or NASDAQ stock exchange.[24] The Rule also excludes a U.S. entity when at least 51 percent of its common stock or analogous equity interest is held by a listed entity.[25] These U.S. companies are excluded from the Rule because they are subject to public disclosure and reporting requirements that provide information similar to what would otherwise be collected under the Rule.

Companies listed on foreign exchanges are *not* excluded from the definition of legal entity customer. Such companies may not be subject to the same or similar public disclosure and reporting requirements as companies publicly traded in the United States and, therefore, collecting beneficial ownership information for them is required.

22. *See* 81 FR at 29412.
23. *Id*.
24. *See* 31 CFR 1020.315 (b)(4).
25. *See* 31 CFR 1020.315 (b)(5).

Question 25: Collection of beneficial ownership information: Legal entities listed on foreign exchanges

May covered financial institutions take a risk-based approach for collecting beneficial ownership information from legal entity customers listed on foreign exchanges?

A. No. Financial institutions may not take a "risk-based approach" to collecting the required beneficial ownership information from legal entity customers that are listed on foreign exchanges, because such institutions are not excluded from the definition of legal entity customer. However, as they may with regard to other legal entity customers, whether listed or not, covered institutions may rely on the public disclosures of such entities, absent any reason to believe such information is inaccurate or not up-to-date.

Question 26: Foreign financial institutions

Does the exclusion for foreign financial institutions from the Rule's definition of "legal entity customer" depend on whether the beneficial ownership requirements applied by such institution's foreign regulator match U.S. requirements?

A. No. For purposes of beneficial ownership identification, the Rule excludes from the definition of "legal entity customer" a foreign financial institution created in a non-U.S. jurisdiction when the foreign regulator for that financial institution collects and maintains information on the beneficial owner(s) of the regulated institution.[26] The rule does not require covered financial institutions to research the specific transparency requirements imposed on a foreign financial institution by its regulator and compare them with those imposed on U.S. financial institutions by U.S. Federal functional regulators. However, if the foreign regulator does not collect and maintain beneficial ownership information on the foreign financial institution it regulates, then U.S. financial institutions will have to collect and maintain beneficial ownership information on accounts opened by foreign financial institutions in compliance with the Rule. As with any exclusion, covered financial institutions may rely on the representations of its legal entity customer as to whether an exclusion applies, provided that they have no knowledge of facts that would reasonably call into question the reliability of such representation. (See Question 21.)

For purposes of existing customer due diligence requirements, covered financial institutions that maintain correspondent accounts for foreign financial institutions are already required to establish and maintain specific risk-based due diligence procedures and controls for such accounts that include consideration of all

26. *See* 31 CFR 1010.230(e)(1)(xiv).

relevant factors,[27] and are required to identify beneficial ownership for certain high-risk foreign banks.[28] These correspondent accounts will continue to be subject to these existing requirements rather than the requirements set forth in the AML Program requirements contained in the Rule.

Question 27: Exclusion from the definition of legal entity customer: U.S. Government list of foreign regulators that maintain beneficial ownership information

Will the U.S. Government maintain a list of non-U.S. jurisdictions where the regulator of financial institutions within that jurisdiction maintains beneficial ownership information regarding the financial institutions they regulate or supervise?

A. No. Covered financial institutions should contact the relevant foreign regulator or use other reliable means to ascertain whether the foreign regulator maintains beneficial ownership information for the financial institutions that it regulates or supervises.

Question 28: Exclusion from the definition of legal entity customer: Non-U.S. governmental department, agency, or political subdivision engaged only in governmental activities

What types of entities would be considered a "non-U.S. governmental department, agency or political subdivision that engages only in governmental rather than commercial activities"[29] such that they would qualify for exclusion from the definition of a legal entity customer?

A. Examples of legal entity customers that would be considered non-U.S. governmental entities engaged in only governmental and not commercial activities include entities that are owned and operated by a non-U.S. government agency or political subdivision, such as embassies or consulates, as well as entities that are instrumentalities of a foreign government, such as government-owned enterprises engaging in activities that are exclusively governmental in nature, that is, activities involving the direct exercise of legislative, executive, or judicial authority and which do not involve taking profits from the endeavor. Those State-owned enterprises engaged in profit-seeking activities, including, among others, sovereign wealth funds, airlines, or oil companies, would not qualify for the legal entity customer exclusion. Generally, many State-owned enterprises may not have an individual that owns at least a 25 percent equity interest because a governmental department, agency, or political subdivision holds such interest.

27. *See* 31 CFR 1010.610(a)(2)(iv).

28. *See* 31 CFR 1010.610(b)(3).

29. 31 CFR 1010.230(e)(2)(xv).

In these circumstances, a covered financial institution would only be required to identify an individual under the control prong. Similarly, with respect to a State-owned enterprise that is a pooled investment vehicle not subject to another exclusion, financial institutions would be required to obtain beneficial ownership information under the control prong but not under the ownership/equity prong of the definition of beneficial owner.

Furthermore, similar to other instances of identification and verification within the Rule's context, a covered financial institution may reasonably rely upon the representations of the legal entity customer, absent knowledge of facts that would call into question the reliability of the beneficial ownership information provided to the financial institution.

Question 29: Private label retail credit accounts established at the point of sale

Does the point of sale exception only apply to accounts opened at the cash register or does it refer to all applications for credit accounts that are for use at the private label retailer only?

A. The Rule provides an exemption from the requirements for a covered financial institution that "opens an account for a legal entity customer that is: [a]t the point-of-sale to provide credit products, including commercial private label credit cards, solely for the purchase of retail goods and/or services at these retailers, up to a limit of $50,000." The point of sale exemption is provided for retail credit accounts opened to facilitate purchases made at the retailer because of the very low risk posed by opening such accounts at the brick and mortar store.

Question 30: Equipment Finance and Lease Exemption: Definition of equipment

What kind of businesses and equipment are covered under the equipment finance exemption?

A. The Rule reflects FinCEN's understanding that businesses require financing to obtain equipment to conduct ongoing business operations. Many such businesses, including both large and small businesses, open accounts solely for the purpose of financing the purchase or lease of that equipment. Subject to certain limitations, the Rule provides an exemption from the requirement to identify and verify the identity of a legal entity customer's beneficial owners for equipment finance and lease accounts established at a covered financial institution because of the low risk for money laundering posed by these accounts.[30] The exemption is intended

30. *See* 31 CFR 1010.230(h)(1)(iv).

to cover business equipment such as farm equipment, construction machinery, aircraft, computers, printers, photocopiers, and automobiles that a business purchases or leases. The Rule does not limit the exemption to small businesses. Regardless of the application of the exemption, a covered financial must comply with all other applicable BSA/AML obligations, which may include the obligation to file SARs where there is a suspicion that the equipment may be used to facilitate criminal activity.

Question 31: Equipment Finance and Leasing Exemption: Accounts opened to finance the purchase or leasing of equipment

Does the equipment lease and purchase exemption apply when the customer leases directly from the covered institution?

A. Yes, consider the following. Aviation LLC, which operates several flight training schools, visits Aircraft Vendor to acquire five aircraft for its flight training schools. Aviation LLC selects the aircraft and contacts the Lessor Covered Financial Institution to obtain the necessary equipment finance to acquire the aircraft. After a review of the aircraft and Aviation LLC's business, the Lessor Covered Financial Institution agrees to purchase the aircraft from Aircraft Vendor and then lease them to Aviation LLC for a specified rent amount and duration. The Lessor Covered Financial Institution purchases the aircraft, pays the purchase price directly to Aircraft Vendor, and obtains title to the aircraft as collateral. The Lessor Covered Financial Institution then enters into a lease agreement with Aviation LLC, which opens an account at the financial institution solely for the purpose of obtaining the aircraft and making periodic rent payments. There is no possibility of a cash refund to Aviation LLC under the lease terms.

The equipment lease and purchase exemption would apply because the account established at the covered financial institution meets all of the requirements of the exemption, which are that (1) the account's purpose is to finance the purchase or leasing of equipment, (2) payments are remitted directly by the financial institution to the vendor or lessor, and (3) there is no possibility of a cash refund on the account activity. First, Covered Financial Institution remit full payment directly to the vendor and obtained title to the equipment in order to lease the equipment to the legal entity customer. Second, Aviation LLC opened the account solely for the purpose of financing an equipment lease to acquire aircraft for its training schools. Finally, there is no possibility of a cash refund to Aviation LLC. As noted in the final rule, accounts created to provide financing for equipment lease or purchase, subject to certain conditions, are exempt from the beneficial ownership requirement because they present a low risk for money laundering and terrorist financing.[31]

31. *Id*.

Question 32: Currency Transaction Report (CTR) and aggregation of transactions

Under what circumstances should the transactions of a legal entity customer and those of the beneficial owner(s) be aggregated for purposes of filing a CTR? Are financial institutions required to proactively cross-check beneficial ownership information to comply with the CTR aggregation requirement?

A. As a general matter, financial institutions are required to aggregate multiple currency transactions "if the financial institution has knowledge that [the multiple transactions] are by or on behalf of any person and result in either cash in or cash out totaling more than $10,000 during any one business day."[32] With respect to legal entity customers that may share a common owner, unless there is an affirmative reason to believe otherwise, covered financial institutions should presume that different businesses that share a common owner are operating separately and independently from each other and from the common owner. Thus, absent indications that the businesses are not operating independently (*e.g.*, the businesses are staffed by the same employees and are located at the same address, the accounts of one business are repeatedly used to pay the expenses of another business or of the common owner), financial institutions should not aggregate transactions involving those businesses with those of each other or with those of the common owner for CTR filing.[33]

Question 33: Listing beneficiaries on CTRs

When completing a CTR for a business (*i.e.*, corporations, limited liability companies, and general partnerships) will beneficial owners now need to be listed as beneficiaries in such CTRs? If yes, would this also include trust and estate accounts?

A. No. The Rule does not change the existing currency transaction reporting requirements or any guidance FinCEN published pursuant to this reporting requirement. Thus, a covered financial institution is not required to list the beneficial owners of a business, or trust or estate account, when completing a CTR as a matter of course. A financial institution must list a beneficial owner in Part 1 of the CTR only if the financial institution has knowledge that the transaction(s) requiring the filing is made on behalf of the beneficial owner and results in either cash in or cash out totaling more than $10,000 during any one business day.

32. 31 CFR 1010.313.

33. *See* FinCEN Ruling 2001–2, "Currency Transaction Reporting: Aggregation," (Aug. 23, 2001) and FinCEN Guidance 2012-G001, "Currency Transaction Report Aggregation for Businesses with Common Ownership," (March 16, 2012), respectively. *See also* 81 FR at 29409.

Question 34: Impact of the Rule on the AML program Board of Directors or senior management review process

Are covered financial institutions now required to follow specific procedures to approve changes to AML programs or require Boards of Directors or senior management to approve such changes? Can Federal functional regulators direct financial institutions within their jurisdiction to follow a specific approval process?

A. Covered financial institutions may continue to follow their existing internal procedures for approving AML program changes, including changes that incorporate the Rule's new program requirements. However, these procedures should be consistent with the requirements and expectations of the institution's Federal functional regulator.

Question 35: Documenting nature and purpose of customer relationship on a risk-basis

The Rule requires financial institutions to understand "the nature and purpose of customer relationships to develop a customer risk profile." What type of information should financial institutions collect to satisfy this requirement and may the documentation of the nature and purpose of a customer relationship be made on a risk-basis?

A. Understanding the nature and purpose of a customer relationship in order to develop a customer risk profile is an important part of ongoing customer due diligence, and is required for all customers and accounts. An understanding based on category of customer means that for certain lower-risk customers, a financial institution's understanding of the nature and purpose of a customer relationship can be developed by inherent or self-evident information, such as the type of customer or type of account, service, or product or other basic information about the customer including information obtained at account opening.

   The profile may, but need not, include a system of risk ratings or categories of customers. Accordingly, the documentation that is required to demonstrate an understanding of the nature and purpose of a customer relationship would vary with the type of customer, account, service, or product.

Question 36: Use of information on customer risk profile

Once the nature and purpose of a customer relationship has been established, what are FinCEN's expectations concerning the use of this information?

A. Understanding the nature and purpose of a customer relationship—the information gathered about a customer at account opening—is essential to developing a customer risk profile. This information should be used to develop a baseline against which customer activity, such as the customer's expected use of wires or typical number of deposits in a month, can be assessed for possible suspicious activity reporting. If account activity changes, particularly with regard to what should be anticipated based on the original nature and purpose of the account, risk-based monitoring may identify a need to update customer information, including, as appropriate, beneficial ownership.

Question 37: The nature and purpose of customer relationship

In understanding the nature and purpose of customer relationships, are financial institutions required to develop and document customer risk profiles for self-evident products or customer type (*e.g.*, a safe deposit box)?

A. Financial institutions must implement risk-based procedures as part of their AML program to demonstrate an understanding of the nature and purpose of customer relationships to develop customer risk profiles. Customer risk profiles refer "to the information gathered about a customer at account opening used to develop a baseline against which customer activity can be assessed for suspicious activity reporting. This may include self-evident information such as the type of customer, or type of account, service or product."[34] It is reasonable that in the case of certain products, such as safety deposit boxes, the nature and purpose are self-evident and therefore no additional documentation would be needed to demonstrate an understanding of their nature and purpose, beyond the documentation to establish the particular type of account.

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For Further Information

Additional questions or comments regarding the contents of this Guidance should be addressed to the FinCEN Resource Center at FRC@fincen.gov, (800) 767-2825, or (703) 905-3591. ***Financial institutions wanting to report suspicious transactions that may relate to terrorist activity should call the Financial Institutions Toll-Free Hotline at (866) 556-3974 (7 days a week, 24 hours a day)***. The purpose of the hotline is to expedite the delivery of this information to law enforcement. Financial institutions should immediately report any imminent threat to local-area law enforcement officials.

34. 81 FR 29398, 29398 (May 11, 2016).

FinCEN's mission is to safeguard the financial system from illicit use and combat money laundering and promote national security through the collection, analysis, and dissemination of financial intelligence and strategic use of financial authorities.

Ruling

Financial Crimes Enforcement Network / U.S. Department of the Treasury

FIN-2018-R003

Issued: September 7, 2018

Subject: Exceptive Relief from Beneficial Ownership Requirements for Legal Entity Customers of Rollovers, Renewals, Modifications, and Extensions of Certain Accounts

The Financial Crimes Enforcement Network (FinCEN) grants exceptive relief under the authority set forth in 31 U.S.C. § 5318(a)(7) and 31 CFR § 1010.970(a) to covered financial institutions from the obligations of the Beneficial Ownership Requirements for Legal Entity Customers (Beneficial Ownership Rule)[1] and its requirement to identify and verify the identity of the beneficial owner(s) when a legal entity customer opens a new account as a result of the following:

- A rollover of a certificate of deposit (CD) (as defined below);
- A renewal, modification, or extension of a loan (e.g., setting a later payoff date) that does not require underwriting review and approval;
- A renewal, modification, or extension of a commercial line of credit or credit card account (e.g., a later payoff date is set) that does not require underwriting review and approval; and
- A renewal of a safe deposit box rental.

The exception only applies to the rollover, renewal, modification or extension of any of the types of accounts listed above occurring on or after May 11, 2018, and does not apply to the initial opening of such accounts.[2] Notwithstanding this exception, covered financial institutions must continue to comply with all other applicable anti-money laundering (AML) requirements under the Bank Secrecy Act (BSA) and its implementing regulations, including program, recordkeeping, and reporting requirements.

1. 31 CFR §1010.230. "Covered financial institutions" are banks, brokers or dealers in securities, mutual funds, futures commission merchants, and introducing brokers in commodities.
2. Covered financial institutions are not excepted from the obligation to identify and verify the identity of the beneficial owner(s) of legal entity customers at the initial account opening for such accounts occurring on or after May 11, 2018.

Background

In its response to Question Number 12 in the April 3, 2018 Frequently Asked Questions Regarding Customer Due Diligence Requirements for Financial Institutions (FAQs),[3] FinCEN stated "[c]onsistent with the definition of 'account' in the CIP [Customer Identification Program] rules and subsequent interagency guidance, each time a loan is renewed or a certificate of deposit is rolled over, the bank establishes another formal banking relationship and a new account is established."[4] FinCEN therefore noted that because CD rollovers (or certain loan renewals) are the establishment of a new account relationship and covered financial institutions are required to obtain information on the beneficial owners of a legal entity that opens a new account, even for existing customers, covered financial institutions must obtain the required information at the first renewal following the applicability date of the Beneficial Ownership Rule. Since the FAQs were issued, financial institutions represented that it is industry practice not to treat such rollovers and renewals as the opening of a new account, because, among other factors, there is generally no change to account information. Accordingly, industry representatives requested that FinCEN either except these accounts from the obligations of the Beneficial Ownership Rule or delay the implementation of the Rule for the products and services referenced in the FAQ to allow the industry adequate time to come into compliance.

In response, on May 16, 2018, FinCEN issued a 90-day temporary and limited exceptive relief, retroactive to May 11, 2018, and which FinCEN extended an additional 30 days, to covered financial institutions from the obligations of the Beneficial Ownership Rule in order to determine whether, and to what extent, a further exception would be appropriate for certain products and services. The exception applied to covered financial products and services that automatically rollover or renew (i.e., CD or loan accounts) and were established before the Beneficial Ownership Rule's Applicability Date of May 11, 2018. This exceptive relief replaces and supersedes the May 16, 2018, 90-day limited exceptive relief, as well as the August 8, 2018, 30-day extension.

Since May 11, 2018, FinCEN has met with stakeholders, including representatives from financial institutions, trade associations, regulators, and law enforcement to obtain feedback on implementation of the Beneficial Ownership Rule for CDs and loans, including rollovers and renewals, established before May 11, 2018 and that are expected to rollover or renew after that date. FinCEN also received feedback from stakeholders through the FinCEN Resource Center.

3. See, "Frequently Asked Questions Regarding Customer Due Diligence Requirements for Financial Institutions," (April 3, 2018), https://www.fincen.gov/sites/default/files/2018-04/FinCEN_Guidance_CDD_FAQ_FINAL_508_2.pdf.

4. See, "Interagency Interpretive Guidance on Customer Identification Program Requirements under Section 326 of the USA PATRIOT Act, FAQS: Final CIP Rule," p. 8 (April 28, 2005) https://www.fincen.gov/sites/default/files/guidance/faqsfinalciprule.pdf.

Based on those discussions and feedback, FinCEN obtained additional information on the characteristics and the money laundering risks posed by those products and the practical impact the Beneficial Ownership Rule had on those products.

COVERED PRODUCT DESCRIPTIONS AND CHARACTERISTICS

Certificates of Deposit

For purposes of this Ruling, a certificate of deposit (CD) is a deposit account that has a specified maturity date, but cannot be withdrawn before that date without incurring a penalty.[5] During the term of the CD, a customer cannot add additional funds to the CD. The term of a CD may vary from a week to several years. At the end of the term, when the CD matures, the customer is entitled to the amount deposited and any interest that has accrued; the customer may also have the ability to elect to either renew or close the account. Typically, the account will automatically renew absent affirmative action by the customer to close the account.

Loan Renewals, Modifications, and Extensions

Generally, a loan account is an account created to track transactions related to a loan that has terms and conditions tailored to the needs and circumstances of the customer, such that the issuance of a new loan would result in a new account relationship. However, once a loan application process is finalized and a loan approved, a financial institution may renew, extend, or otherwise modify the loan without substantively changing the terms or requiring additional underwriting. Industry has also represented that, as with CDs, some loans are subject to automatic renewal, modification, or extension within a specified time and require no action from the customer for that renewal, modification, or extension to take effect.

Commercial Lines of Credit and Credit Cards

A commercial line of credit account is a type of revolving loan account that allows a commercial enterprise to draw upon a predetermined amount of funds and generally use those funds only for specified business purposes. Small businesses rely on this mode of financing to cover short-term needs such as paying suppliers and addressing payroll needs. A business customer can repay the line at any time by making payment to the financial institution through the account, at which point those funds become available for borrowing again. Credit card accounts are revolving

5. The definition of "CD" for the purposes of this Ruling differs from the definition of "time deposit" in Regulation D of the Board of Governors of the Federal Reserve System (Reserve Requirements of Depository Institutions, 12 CFR Part 204); see 12 CFR 204.2(c)(i).

accounts, similar to commercial line of credit accounts, that grant the customer a maximum credit limit, which can generally be used repeatedly so long as the limit is not exceeded. The financial institution may change certain terms of a commercial line of credit or of a credit card, such as the credit limit, without requiring the affirmative assent of the customer.

Safe Deposit Boxes

Financial institutions maintain safe deposit boxes within their institutions that they rent to individuals and legal entities to store valuables such as collectibles, documents, and jewelry. While financial institutions do not have access to the contents of a safe deposit box rented to a customer, under the terms of the rental agreement, customers are not permitted to store money or dangerous substances in them. In exchange for the use of the safe deposit box, the customer generally pays a rental fee that is electronically deducted from an account provided to the financial institution. During the rental period, the financial institution has minimal or no communication with the customer, so long as the rental payment is made.

ANALYSIS

Additional Information from Industry

After FinCEN issued the temporary exception on May 16, 2018, covered financial institutions explained that the burden of complying with the Beneficial Ownership Rule with respect to renewals of CDs, certain loan and credit accounts, and safe deposit box rentals was not, in their view, commensurate with the low money laundering risks associated with the renewal of these particular products. They indicated that applying the Beneficial Ownership Rule, with its requirement to collect certain information before account rollover, renewal, modification, or extension, would be costly, burdensome, and would have a significant impact on financial products and services that many small businesses rely upon to manage their cash flow and liquidity. The current industry practice for renewing or extending these types of account relationships is generally automated and does not require an affirmative action from the customer. Any delay by the customer in providing the required beneficial ownership information could result in account closure and a corresponding loss of needed liquidity or financial stability (in the case of a loan account) or loss of investment benefit (in the case of a CD).

Furthermore, financial institutions indicated that implementation of the Beneficial Ownership Rule for these accounts would require information technology (IT) system upgrades as some of these accounts, such as a CD, might renew every week or month. Moreover, in the case of a CD, the financial institution's IT operation systems may

automatically roll over the CD if the customer does not communicate to the financial institution that the customer will remove the funds and close the CD. Similarly, a safe deposit box rental may automatically renew through an institution's IT systems, provided that the customer pays the renewal or rental fee, or such fee is available for automatic deduction from an account the customer has provided to the financial institution. The automated rollover or renewal characteristics of these products have therefore presented certain implementation challenges for financial institutions.

Money Laundering and Terrorist Financing Risks

Each of the account relationships described in this exceptive relief presents low risks for money laundering and terrorist financing (ML/TF) because the features of the account make their use for ML/TF activity impractical. For example, CDs and safe deposit boxes are non-transactional, that is, customers cannot use either of them to pay or receive payments from a third party. In addition, funds cannot be transferred into or out of the CD during the term of the account relationship. Moreover, customer information, including beneficial ownership information, is collected about the customer at account opening in order to understand the nature and purpose of the customer relationship, create a customer risk profile, monitor account activity, and report suspicious activity, when appropriate. A financial institution providing a loan or line of credit to a customer must collect customer identification and other background information to determine the creditworthiness of the customer to assess against the institution's risk tolerance. This customer information obtained at the establishment of the relationship, which often includes information on the customer's beneficial owner(s), would generally be sufficient for covered financial institutions to understand who their customers are and the type of transactions they conduct in order to assess ML/TF risks and identify suspicious activity.

Information Available to Law Enforcement

FinCEN also considered the extent to which the application of the Beneficial Ownership Rule would provide information that is of a high degree of usefulness to law enforcement and other FinCEN stakeholders. The exception affects the accounts described in this Ruling in two ways: by removing the obligation to collect beneficial ownership information when an account opened before May 11, 2018 rolls over or renews after May 11, 2018, as if it were a new account, and by removing that same obligation for rollovers, modifications, extensions, and renewals of such accounts opened after May 11, 2018. However, the removal of these obligations does not have a significant impact on the information available and useful to law enforcement.

This exception relieves financial institutions from treating rollovers, loan or safe deposit rental renewals, modifications, or extensions described in this Ruling as new accounts for purposes of the Beneficial Ownership Rule, but it does not relieve

financial institutions from their obligation to collect sufficient information to understand the nature and purpose of customer relationships in order to develop a customer risk profile, as needed as part of the AML program requirement. Regardless of whether an account described in this Ruling was established before or after May 11, 2018, a financial institution has an obligation under its AML program requirement to "conduct ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information."[6]

For accounts with rollover, renewal, modification or extension features opened after May 11, 2018, financial institutions must collect the beneficial ownership information, as part of the account opening process. Financial institutions will no longer be required, however, to collect beneficial ownership information for these accounts at each rollover, renewal, extension, or modification for products described in this Ruling.

CONCLUSION

Under 31 U.S.C. § 5318(a)(7) and 31 CFR § 1010.970(a), FinCEN has the authority to grant exceptions to the requirements of 31 CFR Chapter X. Such exceptions may be either conditional or unconditional and may apply to particular persons or classes of persons, but only to the extent that such limits are expressly stated in the order of authorization. Exceptions may be revoked at FinCEN's discretion.

Accordingly, FinCEN is granting exceptive relief to covered financial institutions from the Beneficial Ownership Rule's requirement to identify and verify beneficial ownership information on or after May 11, 2018, as a result of the following: (1) CD rollovers; (2) loan renewals, modifications, and extensions (e.g.,, setting a later payoff date) that do not require underwriting review and approval; (3) commercial line of credit or credit card account renewals, modifications, or extensions (e.g., , setting a later payoff date) that do not require underwriting review and approval; and (4) safe deposit box rental renewals. This exceptive relief does not apply to the initial opening of any of the types of accounts listed above, nor does it apply to relieve any covered financial institution of its customer due diligence requirements under AML program rules. Notwithstanding this permanent excepted relief, covered financial institutions must comply with all other applicable AML requirements under the BSA, such as maintaining an AML program and reporting suspicious activity.

6. See, 31 CFR § 1020.210(b)(5) regarding AML program requirements for banks, savings associations, and credit unions.

Customer Due Diligence — Overview

Objective. *Assess the bank's compliance with the regulatory requirements for customer due diligence (CDD).*

The cornerstone of a strong BSA/AML compliance program is the adoption and implementation of risk-based CDD policies, procedures, and processes for all customers, particularly those that present a higher risk for money laundering and terrorist financing. The objective of CDD is to enable the bank to understand the nature and purpose of customer relationships, which may include understanding the types of transactions in which a customer is likely to engage. These processes assist the bank in determining when transactions are potentially suspicious.

Effective CDD policies, procedures, and processes provide the critical framework that enables the bank to comply with regulatory requirements including monitoring for and reporting of suspicious activity. An illustration of this concept is provided in Appendix K ("Customer Risk versus Due Diligence and Suspicious Activity Monitoring"). CDD policies, procedures, and processes are critical to the bank because they can aid in:

- Detecting and reporting unusual or suspicious activity that potentially exposes the bank to financial loss, increased expenses, or other risks.
- Avoiding criminal exposure from persons who use or attempt to use the bank's products and services for illicit purposes.
- Adhering to safe and sound banking practices.

Customer Due Diligence

FinCEN's final rule on CDD became effective July 11, 2016, with a compliance date of May 11, 2018. The rule codifies existing supervisory expectations and practices related to regulatory requirements and therefore, nothing in this final rule is intended to lower, reduce, or limit the due diligence expectations of the federal functional regulators or in any way limit their existing regulatory discretion.[1]

In accordance with regulatory requirements, all banks must develop and implement appropriate risk-based procedures for conducting ongoing customer due diligence,[2] including, but not limited to:

- Obtaining and analyzing sufficient customer information to understand the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and
- Conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information, including information

[1] Department of the Treasury, Financial Crimes Enforcement Network (2016), "Customer Due Diligence Requirements for Financial Institutions," final rules (RIN 1506-AB25), *Federal Register*, vol. 81 (May 11), p. 29403.
[2] See 31 CFR 1020.210(b)(5)

regarding the beneficial owner(s) of legal entity customers. Additional guidance can be found in the examination procedures "Beneficial Ownership Requirements for Legal Entity Customers."

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

- Enable the bank to understand the nature and purpose of the customer relationship in order to develop a customer risk profile.
- Enable the bank to conduct ongoing monitoring
  - for the purpose of identifying and reporting suspicious transactions and,
  - on a risk basis, to maintain and update customer information, including information regarding the beneficial owner(s) of legal entity customers.

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

- Be commensurate with the bank's BSA/AML risk profile, with increased focus on higher risk customers.
- Contain a clear statement of management's and staff's responsibilities, including procedures, authority, and responsibility for reviewing and approving changes to a customer'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.

Customer Risk Profile

The bank should have an understanding of the money laundering and terrorist financing risks of its customers, referred to in the rule as the customer risk profile.[3] This concept is also commonly referred to as the customer risk rating. Any customer account may be used for illicit purposes, including money laundering or terrorist financing. Further, a spectrum of risks may be identifiable even within the same category of customers. The bank's program for determining customer risk profiles should be sufficiently detailed to distinguish between significant variations in the money laundering and terrorist financing risks of its customers. Improper identification and assessment of a customer's risk can have a cascading effect, creating deficiencies in multiple areas of internal controls and resulting in an overall weakened BSA compliance program.

The assessment of customer risk factors is bank-specific, and a conclusion regarding the customer risk profile should be based on a consideration of all pertinent customer information, including ownership information generally. Similar to the bank's overall risk assessment, there are no required risk profile categories and the number and detail of these categorizations will vary based on the bank's size and complexity. Any one single indicator is not necessarily determinative of the existence of a lower or higher customer risk.

[3] See 31 CFR 1020.210(b)(5)(i)

Examiners should primarily focus on whether the bank has effective processes to develop customer risk profiles as part of the overall CDD program. Examiners may review individual customer risk decisions as a means to test the effectiveness of the process and CDD program. In those instances where the bank has an established and effective customer risk decision-making process, and has followed existing policies, procedures, and processes, the bank should not be criticized for individual customer risk decisions unless it impacts the effectiveness of the overall CDD program, or is accompanied by evidence of bad faith or other aggravating factors.

The bank should gather sufficient information about the customer to form an understanding of the nature and purpose of customer relationships at the time of account opening. This understanding may be based on assessments of individual customers or on categories of customers. An understanding based on "categories of customers" means that for certain lower-risk customers, the bank's understanding of the nature and purpose of a customer relationship can be developed by inherent or self-evident information such as the type of customer, the type of account opened, or the service or product offered.

The factors the bank should consider when assessing a customer risk profile are substantially similar to the risk categories considered when determining the bank's overall risk profile. The bank should identify the specific risks of the customer or category of customers, and then conduct an analysis of all pertinent information in order to develop the customer's risk profile. In determining a customer's risk profile, the bank should consider risk categories, such as the following, as they relate to the customer relationship:

- Products and Services.
- Customers and Entities.
- Geographic Locations.

As with the risk assessment, the bank may determine that some factors should be weighted more heavily than others. For example, certain products and services used by the customer, the type of customer's business, or the geographic location where the customer does business, may pose a higher risk of money laundering or terrorist financing. Also, actual or anticipated activity in a customer's account can be a key factor in determining the customer risk profile. Refer to the further description of identification and analysis of specific risk categories in the "BSA/AML Risk Assessment - Overview" section of the FFIEC BSA/AML Examination Manual.

Customer Information – Risk-Based Procedures

As described above, the bank is required to form an understanding of the nature and purpose of the customer relationship. The bank may demonstrate its understanding of the customer relationship through gathering and analyzing information that substantiates the nature and purpose of the account. Customer information collected under CDD requirements for the purpose of developing a customer risk profile and ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information, includes beneficial ownership information for legal entity customers. However, the collection of customer information regarding beneficial ownership is governed by the

requirements specified in the beneficial ownership rule. The beneficial ownership rule requires the bank to collect beneficial ownership information at the 25 percent ownership threshold regardless of the customer's risk profile. In addition, the beneficial ownership rule does not require the bank to collect information regarding ownership or control for certain customers that are exempted or not included in the definition of legal entity customer, such as certain trusts, or certain other legal entity customers.[4]

Other than required beneficial ownership information, the level and type of customer information should be commensurate with the customer's risk profile, therefore the bank should obtain more customer information for those customers that have a higher customer risk profile and may find that less information for customers with a lower customer risk profile is sufficient. Additionally, the type of appropriate customer information will generally vary depending on the customer risk profile and other factors, for example, whether the customer is a legal entity or an individual. For lower risk customers, the bank may have an inherent understanding of the nature and purpose of the customer relationship (*i.e.,* the customer risk profile) based upon information collected at account opening. As a result, the bank may not need to collect any additional customer information for these customers in order to comply with this part of the CDD requirements.

Customer information collected under the CDD rule may be relevant to other regulatory requirements, including but not limited to, identifying suspicious activity, identifying nominal and beneficial owners of private banking accounts, and determining OFAC sanctioned parties. The bank should define in its policies, procedures and processes how customer information will be used to meet other regulatory requirements. For example, the bank is expected to use the customer information and customer risk profile in its suspicious activity monitoring process to understand the types of transactions a particular customer would normally be expected to engage in as a baseline against which suspicious transactions are identified and to satisfy other regulatory requirements.[5]

The bank may choose to implement CDD policies, procedures, and processes on an enterprise-wide basis. To the extent permitted by law, this implementation may include sharing or obtaining customer information across business lines, separate legal entities within an enterprise, and affiliated support units. To encourage cost effectiveness, enhance efficiency, and increase availability of potentially relevant information, the bank may find it useful to cross-check for customer information in data systems maintained within the financial institution for other purposes, such as credit underwriting, marketing, or fraud detection.

Higher Risk Profile Customers

Customers that pose higher money laundering or terrorist financing risks, (*i.e.,* higher risk profile customers), present increased risk exposure to banks. As a result, due diligence policies, procedures, and processes should define both when and what additional customer information will be collected based on the customer risk profile and the specific risks posed. Collecting additional information about customers that pose heightened risk, referred to as enhanced due diligence (EDD), for example, in the private and foreign correspondent banking context, is part

[4] See 31 CFR 1010.230(e)(2) and 31 CFR 1010.230(h)
[5] See 31 CFR 1020.210(b)(5)(ii)

of an effective due diligence program. Even within categories of customers with a higher risk profile, there can be a spectrum of risks and the extent to which additional ongoing due diligence measures are necessary may vary on a case-by-case basis. Based on the customer risk profile, the bank may consider obtaining, at account opening (and throughout the relationship), more customer information in order to understand the nature and purpose of the customer relationship, such as:

- Source of funds and wealth.
- Occupation or type of business (of customer or other individuals with ownership or control over the account).
- Financial statements for business customers.
- Location where the business customer is organized and where they maintain their principal place of business.
- Proximity of the customer's residence, place of employment, or place of business to the bank.
- Description of the business customer's primary trade area, whether transactions are expected to be domestic or international, and the expected volumes of such transactions.
- Description of the business operations, such as total sales, the volume of currency transactions, and information about major customers and suppliers.

Performing an appropriate level of ongoing due diligence that is commensurate with the customer's risk profile is especially critical in understanding the customer's transactions in order to assist the bank in determining when transactions are potentially suspicious. This determination is necessary for a suspicious activity monitoring system that helps to mitigate the bank's compliance and money laundering risks.

Consistent with the risk-based approach, the bank should do more in circumstances of heightened risk, as well as to mitigate risks generally. Information provided by higher risk profile customers and their transactions should be reviewed more closely at account opening and more frequently throughout the term of their relationship with the bank. The bank should establish policies and procedures for determining whether and/or when, on the basis of risk, obtaining and reviewing additional customer information, for example through negative media search programs, would be appropriate.

While not inclusive, certain customer types, such as those found in the "Persons and Entities" section of the FFIEC BSA/AML Examination Manual, may pose heightened risk. In addition, existing laws and regulations may impose, and supervisory guidance may explain expectations for, specific customer due diligence and, in some cases, enhanced due diligence requirements for certain accounts or customers, including foreign correspondent accounts,[6] payable-through

[6] See 31 CFR 1010.610.

accounts,[7] private banking accounts,[8] politically exposed persons,[9] and money services businesses.[10] The bank's risk-based customer due diligence and enhanced due diligence procedures must ensure compliance with these existing requirements and should meet these supervisory expectations.

Ongoing Monitoring of the Customer Relationship

The requirement for ongoing monitoring of the customer relationship reflects existing practices established to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.

Therefore, in addition to policies, procedures, and processes for monitoring to identify and report suspicious transactions, the bank's CDD program must include risk-based procedures for performing ongoing monitoring of the customer relationship, on a risk basis, to maintain and update customer information, including beneficial ownership information of legal entity customers.[11] For more information on beneficial ownership of legal entity customers, refer to the "Beneficial Ownership Requirements for Legal Entity Customers" section of the FFIEC BSA/AML Examination Manual.

The requirement to update customer information is event-driven and occurs as a result of normal monitoring.[12] Should the bank become aware as a result of its ongoing monitoring that customer information, including beneficial ownership information, has materially changed, it should update the customer information accordingly. Additionally, if this customer information is material and relevant to assessing the risk of a customer relationship, then the bank should reassess the customer risk profile/rating and follow established bank policies, procedures, and processes for maintaining or changing the customer risk profile/rating. One common indication of a material change in the customer risk profile is transactions or other activity that are inconsistent with the bank's understanding of the nature and purpose of the customer relationship or with the customer risk profile.

The bank's procedures should establish criteria for when and by whom customer relationships will be reviewed, including updating customer information and reassessing the customer's risk profile. The procedures should indicate who in the organization is authorized to change a customer's risk profile. A number of factors may be relevant in determining when it is appropriate to review a customer relationship including, but not limited to:

- Significant and unexplained changes in account activity
- Changes in employment or business operation

[7] See 31 CFR 1010.610(b)(1)(iii).
[8] See 31 CFR 1010.620
[9] Department of State, Department of the Treasury, Federal Reserve, FDIC, OCC, OTS, *Guidance on Enhanced Scrutiny for Transactions that may Involve the Proceeds of Official Corruption*, January 1, 2001.
[10] FinCEN, Federal Reserve, FDIC, NCUA, OCC, OTS, *Interagency Interpretive Guidance on Providing Banking Services to Money Services Businesses Operating in the United States,* April 26, 2005.
[11] See 31 CFR 1020.210(b)(5)(ii)
[12] Department of the Treasury, Financial Crimes Enforcement Network (2016), "Customer Due Diligence Requirements for Financial Institutions," final rules (RIN 1506-AB25), *Federal Register*, vol. 81 (May 11), p. 29399.

- Changes in ownership of a business entity
- Red flags identified through suspicious activity monitoring
- Receipt of law enforcement inquiries and requests such as criminal subpoenas, National Security Letters (NSL), and section 314(a) requests
- Results of negative media search programs
- Length of time since customer information was gathered and the customer risk profile assessed

The ongoing monitoring element does not impose a categorical requirement that the bank must update customer information on a continuous or periodic basis. [13] However, the bank may establish policies, procedures, and processes for determining whether and when, on the basis of risk, periodic reviews to update customer information should be conducted to ensure that customer information is current and accurate.

[13] Ibid.

Examination Procedures

Customer Due Diligence

Objective. *Assess the bank's compliance with the regulatory requirements for customer due diligence (CDD).*

1. Determine whether the bank has developed and implemented appropriate written risk-based procedures for conducting ongoing CDD and that they:

- Enable the bank to understand the nature and purpose of the customer relationship in order to develop a customer risk profile.
- Enable the bank to conduct ongoing monitoring
  - for the purpose of identifying and reporting suspicious transactions and,
  - on a risk basis, to maintain and update customer information, including information regarding the beneficial owner(s) of legal entity customers.
- Enable the bank to use customer information and the customer risk profile to understand the types of transactions a particular customer would be expected to engage in and as a baseline against which suspicious transactions are identified.

2. Determine whether the bank, as part of the overall CDD program, has effective processes to develop customer risk profiles that identify the specific risks of individual customers or categories of customers.

3. Determine whether the risk-based CDD policies, procedures, and processes are commensurate with the bank's BSA/AML risk profile with increased focus on higher risk customers.

4. Determine whether policies, procedures, and processes contain a clear statement of management's and staff's responsibilities, including procedures, authority, and responsibility for reviewing and approving changes to a customer's risk profile, as applicable.

5. Determine that the bank has policies, procedures, and processes to identify customers that may pose higher risk for money laundering or terrorist financing that include whether and/or when, on the basis of risk, it is appropriate to obtain and review additional customer information.

6. Determine whether the bank provides guidance for documenting analysis associated with the due diligence process, including guidance for resolving issues when insufficient or inaccurate information is obtained.

7. Determine whether the bank has defined in its policies, procedures, and processes how customer information, including beneficial ownership information for legal entity customers, is used to meet other relevant regulatory requirements, including but not limited to, identifying suspicious activity, identifying nominal and beneficial owners of private banking accounts, and determining OFAC sanctioned parties.

Transaction Testing

8. On the basis of a risk assessment, prior examination reports, and a review of the bank's audit findings, select a sample of customer information. Determine whether the bank collects appropriate information sufficient to understand the nature and purpose of the customer relationship and effectively incorporates customer information, including beneficial ownership information for legal entity customers, into the customer risk profile. This sample can be performed when testing the bank's compliance with its policies, procedures, and processes as well as when reviewing transactions or accounts for possible suspicious activity.

9. On the basis of examination procedures completed, including transaction testing, form a conclusion about the adequacy of policies, procedures, and processes associated with CDD.

To Do

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