



CDD RULE FAQ HIGHLIGHTS | YOUR MAP TO REGULATORY CHANGE

BACKGROUND

On April 3, 2018, FinCEN issued [Frequently Asked Questions](#) (FAQs) to assist covered financial institutions in understanding the scope of the Customer Due Diligence for Financial Institutions Rule, issued on March 11, 2016 and going into effect on May 11, 2018. This document has been developed to highlight the FAQs and should be used in conjunction with, not as a replacement for, the full scope of the CDD Rule and FAQs issued in 2016 and 2018.

Can you do more, or be more strict, than what the CDD Rule requires? Yes. You can actually implement stricter policies and procedures for the collection and verification of beneficial ownership requirements than those prescribed by the rule. The minimum percentage under the Ownership Prong is 25%, but you can institute a lower percentage of ownership, and you could gather information on more than one individual under the Control Prong.

Should you ever consider collecting lower percentages of ownership interests than the 25% prescribed by the Rule?

It depends... if you determine, based on your assessment of a customer's risk, that collection and verification of beneficial ownership information at a lower threshold is warranted, you may do so. The FAQs do note that transparency in beneficial ownership is only one component of due diligence – additional or heightened risk may be mitigated by other means (e.g. enhanced monitoring or collecting other information such as expected account activity).

Do you have to drill down if your legal entity customer is owned by another legal entity? While not explicitly stated as a “yes” or “no” answer in the FAQs, the illustration provided in the FAQs indicates the affirmative. So, **yes**, you must drill down to figure out which individuals own, **directly or indirectly**, 25% or more of your legal entity customer.

What are acceptable means to use in verifying the identities of beneficial owners? The requirements are similar to what you are following now under the Customer Identification Program (CIP), which includes situations in which you are unable to form a reasonable belief of the legal entity customer's beneficial owners. And, while your beneficial ownership verification procedures must contain the same elements as existing CIP, they are not required to be identical. For example, under the CDD Rule, you can accept photocopies or other reproductions of an ID for beneficial owners if the beneficial owners are not present. Acceptable documents include but are not limited to: unexpired government-issued ID evidencing nationality or residence and bearing a photograph or similar safeguard. Non-documentary evidence may include but is not limited to: independently verifying the beneficial owner's identity through the comparison of information from other sources, checking references with other financial institutions or obtaining a financial statement. Keep in mind, however, that running beneficial owners through ChexSystems could run afoul of the Fair Credit Reporting Act – be careful about that.

Do you get the beneficial owners' residential or business addresses? You have the option of obtaining **either** the residential or business street address. Army Post Office and Fleet Post Office boxes, or the residential or business street address of the next of kin or another contact individual are acceptable.

What do you do if the beneficial owner(s) is not available to appear in person and the person authorized to open the account presented a copy of the ID? You are able to accept a photocopy or other reproduction of the ID under the CDD Rule. Your procedures should outline your documentary requirements accordingly. Additionally, you can either obtain a completed Certification Form or equivalent information from the individual authorized to open the account.

What if the beneficial owner is already an existing customer?

Keep in mind the CDD Rule and CIP Rule are not identical. While you are required to identify and verify the identities of beneficial owners of legal entity customers each time a new account is opened, you may rely on information you already have on file if a beneficial owner is already an existing customer. You must however, ensure the CIP information is up-to-date, accurate and the individual authorized to open the account certifies or confirms (verbally or in writing) the accuracy of the pre-existing CIP information.

Are you required to use the Certification Form in Appendix A? **No.** There is no requirement that you use the Certification Form; the form is optional and provided as a means to obtain the required beneficial ownership information. You may choose to comply with the requirements using another method (i.e. through your own forms, or any other means that substantively complies with the requirements). FYI – the Certification Form provided in Appendix A is non-fillable. As such, it would need to be completed manually or converted for electronic use.

What if you have multiple sets of beneficial ownership documents? You **must** retain all beneficial ownership information collected about the legal entity customer. So, you will have the set collected at account opening (or when a triggering event occurs for an existing customer), and any subsequent records obtained for additional accounts or triggering events. **You must retain identifying information for 5 years after the legal entity’s account is closed; verification information must be retained for 5 years after the record is made.**

What if the customer opens multiple accounts (whether or not simultaneously)? You 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 period of time that has elapsed. **However, if you have already obtained a Certification Form (or used your method to certify beneficial owner information), you may rely on that information to fulfill your requirement for subsequent accounts, as long as the customer certifies or confirms (verbally or in writing) that the information is up-to-date and accurate at the time each subsequent account is opened, and that you have no knowledge that would call into question the reliability of that information.** You would need to retain a record of that certification or confirmation (verbal and written) by the customer.

What about accounts opened for a legal entity customer that are for your own internal recordkeeping or operational purposes? The beneficial ownership requirement applies to a new account, which has defined to mean “each account opened...by a legal entity customer.” An account (or subaccount) relating to a legal entity customer will **not** be considered a new account for purposes of this rule when you create the account for your own administrative or operational purposes and **NOT** at the customer’s request. **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.** Examples that would not fall within this interpretation are outlined in the FAQs.

Loan Renewals & Auto-Renewing CDs: Here we have it, folks...what we’ve all be waiting for! YES. You are required to obtain information on the beneficial owners of a legal entity that opens a new account – for financial services or products established before May 11, 2018, you must obtain beneficial ownership information of the legal entity customers at the time of the first renewal following that date. So, the first time the service or product renews is your triggering event – you need to get the beneficial ownership at that time. However, for subsequent renewals where: (1) the legal entity customer and the service or product remains the same, (2) the customer certifies or confirms in writing that the existing beneficial ownership information is accurate and up-to-date, and (3) you have no knowledge that would call into question the reliability of the information, you

would not be required to collect the beneficial ownership information again. In the case of a loan renewal or auto-renewing CD, if at the time the customer certifies beneficial ownership information, and also agrees to notify you of any change in such information, such agreement can be considered certification or confirmation from the customer and should be documented as such, for as long as the loan or CD is outstanding.

Are you required to collect beneficial ownership information prior to May 11, 2018? You 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 is triggered when you become aware of information about the customer during the course of normal monitoring relevant to assessing or reassessing the customer's risk, and such information indicates a possible change in beneficial ownership (OR, if a new account is opened on or after May 11, 2018).

Do you need to attempt to get or update beneficial ownership during routine periodic reviews of existing accounts? **No.** You are not required to solicit or update beneficial ownership as a matter of course during regular or periodic reviews, absent risk-based concerns. You must 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.

Do you need to implement new or different processes for ongoing monitoring and updates? To the extent that you have monitoring processes in place that allow you to meet the Rule's requirements, you can use your existing monitoring processes to comply with CDD monitoring and updating obligations (i.e. "current industry practice to comply with existing expectations for SAR reporting should already satisfy this...requirement").

If you have to update beneficial ownership information, do you need to physically obtain and re-certify the information? It depends. The Rule does not necessarily require re-certification when the information is up-to-date and accurate. You may, therefore, update your records to reflect a change in information for an existing beneficial owner using the same or similar processes you use to record account information obtained in connection with account opening. If, however, the updated information was a change of beneficial ownership, the new beneficial owner's identity would need to be collected, certified and verified.

Is there a distinction between the requirements for identifying and verifying beneficial ownership information at the time of a new account opening and at the time of a triggering events? **No.** Whether you identify and verify the identity of a beneficial owner at the time a legally entity opened a new account or at the time of a triggering event, the fundamental elements of identification and verification are the same.

Are you required to identify and verify the identity of the beneficial owners that own 25% 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? **No.** However, you are required to collect beneficial ownership information for the pooled investment vehicle under the **control prong**.

Do you need to identify and verify the identity of all co-trustees when 25% or more of the equity interests of a legal entity customer are owned by a trust that is overseen by multiple trustees? **No.** If a trust owns, directly or indirectly, 25% or more of the equity interests in a legal entity customer, the beneficial owner under the ownership prong is the trustee. Where there are multiple trustees or co-trustees, you are expected to collect and verify the identity of, at a minimum, one co-trustee of a multi-trustee trust who owns 25% or more of the equity interests of a legal entity customer that is not subject to an exclusion.

If a legal entity if the trustee of a trust that owns 25% or more of the equity interests of a legal entity customer, can that entity be identified as a beneficial owner under the ownership prong or does a natural person need to be

identified? If a trust owns, directly or indirectly, 25% or more of the equity interests in a legal entity customer, the beneficial owner under the ownership prong is the trustee, regardless of whether the trustee is a natural person or entity. However, you should collect information on the legal entity trustee as part of your CIP, consistent with your risk assessment and the customer's risk profile. As a reminder, you must also identify and verify a natural person as the beneficial owner under the control prong, in addition to the ownership prong.

How do you verify eligibility for exclusion from the definition of a legal entity customer? The first step is to review the exclusions under the rule. Then, you may rely on information provided by the legal entity customer to determine whether the legal entity is excluded from the definition, provided you have no knowledge to the contrary. Your policies and procedures should address the type of information you will obtain and reasonably rely upon to determine eligibility for exclusion.

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

Are you limited to the Internal Revenue Code (IRC) definitions of charities, non-profits and similar entities when assessing eligibility for exclusion? **No.** The exclusion from the definition of legal entity customer for charities and non-profits is not limited to those entities that meet IRC definition. Keep in mind, however, that such entities are **still subject to the control prong.**

Are companies publicly traded in the U.S. and entities listed on foreign exchanges excluded? **Companies traded publicly in the U.S. are excluded** from the definition of a legal entity customer. The Rule also excluded a U.S. entity when at least 51% of its common stock or analogous equity interest is held by a listed entity. However, **companies listed on foreign exchanges are not** excluded.

Can you take a risk-based approach to collecting information from legal entity customers listed on foreign exchanges? **No.** However, you may rely on public disclosures of such entities, absent any reason to believe such information is not accurate or not up-to-date.

Does the exclusion for foreign financial institutions from the Rule's definition of a legal entity customer depend on whether the beneficial ownership requirements applied by the bank's foreign regulator match U.S. requirements? **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. See Question #26 for complete details.

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? **No.** You would need to contact the relevant foreign regulator or use other reliable means to make this determination.

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 (i.e. to qualify for the exemption)? Examples include entities that are owned or operated by a non-U.S. government agency (e.g. embassies or consulates), and entities that are instrumentalities of foreign government (e.g. government-owned enterprises engaging in activities that are exclusively governmental in nature). State-owned enterprise engaged in profit-seeking activities would **not** qualify.

Does the point of sale exception apply only 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? The POS exemption is provided for retail credit

accounts opened to facilitate the purchases made at the retailer because of the low risk posed by opening such accounts at the brick and mortar store. Refer to the exclusion and the qualifying language in the Rule.

What kind of businesses and equipment are covered under the equipment finance exemption? Examples in the FAQs include, but are not limited to: farm equipment, construction machinery, aircraft, computers, printers, photocopiers, and autos that the business purchases or leases.

Does the equipment lease and purchase exemption apply when the customer leases directly from the financial institution? Yes. The exemption would apply because the account established at the FI meets the requirements of the exemption: (1) account's purpose is to finance the purchase or leasing of equipment, (2) payments are remitted directly by the FI to the vendor or lessor, and (3) there is no possibility of a cash refund on the account. Refer to Question #31 for details.

How will beneficial ownership information need to be incorporated into, or considered, when aggregating transactions for currency transaction reporting purposes? Unless there is an affirmative reason to believe otherwise, you should presume that difference businesses that share a common owner are operating separately and independently from each other and from the common owned. So, if you know the businesses are separate and distinct and operated independently, you should not aggregate transactions involving those businesses. However, if you find that the businesses are no operated independently (e.g. staffed by the same employees, located at the same address, accounts of one business pay the expenses of another), the transactions should be aggregated.

Do you need to list beneficial owners on CTRs filed for legal entity customers? No. Refer to Question #33 for details. There is no difference in completing the CTRs under the new rule.

Do you need to implement procedures to approve changes to your AML program or require Boards of Directors or senior management to approve such changes? You may continue to use your existing procedures for approval AML program changes.

What type of information do you need to collect to document the nature and purpose of the customer relationship on a risk-basis? Understanding the nature and purpose of a customer relationship in order to develop a customer risk profile is critical to CDD. An understanding based on category of customer means that for certain low-risk customers, your understanding of the nature and purpose of the relationship can be developed by inherent or self-evident information (e.g. type of customer, type of account, service, product or other basic information obtained at account opening). The profile may include a system of risk ratings or categories of customer. As such, your level of documentation is going to vary.

Once you know the nature and purpose of a customer relationship, what does FinCEN want you to do with it? The information should be used to develop a baseline against which the customer activity can be assessed for possible suspicious activity reporting. If account activity changes, risk-based monitoring may identify the need to update customer information, including as appropriate, beneficial ownership information.

Are you required to develop and document customer risk profiles for self-evident products or customer types (e.g. safe deposit boxes)? You must implement risk-based procedures within your AML program to demonstrate an understanding of the nature and purpose of customer relationships to develop customer risk profiles. It is reasonable that in the case of certain products, such as safe deposit boxes, the nature and purpose are self-evident and therefore, not additional documentation would be needed to demonstrate an understanding of the nature and purpose, beyond the documentation to establish the particular type of account.