BENEFICIAL OWNERSHIP REFERENCE GUIDE
IN THIS GUIDE

The documents within this package were developed as we, and the industry, planned for implementation of the Customer Due Diligence (CDD) Rule (i.e. Beneficial Ownership Requirements). The documents were compiled into this guide to assist you in ongoing administration and compliance with the CDD Rule.

Beneficial Ownership Fact Sheet
Beneficial Ownership Action Plan
Account Opening Reference Guide
Sample Certification Form
Sample Policy Language and Procedures
Customer Information Brochure
April 2018 FAQ Highlights
Beneficial Ownership FAQs (Original)
BACKGROUND

FinCEN issued its long-awaited Customer Due Diligence Requirements for Financial Institutions in May 2016. The final rule amends existing rules to explicitly reference key elements of customer due diligence and set forward minimum standards for CDD that are believed to be fundamental to an effective anti-money laundering program.

OVERVIEW OF REQUIREMENTS

Covered financial institutions must identify and verify the identity of beneficial owners of all legal entity customers at the time a new account is opened. To be clear, you must verify the identity of the individuals identified as beneficial owners – NOT his or her status as a beneficial owner. **Covered financial institutions have been defined as banks; brokers or dealers in securities; mutual funds and futures commission merchants; and, introducing brokers in commodities.** As a covered financial institution, you are required to establish and maintain written policies and procedures reasonably designed to identify and verify the identities of beneficial owners of legal entity customers. **FinCEN is NOT imposing a categorical retroactive requirement.** However, you are not precluded from retroactively collecting beneficial ownership information.

STANDARD CERTIFICATION FORM (OPTIONAL)

You may comply EITHER by documenting the information on a standard certification form that is similar to that provided in the Appendix of the final rule OR by any other means that substantively complies with obtaining and documenting beneficial ownership information (i.e. you may use your own form rather than adopting the model form in the Appendix, provided the individual opening the account certifies, to the best of his/her knowledge, the accuracy of the information). In obtaining beneficial ownership information, you may rely on the beneficial ownership information supplied by the customer, provided that you have no knowledge of facts that would reasonably call into question the reliability of the information that the customer supplied. Please note that identification and verification procedures for beneficial owners are very similar to those for individual customers under CIP, except that for beneficial owners, you may rely on photocopies or other reproductions of identification documents. Verification must be completed within a reasonable time after the account is opened. Procedures must address situations in which you cannot form a reasonable belief that you know the true identity of the beneficial
owner of a legal entity customer after following required procedures.

RELEVANT DEFINITIONS

- **Covered Financial Institution**: Banks; brokers or dealers in securities; mutual funds and futures commission merchants; and, introducing brokers in commodities

- **Legal Entity Customer**: Examples of legal entity customers would include corporations, partnerships or other similar business entities that open an account after this rule becomes effective.

- **Beneficial Owner**: The natural person (as opposed to another legal entity). To aid in the determination of who meets the definition of a beneficial owner, FinCEN has provided for a two-prong test. **Each prong is intended to be an independent test.**

In cases where an individual is both a 25% owner and meets the definition for control, that same individual could be identified as a beneficial owner under both prongs. You may also identify other individuals that technically fall outside the proposed definition of “beneficial owner” in accordance with your risk mitigation and customer due diligence practices.

**EXCLUSIONS**

Exclusions to the beneficial ownership rule include:

- Financial institutions regulated by a Federal functional regulator or a bank regulated by a State bank regulator
- A department or agency of the United States, of any State, or of any political subdivision of a State
- Any entity established under the laws of the United States, of any State, or of any political subdivision of any State, or under an interstate compact between two or more states, that exercises governmental authority on behalf of the U.S. or of any such State or political subdivision
- Any entity (other than a bank) whose common stock or analogous equity interests are listed on the New York, American or NASDAQ stock exchanges
- Any entity organized under the laws of the United States or any State at least 51% of whose common stock or analogous equity interests are held in a listed entity.
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

An investment company, as defined in Section 3 of the Investment Company Act of 1940, that is registered with the SEC under that Act

An investment adviser, as defined in Section 2022(a)(11) of the Investment Advisors Act of 1940 that is registered with the SEC under that Act

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

Any other entity registered with the SEC under the Securities and Exchange Act of 1934

A registered entity, commodity pool operators, 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 CFTC

A public accounting firm registered under Section 102 of the Sarbanes-Oxley Act

A bank holding company, as defined in Section 2 of the Bank Holding Company Act of 1956 or a savings or loan holding company as defined in Section 10(n) of the Home Owners’ Loan Act

A pooled investment vehicle that is operated or advised by a financial institution excluded from the rule

An insurance company that is regulated by a State

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

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

Non-excluded pooled investment vehicles

Intermediated account relationships

A non-U.S. governmental department, agency or political subdivision that engages only in governmental rather than commercial activities (As in the case of other legal entities lacking significant equity interests, financial institutions would be expected to collect beneficial ownership information under the control prong only)

Any legal entity only to the extent that it opens a private banking account subject to 31 CFR 1010.620

Non-profit entities whether or not tax exempt (from the ownership prong). For purposes of this provision, a non-profit corporation or similar entity would include, among others, charitable, non-profit, not-for-profit, non-stock, public benefit or similar corporations

Accounts established for the purchase and financing of postage and for which payments are remitted directly by the financial institution to the provider of the postage products **

Commercial accounts to financial insurance premiums and for which payments are remitted directly by the financial institution to the insurance provider or broker **

Accounts to finance the purchase or lease of equipment and for which payments are remitted directly by the financial institution to the vendor or lessor of the equipment **

** The three exemptions directly above are subject to further limitations to mitigate the remaining limited money laundering risks associated with them. (Refer to Page 22 of the Final rule for details)
# BENEFICIAL OWNERSHIP ACTION PLAN

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<th>Planning</th>
<th>Responsibility</th>
<th>Target Date</th>
<th>Issues</th>
<th>Status</th>
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<tr>
<td>1. Assign a point person for coordinating the implementation process for the CDD Beneficial Ownership Rule</td>
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<td>2. Identify key stakeholders in the implementation process who will have critical roles and responsibilities in executing this action plan</td>
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<td>3. Determine the policies and procedures that will need to be revised</td>
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<td>4. Complete necessary policy and procedure revisions</td>
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<td>5. Advise the Board and Management of the CDD Beneficial Ownership Rule and its implication for systems, processes and training and maintain a schedule of periodic updates on this action plan</td>
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<td>6. Identify the system(s) that may be used in implementing and complying with the CDD Beneficial Ownership Rule</td>
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<td>7. Establish early and regular contact with third party providers and systems vendors to develop timelines for system upgrades,</td>
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<td>availability of additional fields, the certification process, etc.</td>
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<td>8</td>
<td>Assess current integration between your existing technology platforms and those of any third-party providers to determine whether updates are necessary</td>
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<td>Identify staff who will be affected by the rule and its ongoing requirements</td>
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<td>Develop a detailed training plan for all affected staff commensurate with their responsibilities for communicating with customers, gathering CIP, CDD and beneficial ownership information and recording it within your system</td>
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<td>11</td>
<td>Determine how beneficial ownership information may be tied together within your system and monitoring processes for suspicious activity monitoring purposes</td>
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<td>12</td>
<td>Revisit the scope of your BSA Audit for 2018 to ensure it includes and assessment of your policies, procedures, and controls for the CDD Beneficial Ownership Rule</td>
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<td>13</td>
<td>Consider the benefits of early implementation to test your processes before the May 11, 2018 deadline</td>
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<td><strong>PLANNING</strong></td>
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<td>14. Upon implementation, communicate implementation success at your Compliance Council meeting, to Senior Management and to the Board</td>
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Is the account being opened on behalf of a business?

- **YES**
  - Obtain and document CIP information for an individual as required by your policy.

- **NO**
  - Obtain and document CIP information for a sole proprietor, DBA or other unregistered business required by your policy.

Is the account being opened for a corporation, limited liability company, limited partnership, business trust or other entity registered under the Secretary of State?

- **YES**
  - Beneficial Ownership Information Must Be Obtained and Documented

- **NO**

**WHAT YOU NEED TO DO**

1. Ask the individual opening the account to provide the name(s) of everyone who owns 25% or more of the company.

2. Ask the individual opening the account to provide the name(s) of at least one person in control of the company.

Use the tests below as your guide. Ask the individual opening the account to document the name(s) of the beneficial owner(s) under each test, their addresses, dates of birth and social security numbers on the Beneficial Ownership Certification Form. Obtain documentation to verify the identities.

**OWNERSHIP**

- **ALL individuals who own 25% or more**

**CONTROL**

- **AT LEAST ONE person in control**

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

- An individual with significant responsibility to control, manage, or direct a legal entity customer, including an executive officer (CEO, CFO, COO, Managing Member, General Partner, President, Vice President or Treasurer), OR any other individual who performs similar functions
PROCEDURAL NOTES

- If no one individual owns 25% or more of the legal entity customer, there may be no beneficial owners listed under the ownership prong.
- If a trust owns 25% or more of the business, use the trustee as the beneficial owner.
- If another business entity owns 25% or more of the business, inquire about the owners of the business entity that maintains ownership. Remember, this rule is about getting to the humans behind the business.
- Obtain and document CIP information (name, address, DOB and tax ID #) for each beneficial owner under each test. Obtain documentary evidence for each beneficial owner in accordance with our policy. Photocopies or other reproductions are permissible when identifying beneficial owners.

EXCLUSIONS

- Financial institutions regulated by a Federal functional regulator or a bank regulated by a State bank regulator
- Department or agency of the U.S., of any State, or of any political subdivision of a State
- Any entity established under the laws of the U.S., or any State, or of any political subdivision of any State, or under an interstate compact
- Any entity (other than a bank) whose common stock or analogous equity interests are listed on the New York, American or NASDAQ stock exchange
- Any entity organized under the laws of the U.S. or of any State at least 51% of whose common stock or analogous equity interests are held by a listed entity
- Issuers of securities registered under Section 21 of the Securities Exchange Act of 1934 or that is required to file reports under 15(d) of that Act
- Any investment company, as defined in Section 3 of the Investment Company Act of 1940, registered with the SEC
- An SEC-registered investment adviser, as defined in Section 202(a)(11) of the Investment Advisers Act of 1940
- An exchange or clearing agency, as defined in Section 3 of the SEA, registered under Section 6 or 17A of that Act
- Any other entity registered with the SEC under the SEA
- A registered entity, commodity pool operator, commodity trading adviser, retail foreign exchange dealer, swap dealer or major swap participant, defined in Section 1a of the Commodity Exchange Act, registered with the Commodity Futures Trading Commission
- A public accounting firm registered under Section 102 of the Sarbanes-Oxley Act
- A bank holding company, as defined in Section 2 of the Bank Holding Company Act of 1956 or savings and loan holding company, as defined in Section 10(n) of the Home Owners’ Loan Act
- A pooled investment vehicle operated or advised by an FI excluded from the definition of legal entity customer under the CDD Rule
- An insurance company regulated by a State
- A financial market utility designated by the Financial Stability Oversight Council under Title VIII of the DFA
- A foreign financial institution established in a jurisdiction where the regulator of such an institution maintains beneficial ownership information regarding such institution
- A non-U.S. governmental department, agency or political subdivision that engages only in governmental rather than commercial activities
- Any legal entity only to the extent that is opens a private banking account subject to 31 CFR 1010.620
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 an 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 non-U.S. 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% or more of the equity interests of the legal entity customer (e.g. each natural person who owns 25% or more of the shares of the corporation; and

(ii) An individual with significant responsibility for managing the legal entity customer (e.g. 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 may be identified in 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% 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.
Persons opening an account on behalf of a legal entity must provide the following information.

<table>
<thead>
<tr>
<th>Name of Person Opening Account</th>
<th>Name of Legal Entity for which the Account is being Opened</th>
<th>Legal Entity Type</th>
</tr>
</thead>
</table>

**OWNERSHIP PERCENTAGE**

Please provide the following information for each individual, if any, who directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25% or more in the equity interests of the legal entity listed above.

<table>
<thead>
<tr>
<th>Name</th>
<th>Date of Birth</th>
<th>Address</th>
<th>For U.S. Persons: Social Security Number</th>
<th>For Non-U.S. Persons: Passport Number and Country of Issuance, or other similar identification number</th>
<th>Ownership %</th>
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*Continued on the following page*

**IMPORTANT:** If there is a legal entity that owns 25% or more of this legal entity customer, please complete the Beneficial Ownership Addendum located on Page 4.

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1 Modeled from FinCEN Appendix A, Certification Regarding Beneficial Owners of Legal Entity Customers.
2 We may also ask to see a copy of a driver’s license or other identifying document for each beneficial owner listed on this form.
3 In lieu of a passport number, non-U.S. persons may also provide an alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.
CONTROLLING INTEREST

Please provide the following information\(^4\) for one individual with significant responsibility for managing the legal entity listed above, such as:

- An executive officer or senior manager (e.g. Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President or Treasurer); OR
- Any other individual who regularly performs similar functions.

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<thead>
<tr>
<th>Name &amp; Title</th>
<th>Date of Birth</th>
<th>Address</th>
<th>For U.S. Persons: Social Security Number</th>
<th>For Non-U.S. Persons: Passport Number and Country of Issuance, or other similar identification number(^5)</th>
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CERTIFICATION & AGREEMENT TO NOTIFY

I, _____________________________, hereby certify, to the best of my knowledge, that the information provided herein is complete and correct. I also agree to notify [Financial Institution Name] of any change in the information provided within this Certification.

______________________________
Signature

______________________________
Date

Legal Entity Identifier: ____________ (Optional)        Account Number: ______________

\(^4\) We may also ask to see a copy of a driver’s license or other identifying document for each beneficial owner listed on this form.

\(^5\) In lieu of a passport number, non-U.S. persons may also provide an alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.
BENEFICIAL OWNERSHIP ADDENDUM

This addendum should be used when there is legal entity or entities that owns 25% or more of the legal entity customer opening this account.

<table>
<thead>
<tr>
<th>Legal Entity Name</th>
<th>% Ownership in Legal Entity Opening the Account</th>
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</table>

Please provide the following information for each individual, if any, who directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25% or more in the equity interests of the legal entity listed above.

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<th>Name</th>
<th>Ownership %</th>
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Are any of the individuals listed above also owners of the legal entity seeking to open this account?  
☐ Yes  ☐ No

If you selected “Yes” above, please provide the following information for each individual, who owns 25% or more in the equity interests of the legal entity seeking to open this account.

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<tr>
<th>Name</th>
<th>Date of Birth</th>
<th>Address</th>
<th>For U.S. Persons: Social Security Number</th>
<th>For Non-U.S. Persons: Passport Number and Country of Issuance, or other similar identification number</th>
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6 Name of the legal entity that has ownership in the legal entity seeking to open the account.

7 We may also ask to see a copy of a driver’s license or other identifying document for each beneficial owner listed on this form.

8 Aggregate ownership between the entities to determine total ownership of the legal entity customer seeking to open the account.

9 In lieu of a passport number, non-U.S. persons may also provide an alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.
POLICY LANGUAGE (SAMPLE)

Background
The Financial Crimes Enforcement Network (FinCEN) issued the Customer Due Diligence Requirements for Financial Institutions Rule (CDD Rule) in May 2016. However, we are not required to implement the Rule until May 11, 2018.

The Rule amended existing Bank Secrecy Act (BSA) regulations to clarify and strengthen customer due diligence requirements for certain financial institutions. To this end, the CDD Rule amended our anti-money laundering (AML) program requirements. Our AML program must include, at a minimum:

- A system of internal controls.
- Independent testing.
- Designation of a BSA officer or individual(s) responsible for daily compliance.
- Training for appropriate personnel.
- Risk-based procedures for conducting ongoing CDD to understand the nature and purpose of customer relationships and to conduct ongoing monitoring to identify and report suspicious transactions, and on a risk basis, to maintain and update customer information.

The CDD Rule outlined explicit customer due diligence requirements and imposed a new requirement for financial institutions to identify and verify the identity of beneficial owners of legal entity customers, subject to certain exclusions and exemptions. Within this construct, FinCEN intends that the legal entity customer identify its ultimate beneficial owner(s) rather than “nominees” or “straw men.”

The CDD Rule requires us to establish procedures that enable us to identify the beneficial owners of each customer at the time a new account is opened, unless the customer is otherwise excluded, or the transaction is exempted. The procedures must establish risk-based practices for verifying the identity of each beneficial owner identified, to the extent reasonable and practicable. The procedures must contain the elements required for verifying the identities of customers that are individuals under applicable Customer Identification Program (CIP) requirements (i.e. We are required to obtain, verify and record the identities of the beneficial owners of legal entity customers).

Coverage
Covered financial institutions include federally regulated banks and federally insured credit
unions, mutual funds, brokers or dealers in securities, futures commissions merchants and introducing brokers in commodities.

The CDD Rule is applicable to “new” accounts. The Rule defines a new account as each account opened as a covered financial institution by a legal entity customer on or after May 11, 2018.

The Rule does not supersede existing obligations and practices regarding trusts. While we are not required to look through a trust to its beneficiaries, we may need to take additional steps to verify the identity of a customer that is not an individual, such as obtaining information about the persons with control over the account. When a trust is our direct customer, we will identify and verify the identity of trustees because trustees will be signatories on trust accounts. Additionally, in the case of revocable trusts, we may need to gather information about the settlor, grantor, trustee or other persons with the authority to direct the trustee and who thus has the authority or control over the account, in order to establish the trust identity of the customer.

**Beneficial Owner | Defined**

The CDD Rule defines a beneficial owner as each of the following:

- Each individual, if any, who directly or indirectly, owns 25% or more of the equity interests of a legal entity customer (OWNERSHIP PRONG).
- A single individual with significant responsibility to control, manage or direct a legal entity customer, including an executive officer or senior manager (e.g. CEO, CFO, COO, Managing Member, General Partner, President, Vice President or Treasurer); or any other individual who regularly performs similar functions (CONTROL PRONG).

**Collection of Beneficial Owner Information**

The CDD Rule requires us to obtain information about the beneficial owners of a legal entity from the individual seeking to open a new account on behalf of the legal entity customer. This individual could, but would not necessarily, be a beneficial owner. Please refer to the Beneficial Ownership Account Opening Procedures to guide you through the account opening process and the Customer Identification Program Procedures for information required to be obtained from each beneficial owner (i.e. CIP procedures for individuals) and acceptable documentary and non-documentary methods of verifying an individual’s identity.

Note: To the extent that we have accurate and up-to-date information for an existing customer who is defined as a beneficial owner under either prong, we are not required to again obtain CIP information or perform ID-verification.

**Procedural Note**: The Rule allows you to collect either the residential or business address for beneficial owners. Your procedures should indicate which you will be collecting.
Loan Renewals and Auto-Renewing Certificates of Deposit (CDs)

When a loan is renewed or a CD automated rolls over, the customer establishes another formal banking relationship with the bank and as such, beneficial ownership information must be obtained. FinCEN issued guidance on April 3, 2018, to specifically address such situations. For financial services or products established before May 11, 2018, covered financial institutions must obtain certified beneficial ownership information of the legal entity customers 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 product or service remains the same, the customer certifies or confirms that the beneficial ownership previously obtained is accurate and up-to-date, and we have no knowledge of facts otherwise, we would not be required to obtain beneficial ownership information again.

In the case of a loan renewal or CD rollover, if at the time the customer certifies its beneficial ownership information, it also agrees to notify us of any change in such information, the agreement can be considered certification or confirmation from the customer and should be documented and maintained as such, along as the loan or CD is outstanding.

To comply with this rule, we will:

- Require that all legal entity customers, who have loan renewal options on credit established prior to May 11, 2018, provide beneficial ownership information and complete our Certification Form prior to the first renewal date following May 11, 2018.

- Require that all legal entity customers, who have auto-renewing CDs established prior to May 11, 2018, provide beneficial ownership information and complete our Certification Form prior to the first renewal date following May 11, 2018. Such notice will be provided within the CD maturity notice, indicating that the beneficial ownership information and completed Certification Form, must be returned fully executed prior to the renewal date. Failure to do so shall result in closure of the CD, and issuance of a cashier’s check for the balance.

Because our Certification Form includes an “Agreement to Notify,” each legal entity customer will acknowledge their responsibility to notify us of any change in beneficial ownership information. This statement, and the customer’s agreement to comply, shall fulfill our responsibilities for loan renewals and auto-renewing CDs as specified in Question #12 of FinCEN’s April 3, 2018 FAQs. For all other accounts, the customer’s responsibility to notify us of changes shall aid in our account administration and ongoing monitoring.

Please note: For all other account types, other than those with renewing options, a Beneficial Ownership Certification Form shall be completed for every new account opened by a legal entity customer, unless the customer meets one of the exclusions in the rule.

For any legal entity customer that has previously supplied beneficial ownership information and completed the Certification Form, we may rely on that information to fulfill our beneficial
ownership requirement for subsequent accounts, as long as the customer certifies or confirms (in writing or verbally) that such information is up-to-date and accurate at the time each subsequent account is opened and we have no knowledge otherwise.

Procedural Note: Indicate whether you will rely on previously provided information and how/where you will house the certification/confirmation for subsequent accounts.

OFAC Compliance
We must use beneficial ownership information as we use other information we gather regarding customers, including compliance with OFAC-administered sanctions. As such, we must screen each beneficial owner against the OFAC list prior to account opening and/or disbursement of loan proceeds.

Section 314(a) Information Sharing
FinCEN does not expect the information obtained under the CDD Rule to add additional 314(a) requirements. The regulation implementing Section 314(a) does not require the reporting of beneficial ownership information associated with an account or transaction matching a named subject in a 314(a) request. We are required to search our records for accounts or transactions matching a named subject and report whether a match exists using the identifying information provided in the request. However, we have established as our policy, to include beneficial ownership in our investigation processes in addressing and responding to 314(a) requests [adjust this section if your policy is different].

Retention of Information
We are required to retain all beneficial ownership information collected about a legal entity customer. Identifying information, including the Certification Form, must be maintained for a period of 5 years after the legal entity’s account is closed. However, all verification information records must be retained for a period of 5 years after the record is made. To comply with both of these provisions, we will retain all beneficial ownership information (i.e. identification and verification information) for 5 years after the legal entity’s account is closed.

Exemptions and Limitations
We are not required to identify and verify the identity of the beneficial owners of a legal entity customer when the customer opens any of the following:

- Accounts established at the point-of-sale to provide credit products, solely for the purchase of retail goods and/or services at these retailers, up to a limit of $50,000.
- Accounts established to finance the purchase of postage and for which payments are remitted directly by the FI to the provider of the postage products.
- Accounts established to finance insurance premiums and for which payments are remitted directly by the FI to the insurance provider or broker.
- Accounts established to finance the purchase or lease of equipment and for which payments are remitted directly by the FI to the vendor or lessor of the equipment.

These exemptions will NOT apply under EITHER of the following circumstances:

- If the accounts are transaction accounts through which a legal entity customer can make payments to, or receive payments from, third parties
- If there is the possibility of a cash refund for accounts opened to finance purchase of postage, insurance premium or equipment leasing.

Additionally, the Rule excludes from the definition of legal entity customer certain entities that are subject to Federal and State regulation and for which information about their beneficial ownership and management is available from the Federal and State agencies. The following list of exclusions have been outlined in the Rule:

- Financial institutions regulated by a Federal functional regulator or a bank regulated by a State bank regulator
- Department or agency of the U.S., of any State, or of any political subdivision of a State
- Any entity established under the laws of the U.S., or any State, or of any political subdivision of any State, or under an interstate compact
- Any entity (other than a bank) whose common stock or analogous equity interests are listed on the New York, American or NASDAQ stock exchange
- Any entity organized under the laws of the U.S. or of any State at least 51% of whose common stock or analogous equity interests are held by a listed entity
- Issuers of securities registered under Section 12 of the Securities Exchange Act of 1934 or that is required to file reports under 15(d) of that Act
- Any investment company, as defined in Section 3 of the Investment Company Act of 1940, registered with the SEC
- An SEC-registered investment adviser, as defined in Section 202(a)(11) of the Investment Advisers Act of 1940
- An exchange or clearing agency, as defined in Section 3 of the SEA, registered under Section 6 or 17A of that Act
- Any other entity registered with the SEC under the SEA
- A registered entity, commodity pool operator, commodity trading adviser, retail foreign exchange dealer, swap dealer or major swap participant, defined in Section 1a of the Commodity Exchange Act, registered with the Commodity Futures Trading Commission
- A public accounting firm registered under Section 102 of the Sarbanes-Oxley Act
- A bank holding company, as defined in Section 2 of the Bank Holding Company Act of 1956 or savings and loan holding company, as defined in Section 10(n) of the Home Owners’ Loan Act
- A pooled investment vehicle operated or advised by an FI excluded from the definition of legal entity customer under the CDD Rule
- An insurance company regulated by a State
- A financial market utility designated by the Financial Stability Oversight Council under Title VIII of the DFA
- A foreign financial institution established in a jurisdiction where the regulator of such an institution maintains beneficial ownership information regarding such institution
- A non-U.S. governmental department, agency or political subdivision that engages only in governmental rather than commercial activities
- Any legal entity only to the extent that is opens a private banking account subject to 31 CFR 1010.620
BENEFICIAL OWNERSHIP ACCOUNT OPENING PROCEDURES

When an individual is opening an account on behalf of a legal entity (i.e. a business) and that business is a corporation, limited liability company, other entity created by the filing of a public document with a Secretary of State, a general partnership, a limited partnership, business trust and any similar entity formed under the laws of a foreign jurisdiction, we must obtain and document information about the legal entity’s beneficial owners.

STEP 1: Determine whether the account is being opened on behalf of a legal entity: A corporation, limited liability company, other entity created by the filing of a public document with a Secretary of State, a general partnership, a limited partnership, business trust and any similar entity formed under the laws of a foreign jurisdiction.

STEP 2: Provide the Beneficial Ownership Certification Form to the individual opening the account.

STEP 3: Explain the purpose of the form and provide instructions to the individual opening the account on how to complete each section. Be sure to explain how the beneficial owners are defined under each test: by ownership and by control. Refer to the Beneficial Ownership Account Opening Reference Guide for details.

STEP 4: Ask for identification for each beneficial owner. Photocopies and other reproductions are acceptable.

[PROCEDURAL NOTE: You should outline examples of other reproductions that will be acceptable at your institution.]

STEP 5: Review the completed Beneficial Ownership Certification Form to ensure all fields have been completed. Make sure ALL beneficial owners under the OWNERSHIP PRONG have been identified and AT LEAST ONE beneficial owner under the CONTROL PRONG has been identified. Be sure the following has been collected for each beneficial owner: Name, address, date of birth and social security number or other government identification number (passport number or alien identification number). Make sure the identities of each beneficial owner have been verified.

[PROCEDURAL NOTE: Your procedures should indicate whether copies are to be made of identifying documents (e.g. driver’s license, passport, state-issued ID, etc.).]

If no one individual owns 25% or more of the legal entity customer, there may be no beneficial owners listed under the ownership prong.

If a trust owns 25% or more of the business, use the trustee as the beneficial owner under the ownership prong. If there are multiple trustees, collect and verify the identity of, at a minimum,
one co-trustee. We must also identify and verify a natural person as the beneficial owner of the legal entity customer under the control prong to comply with the Rule.

If another business entity owns 25% or more of the business, inquire about the owners of the business entity that maintains ownership. Remember, this rule is about getting to the humans behind the business.

STEP 6: Enter the information into the system. Be sure to enter the name(s) of beneficial owner(s) into the appropriate fields within the system.

[PROCEDURAL NOTE: The CDD Rule requires you to establish procedures that enable you to identify the beneficial owners of each customer at the time a new account is opened, unless the customer is otherwise excluded, or the transaction is exempted. The procedures must establish risk-based practices for verifying the identity of each beneficial owner identified, to the extent reasonable and practicable. You must satisfy CIP requirements and verify the identities of the beneficial owners using documentary and/or non-documentary evidence.

STEP 7: Screen each beneficial owner for the legal entity against the OFAC list.

[PROCEDURAL NOTE: Depending on how you screen your customers against the OFAC list, you will need to add additional detail to Step 7 to provide instructions to your staff on how to perform this step.]

STEP 8: Complete the Account Opening Customer Due Diligence Worksheet.

STEP 9: Forward the Beneficial Ownership Certification Form and the Customer Due Diligence Worksheet to the BSA Department.

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ii You may have this process built into your automated account opening workflow. Amend these procedures to reflect your format and practice.

ii Beneficial ownership information may be combined in your CDD worksheet. If that is the case, amend these procedures to reflect your practice.
If you have any questions or need additional information, please contact us at [financial institution telephone number and/or email address].

Important Information About Opening a New Account
Effective May 11, 2018
For Our Business Customers:

When you open a new account or apply for a new loan on or after May 11, 2018, you will be required to provide information about your beneficial owners.

A Beneficial Owner is:

- Each individual who owns 25% or more of the company.
- One individual who has significant managerial responsibility for the company.

Why We Need this Information

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account.

Section 326 of the USA PATRIOT Act requires that financial institutions identify and verify the identity of the beneficial owners of all legal entity customers at the time a new account is opened. The identification and verification procedures for beneficial owners are very similar to those you currently follow as individual customers.

When you open an account, we will ask you to identify the beneficial owners of your company, as defined to the left. You will need to provide the following for each beneficial owner: Name, Address, Date of Birth and other identification information that will allow us to identify and verify the identities of your beneficial owners. We may also ask for a driver’s license or other identifying documents for each beneficial owner.

Acceptable Forms of Identification

- Driver’s License
- State-Issued Identification Card
- Passport
- Alien Identification Card

Information You Will Need to Provide

- Name
- Address (Personal or Business)
- Date of Birth
- Social Security Number or Tax Identification Number
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 been 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 quality.

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 owner. 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.
Guidance

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

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.
**Question 3: Covered financial institutions**

Q: Which financial institutions are covered under the CDD Rule?

A: For purposes of the CDD Rule, covered financial institutions are federally regulated banks and federally insured credit unions, mutual funds, brokers or dealers in securities, futures commission merchants, and introducing brokers in commodities.¹

**Question 4: CDD requirements for covered financial institutions with respect to beneficial ownership**

Q: What are the requirements for covered financial institutions to collect beneficial ownership information?

A: The CDD Rule requires covered financial institutions to establish and maintain written procedures that are reasonably designed to identify and verify the beneficial owners of legal entity customers. These procedures must enable the institution to identify the beneficial owners of each customer at the time a new account is opened, unless the customer is otherwise excluded or the account is exempted. Also, the procedures must establish risk-based practices for verifying the identity of each beneficial owner identified to the covered financial institution, to the extent reasonable and practicable. The procedures must contain the elements required for verifying the identity of customers that are individuals under applicable customer identification program (“CIP”) requirements.²

In short, covered financial institutions are now required to obtain, verify, and record the identities of the beneficial owners of legal entity customers.

**Question 5: Amendments to the anti-money laundering (“AML”) program requirements**

Q: Are there any changes to the AML program requirements for covered financial institutions in the Rule?

A: Yes. The CDD Rule amends the AML program requirements for each covered financial institution to explicitly require covered institutions to implement and maintain appropriate risk-based procedures for conducting ongoing customer due diligence, to include:

- understanding the nature and purpose of the customer relationships; and
- conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.

A covered financial institution’s AML program must include, at a minimum: (1) a system of internal controls; (2) independent testing; (3) designation of a compliance officer or individual(s) responsible for day-to-day compliance; (4) training for appropriate personnel; and (5) appropriate risk-based procedures for conducting ongoing CDD to understand the nature and

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¹ “Covered financial institution” is defined at 31 CFR 1010.605(e)(1).
purpose of customer relationships and to conduct ongoing monitoring to identify and report
suspicious transactions, and, on a risk basis, to maintain and update customer information.

**Question 6: Procedures for identification and verification of identity of beneficial owners**

Q: Must a covered financial institution’s procedures for identifying and verifying the
identity of beneficial owners of legal entity customers be identical to its customer identification
program?

A: No. However, the CDD Rule requires that the procedures, at a minimum, contain the
same elements as required for verifying the identity of customers that are individuals under the
applicable CIP rule. However, financial institutions may use photocopies or other reproductions
of identification documents in the case of documentary verification.

**Question 7: Anti-money laundering procedures**

Q: Are covered financial institutions required to include the procedures for identifying and
verifying the identity of the beneficial owners of legal entity customers in the institution’s AML
compliance program?

A: Yes. The CDD procedures must be included in the covered financial institution’s AML
compliance program.

**Question 8: Collection of beneficial ownership information**

Q: Are covered financial institutions required to collect any information about beneficial
ownership from the legal entity customer?

A: Yes. Covered financial institutions must collect information on individuals who are
beneficial owners of a legal entity customer in addition to the information they are required to
collect on the customer under the CIP requirement.

**Question 9: Definition of beneficial owner**

Q: Who is a beneficial owner?

A: The Rule defines beneficial owner as each of the following:

- each individual, if any, who, directly or indirectly, owns 25% or more of the
equity interests of a legal entity customer (i.e., the ownership prong); and
- a single individual with significant responsibility to control, manage, or direct a
legal entity customer, including 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
any other individual who regularly performs similar functions (i.e., the control
prong). This list of positions is illustrative, not exclusive, as there is significant
diversity in how legal entities are structured.
Under this definition, a legal entity will have a total of between one and five beneficial owners (i.e., one person under the control prong and zero to four persons under the ownership prong).

**Question 10: Collection of information for beneficial owners**

Q: Are covered financial institutions required to obtain information directly from the beneficial owners of legal entity customers?

A: No. The Rule requires financial institutions to obtain information about the beneficial owners of a legal entity from the individual seeking to open a new account at the covered financial institution on behalf of the legal entity customer. This individual could, but would not necessarily, be a beneficial owner.

**Question 11: Beneficial ownership information that must be collected for legal entity customers**

Q: What types of information are covered institutions required to collect on the beneficial owners of legal entity customers?

A: As with CIP for individual customers, covered financial institutions must collect from the legal entity customer the name, date of birth, address, and social security number or other government identification number (passport number or other similar information in the case of foreign persons) for individuals who own 25% or more of the equity interest of the legal entity (if any), and an individual with significant responsibility to control/manage the legal entity at the time a new account is opened.

**Question 12: Nominee owners**

Q: May a legal entity provide the identification of a nominee owner in response to a financial institution’s request for the identification of a beneficial owner?

A: No. 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.” FinCEN reiterates that it is the responsibility of the legal entity customer to identify its ultimate beneficial owners and that the financial institution may rely upon the information provided, unless the institution has reason to question its accuracy.

**Question 13: The control prong of the beneficial ownership requirement**

Q: What types of individuals satisfy the definition of a person with “significant responsibility to control, manage, or direct a legal entity customer?”

A: Under the Rule, a legal entity must provide information on a control person with “significant responsibility to control, manage, or direct the company.” The rule also provides examples of the types of positions that could qualify, including “[a]n 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).” FinCEN’s expectation is that the control person identified must be a high-level official in the legal entity, who is responsible for how the organization is run, and who will have access to a range of
information concerning the day-to-day operations of the company. The list of positions is illustrative, not exclusive.

**Question 14: Definition of account**

Q: How is “account” defined in the CDD Rule?

A: In order to maintain consistency with CIP, FinCEN added to the CDD Rule the same definition of the term “account” that is in the CIP rules for banks, brokers or dealers in securities, mutual funds, and futures commission merchants and introducing brokers in commodities.

**Question 15: Definition of new account**

Q: What is a new account?

A: The Rule defines a new account as each account opened at a covered financial institution by a legal entity customer on or after the May 11, 2018 applicability date.

**Question 16: Application to Existing Accounts**

Q: Does a covered financial institution have to obtain beneficial information on existing accounts?

A: No. The rule does not cover existing accounts that were opened before the applicability date.

**Question 17: Exemptions and limitations on exemptions**

Q: Are there any other type of accounts that are not covered by the CDD Rule?

A: Yes. Subject to certain limitations, covered financial institutions are also not required to identify and verify the identity of the beneficial owner(s) of a legal entity customer when the customer opens any of the following four categories of accounts:

- accounts established at the point-of-sale to provide credit products, solely for the purchase of retail goods and/or services at these retailers, up to a limit of $50,000;
- accounts established to finance the purchase of postage and for which payments are remitted directly by the financial institution to the provider of the postage products;
- accounts established to finance insurance premiums and for which payments are remitted directly by the financial institution to the insurance provider or broker; and
- accounts established to finance the purchase or lease of equipment and for which payments are remitted directly by the financial institution to the vendor or lessor of this equipment.

These exemptions will not apply under either of the following two circumstances:
• if the accounts are transaction accounts through which a legal entity customer can make payments to, or receive payments from, third parties.
• if there is the possibility of a cash refund for accounts opened to finance purchase of postage, insurance premium, or equipment leasing. If there’s the possibility of a cash refund, the financial institution must identify and verify the identity of the beneficial owner(s) either at the initial remittance, or at the time such refund occurs.

**Question 18: Collection of beneficial ownership information**

Q: Must covered financial institutions collect beneficial ownership information on all of the beneficial owners of a legal entity customer?

A: Covered financial institutions must collect and verify the beneficial ownership information of each person who meets the definition under the ownership prong, and of one person under the control prong. Under the ownership prong, covered financial institutions are required to collect the beneficial ownership information only for each individual who owns directly or indirectly 25% or more of the equity interest of a legal entity and under the control prong, for one individual with significant responsibility to control, manage, or direct the entity. However, the rule recognizes that there may be instances when no one individual owns 25% or more of the equity interest of the legal entity; in such instances, the financial institution is still required to collect the required information for one individual who controls, manages, or directs the legal entity customer.

**Question 19: Certification Form**

Q: Are covered financial institutions required to use the Certification Form that is in Appendix A of the final CDD Rule?

A: No. The Certification Form is provided as an optional form that financial institutions may use to obtain the required beneficial ownership information. Financial institutions may choose to comply by using the sample Certification Form, using the institution’s own forms, or any other means that complies with the substantive requirements of this obligation.

**Question 20: Definition of legal entity customer**

Q: Who is a legal entity customer?

A: The Rule defines a legal entity customer as a corporation, limited liability company, other entity 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. The definition also includes limited partnerships, business trusts that are created by a filing with a state office, and any other entity created in this manner.

A legal entity customer does not include sole proprietorships, unincorporated associations, or natural persons opening accounts on their own behalf.
**Question 21: Exclusions from the definition of legal entity customer**

Q: Are there any entities that are excluded from the definition of the legal entity customer and for which a covered financial institutions is not required to obtain beneficial ownership information?

A: Yes. The CDD Rule excludes from the definition of legal entity customer certain entities that are subject to Federal or State regulation and for which information about their beneficial ownership and management is available from the Federal or State agencies, such as:

- Financial institutions regulated by a Federal functional regulator or a bank regulated by a State bank regulator;
- Certain exempt persons for purposes of the currency transactions reporting obligations:
  - A department or agency of the United States, of any State, or of any political subdivision of a State;
  - Any entity established under the laws of the United States, or any State, or of any political subdivision of any State, or under an interstate compact;
  - Any entity (other than a bank) whose common stock or analogous equity interests are listed on the New York, American, or NASDAQ stock exchange;
  - Any entity organized under the laws of the United States or of any State at least 51% of whose common stock or analogous equity interests are held by a listed entity;
- Issuers of securities registered under section 12 of the Securities Exchange Act of 1934 (SEA) or that is required to file reports under 15(d) of that Act;
- An investment company, as defined in section 3 of the Investment Company Act of 1940, registered with the U.S. Securities and Exchange Commission (SEC);
- An SEC-registered investment adviser, as defined in section 202(a)(11) of the Investment Advisers Act of 1940;
- An exchange or clearing agency, as defined in section 3 of the SEA, registered under section 6 or 17A of that Act;
- Any other entity registered with the SEC under the SEA;
- A registered entity, commodity pool operator, commodity trading advisor, retail foreign exchange dealer, swap dealer, or major swap participant, defined in section 1a of the Commodity Exchange Act, registered with the Commodity Futures Trading Commission;
- A public accounting firm registered under section 102 of the Sarbanes-Oxley Act.
Additional regulated entities:

- A bank holding company, as defined in section 2 of the Bank Holding Company Act of 1956 (12 USC 1841) or savings and loan holding company, as defined in section 10(n) of the Home Owners’ Loan Act (12 USC 1467a(n));
- A pooled investment vehicle operated or advised by a financial institution excluded from the definition of legal entity customer under the final CDD rule;
- An insurance company regulated by a State;
- A financial market utility designated by the Financial Stability Oversight Council under Title VIII of the Dodd-Frank Wall Street Reform and Customer Protection Act of 2010;

Excluded Foreign Entities:

- A foreign financial institution established in a jurisdiction where the regulator of such institution maintains beneficial ownership information regarding such institution;
- A non-U.S. governmental department, agency or political subdivision that engages only in governmental rather than commercial activities; and
- Any legal entity only to the extent that it opens a private banking account subject to 31 CFR 1010.620.

Question 22: Trusts

Q: Are trusts included in the definition of legal entity customer?

A: No. The definition of legal entity customers only includes statutory trusts created by a filing with the Secretary of State or similar office. Otherwise, it does not include trusts. This is because a trust is a contractual arrangement between the person who provides the funds or other assets and specifies the terms (i.e., the grantor/settlor) and the person with control over the assets (i.e., the trustee), for the benefit of those named in the trust deed (i.e., the beneficiaries). Formation of a trust does not generally require any action by the state.

The CDD Rule does not supersede existing obligations and practices regarding trusts generally. The preamble to each of the CIP rules notes that, while financial institutions are not required to look through a trust to its beneficiaries, they “may need to take additional steps to verify the identity of a customer that is not an individual, such as obtaining information about persons with control over the account.”3 We understand that where trusts are direct customers of financial institutions, financial institutions generally also identify and verify the identity of trustees, because trustees will necessarily be signatories on trust accounts. Furthermore, under supervisory guidance for banks, “in certain circumstances involving revocable trusts, the bank may need to gather information about the settlor, grantor, trustee, or other persons with the

3 See, e.g., “Customer Identification Programs for Broker-Dealers,” 68 FR at 25116 n.32. (May 9, 2003).
authority to direct the trustee, and who thus have authority or control over the account, in order
to establish the true identity of the customer.”

**Question 23: Office of Foreign Assets Control (OFAC) Regulations**

Q: Are covered financial institutions required to comply with the OFAC regulations with
respect to beneficial ownership information?

A: Covered financial institutions should use beneficial ownership information as they use
other information they gather regarding customers (e.g., through compliance with the CIP
requirements), including for compliance with OFAC-administered sanctions.

**Question 24: Section 314(a) Requirements**

Q: Do covered financial institutions now have additional obligations under Section 314(a)
for beneficial ownership information?

A: FinCEN does not expect the information obtained under the CDD Rule to add additional
314(a) requirements for financial institutions. The regulation implementing section 314(a) does
not require the reporting of beneficial ownership information associated with an account or
transaction matching a named subject in a 314(a) request. Covered financial institutions are
required to search their records for accounts or transactions matching a named subject and report
whether a match exists using the identifying information provided in the request.

**Question 25: Effective Date of the final CDD Rule**

Q: What is the effective date of the CDD Rule?

A: July 11, 2016, which is 60 days from the publication of the CDD Rule in the Federal
Register.

**Question 26: Applicability Date of the final CDD Rule**

Q: When must covered financial institutions implement the final rule?

A: Covered financial institutions will have until May 11, 2018, two years from the date the
final CDD Rule was published in the Federal Register, to implement and comply with the CDD
Rule.

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