

Financial Institutions Webinar: FinCEN's Customer Due Diligence Rule—Identifying Who is Behind the Curtain

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Overview

- Background on CDD Rule
- The Customer Due Diligence Rule and its Requirements
- Beneficial Ownership
- Amendments to the AML Program Rule: The Fifth Pillar
- Key Takeaways



Customer Due Diligence Rule

Customer Due Diligence has four core elements:

1. Customer identification and verification
2. Beneficial ownership identification and verification
3. Understanding the nature and purpose of customer relationships to develop a customer risk profile
4. Ongoing monitoring for reporting suspicious transactions and, on a risk basis, maintaining and updating customer information

Customer Identification and Verification

- Covered by existing CIP requirements:
 - Written program
 - Customer risk assessment
 - Collect identifying information about the customer:
 - At least name, DOB, address, identification number
 - Risk-based procedures for verifying customer identification



Beneficial Ownership

Covered financial institutions must establish and maintain written procedures reasonably designed to identify and verify the identities of beneficial owners for new accounts opened by legal entity customers, unless an exemption applies.



“Covered Financial Institution”

- Banks and credit unions
- Brokers or dealers in securities
- Mutual funds
- Futures commission merchants
- Introducing broker in commodities



Definition of Beneficial Owners

- A beneficial owner satisfies *either* the ownership prong or the control prong of the CDD rule:
 1. Ownership: *Each* individual who owns, directly or indirectly, 25% or more of the equity interests of the legal entity customer
 2. Control: *One* individual with significant responsibility for managing the legal entity customer (e.g., CEO, CFO, COO, Managing Member, General Partner, President, Vice President, or Treasurer)
- The covered financial institution may rely on information provided by the legal entity customer



Accounts Subject to Beneficial Owner Requirement

- Beneficial ownership requirement applies to “accounts” opened at a covered financial institution by a legal entity customer
- “Account” is defined as in the CIP rules
- Only applies to:
 - Accounts opened after May 11, 2018, including additional accounts opened by existing customers
 - Pre-existing accounts, if normal monitoring identifies a possible change in beneficial owner



Definition of Legal Entity Customer and Exclusions

- Corporations, LLCs, partnerships, etc., whether formed under U.S. or foreign laws
- Key exclusions:
 - Domestic banks in the U.S.
 - Entities listed on New York, American, or NASDAQ stock exchanges and their majority-owned subsidiaries
 - Security issuers registered under Section 12 of the Securities Exchange Act of 1934
 - Investment companies
 - SEC- and CFTC-registered entities
 - And others



Identifying and Verifying Beneficial Ownership

- Must occur at the time the new account is opened
- Customer may fill out a Standard Certification Form (Appendix A), or provide the same information by some other means
- Legal entity customer must certify truth and accuracy
- No requirement to verify beneficial ownership status

Name/Title	Date of Birth	Address (Residential or Business Street Address)	<i>For U.S. Persons:</i> Social Security Number	<i>For Foreign Persons:</i> Passport Number and Country of Issuance, or other similar identification number ¹

Intermediated Account Relationships

- No change to existing regulatory guidance related to CIP and intermediated account relationships
- No requirement to identify the beneficial owner of an intermediary's underlying clients if the financial institution has no CIP obligation with respect to those underlying clients



The “New” Fifth Pillar

- Four Existing Pillars of Effective AML Programs:
 1. System of internal controls to ensure ongoing compliance
 2. Independent testing
 3. Designation of a BSA compliance officer
 4. Training for appropriate personnel
- The “New” Fifth Pillar:
 5. Elements 3 and 4 of the CDD Rule:
 3. Understanding the nature and purpose of customer relationships to develop a customer risk profile
 4. Ongoing monitoring for reporting suspicious transactions and, on a risk basis, maintaining and updating customer information



The “New” Fifth Pillar

- Codifying implicit requirement of compliance with SAR duties
- Applies to all customers, even those exempt from beneficial ownership requirements
- Customer information update only required if monitoring indicates a change in the risk



Things to Consider

- Has anything really changed?
- CDD expectations for non-covered financial institutions
- Trigger-based updates
- SAR monitoring for financial intermediaries
- Leveraging CDD for other compliance efforts
- Potential rulemakings by functional regulators (e.g., Federal Reserve, FDIC, FINRA, NFA, OCC)



Questions?

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