



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM

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DIVISION OF SUPERVISION
AND REGULATION

SR 18-3

May 11, 2018

**TO THE OFFICER IN CHARGE OF SUPERVISION AND APPROPRIATE
SUPERVISORY AND EXAMINATION STAFF AT EACH FEDERAL RESERVE
BANK AND BANKING ORGANIZATIONS SUPERVISED BY THE FEDERAL
RESERVE**

Applicability: This letter applies to banks supervised by the Federal Reserve, including those with \$10 billion or less in consolidated assets, that are defined as covered institutions under the rule.

SUBJECT: Federal Financial Institutions Examination Council Examination Procedures on Customer Due Diligence and Beneficial Ownership Rule

The Federal Financial Institutions Examination Council (FFIEC)¹ recently issued examination procedures for the Financial Crimes Enforcement Network (FinCEN) rule, *Customer Due Diligence Requirements for Financial Institutions*, which was issued on May 11, 2016.² The rule contains both formalized, explicit customer due diligence (CDD) program requirements and a new requirement to identify and verify the identity of individuals who own or control legal entity customers (otherwise referred to as beneficial owners), subject to certain exclusions and exemptions. FinCEN issued the final rule under the Bank Secrecy Act (BSA) with a compliance date for banks³ and other covered financial institutions of May 11, 2018.

¹ The four federal banking agencies that are voting members of the FFIEC are the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration, and Office of the Comptroller of the Currency. The Consumer Financial Protection Bureau and State Liaison Committee are also voting members of the FFIEC.

² 81 *Fed. Reg.* 29397 (May 11, 2016).

³ Banks that are covered financial institutions for the purposes of this rule are defined in 31 CFR 1010.100 (includes state member banks, Edge Act and agreement corporations, and U.S. branches, agencies, and other offices of foreign banks supervised by the Federal Reserve).

Under the CDD portion of the rule, banks must develop and implement appropriate risk-based policies, procedures, and processes for conducting ongoing CDD.⁴ For the beneficial ownership section of the rule, banks must establish and maintain written procedures that are reasonably designed to identify and verify beneficial owner(s) of legal entity customers and to include such procedures in their anti-money laundering compliance program.⁵ The rule requires banks to collect beneficial ownership information at the 25 percent ownership threshold regardless of the customer's risk profile. Refer to the FFIEC press release and materials linked below for additional detail about these requirements.

These bank examination procedures replace the section in the 2014 *FFIEC BSA/AML Manual* (manual) entitled "Customer Due Diligence – Overview and Examination Procedures," pages 56 – 59, and add a new section entitled "Beneficial Ownership Requirements for Legal Entity Customers – Overview and Examination Procedures." The FFIEC member agencies developed these examination procedures in collaboration with FinCEN and the U.S. Department of the Treasury. These procedures are consistent with the FinCEN regulation and corresponding FinCEN guidance and do not contain any additional requirements.

To foster consistency, the manual includes the bank examination procedures that will be used by each agency's examiners, including the state banking agencies. The manual underscores the importance of banks effectively managing their BSA/AML risk (that is, the risk of abuse by money launderers or terrorist financiers) by developing BSA/AML compliance programs tailored to their organizations' risk profiles.

Federal Reserve examiners should begin using the examination procedures for BSA/AML examinations as soon as they are available on the FFIEC's website.

Reserve Banks are asked to distribute this SR letter to the domestic and foreign banking organizations supervised by the Federal Reserve in their districts, as well as to supervisory and examination staff. Questions concerning the guidance should be addressed to Koko Ives, Manager BSA/AML, at (202) 973-6163; Jennifer White, Senior Supervisory Financial Analyst, at (202) 452-3964; MaryBeth Evans, Senior Supervisory Financial Analyst, at (202) 973-7366; or Jason Gonzalez, Special Counsel, at (202) 452-3275.

Michael S. Gibson
Director

Attachments:

- FFIEC Press Release
 - *Customer Due Diligence – Overview and Examination Procedures*

⁴ See 31 CFR 1020.210(b)(5)

⁵ See 31 CFR 1010.230

- *Beneficial Ownership for Legal Entity Customers – Overview and Examination Procedures*

Supersedes:

- SR letter 10-5, “Interagency Guidance on Obtaining and Retaining Beneficial Ownership Information”

Customer Due Diligence — Overview

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

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

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

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

Customer Due Diligence

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

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

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

¹ Department of the Treasury, Financial Crimes Enforcement Network (2016), “Customer Due Diligence Requirements for Financial Institutions,” final rules (RIN 1506-AB25), *Federal Register*, vol. 81 (May 11), p. 29403.

² See 31 CFR 1020.210(b)(5)

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

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

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

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

- Be commensurate with the bank’s BSA/AML risk profile, with increased focus on higher risk customers.
- Contain a clear statement of management’s and staff’s responsibilities, including procedures, authority, and responsibility for reviewing and approving changes to a customer’s risk profile, as applicable.
- Provide standards for conducting and documenting analysis associated with the due diligence process, including guidance for resolving issues when insufficient or inaccurate information is obtained.

Customer Risk Profile

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

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

³ See 31 CFR 1020.210(b)(5)(i)

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

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

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

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

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

Customer Information – Risk-Based Procedures

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

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

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

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

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

Higher Risk Profile Customers

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

⁴ See 31 CFR 1010.230(e)(2) and 31 CFR 1010.230(h)

⁵ See 31 CFR 1020.210(b)(5)(ii)

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

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

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

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

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

⁶ See 31 CFR 1010.610.

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

Ongoing Monitoring of the Customer Relationship

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

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

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

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

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

⁷ See 31 CFR 1010.610(b)(1)(iii).

⁸ See 31 CFR 1010.620

⁹ Department of State, Department of the Treasury, Federal Reserve, FDIC, OCC, OTS, *Guidance on Enhanced Scrutiny for Transactions that may Involve the Proceeds of Official Corruption*, January 1, 2001.

¹⁰ FinCEN, Federal Reserve, FDIC, NCUA, OCC, OTS, *Interagency Interpretive Guidance on Providing Banking Services to Money Services Businesses Operating in the United States*, April 26, 2005.

¹¹ See 31 CFR 1020.210(b)(5)(ii)

¹² Department of the Treasury, Financial Crimes Enforcement Network (2016), “Customer Due Diligence Requirements for Financial Institutions,” final rules (RIN 1506-AB25), *Federal Register*, vol. 81 (May 11), p. 29399.

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

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

¹³ Ibid.

Examination Procedures

Customer Due Diligence

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

1. Determine whether the bank has developed and implemented appropriate written risk-based procedures for conducting ongoing CDD and that they:
 - Enable the bank to understand the nature and purpose of the customer relationship in order to develop a customer risk profile.
 - Enable the bank to conduct ongoing monitoring
 - for the purpose of identifying and reporting suspicious transactions and,
 - on a risk basis, to maintain and update customer information, including information regarding the beneficial owner(s) of legal entity customers.
 - Enable the bank to use customer information and the customer risk profile to understand the types of transactions a particular customer would be expected to engage in and as a baseline against which suspicious transactions are identified.
2. Determine whether the bank, as part of the overall CDD program, has effective processes to develop customer risk profiles that identify the specific risks of individual customers or categories of customers.
3. Determine whether the risk-based CDD policies, procedures, and processes are commensurate with the bank's BSA/AML risk profile with increased focus on higher risk customers.
4. Determine whether policies, procedures, and processes contain a clear statement of management's and staff's responsibilities, including procedures, authority, and responsibility for reviewing and approving changes to a customer's risk profile, as applicable.
5. Determine that the bank has policies, procedures, and processes to identify customers that may pose higher risk for money laundering or terrorist financing that include whether and/or when, on the basis of risk, it is appropriate to obtain and review additional customer information.
6. Determine whether the bank provides guidance for documenting analysis associated with the due diligence process, including guidance for resolving issues when insufficient or inaccurate information is obtained.
7. Determine whether the bank has defined in its policies, procedures, and processes how customer information, including beneficial ownership information for legal entity customers, is used to meet other relevant regulatory requirements, including but not limited to, identifying suspicious activity, identifying nominal and beneficial owners of private banking accounts, and determining OFAC sanctioned parties.

Transaction Testing

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

Beneficial Ownership Requirements for Legal Entity Customers – Overview

Objective. *Assess the bank's written procedures and overall compliance with regulatory requirements for identifying and verifying beneficial owner(s) of legal entity customers.*

Under the Beneficial Ownership Rule,¹ a bank must establish and maintain written procedures that are reasonably designed to identify and verify beneficial owner(s) of legal entity customers and to include such procedures in its anti-money laundering compliance program.

Legal entities, whether domestic or foreign, can be used to facilitate money laundering and other crimes because their true ownership can be concealed. The collection of beneficial ownership information by banks about legal entity customers can provide law enforcement with key details about suspected criminals who use legal entity structures to conceal their illicit activity and assets. Requiring legal entity customers seeking access to banks to disclose identifying information, such as the name, date of birth, and Social Security number of natural persons who own or control them will make such entities more transparent, and thus less attractive to criminals and those who assist them.

Similar to other customer information that a bank may gather, beneficial ownership information collected under the rule may be relevant to other regulatory requirements. These other regulatory requirements include, but are not limited to, identifying suspicious activity, and determining Office of Foreign Assets Control (OFAC) sanctioned parties. Banks should define in their policies, procedures, and processes how beneficial ownership information will be used to meet other regulatory requirements.

Legal Entity Customers

For the purposes of the Beneficial Ownership Rule,² a legal entity customer is defined as a corporation, limited liability company, or other entity that is created by the filing of a public document with a Secretary of State or other similar office, a general partnership, and any similar entity formed under the laws of a foreign jurisdiction that opens an account. A number of types of business entities are excluded from the definition of legal entity customer under the Beneficial Ownership rule. In addition, and subject to certain limitations, banks are not required to identify and verify the identity of the beneficial owner(s) of a legal entity customer when the customer opens certain types of accounts. For further information on exclusions and exemptions to the Beneficial Ownership Rule, see Appendix 1. These exclusions and exemptions do not alter or supersede other existing requirements related to BSA/AML and OFAC sanctions.

Beneficial Owner(s)

Beneficial ownership is determined under both a control prong and an ownership prong. Under the control prong, the beneficial owner is a single individual with significant

¹ See 31 CFR 1010.230

² See 31 CFR 1010.230(e)(1)

responsibility to control, manage or direct a legal entity customer.³ This includes, an executive officer or senior manager (Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, President), or any other individual who regularly performs similar functions. One beneficial owner must be identified under the control prong for each legal entity customer.

Under the ownership prong, a beneficial owner is each individual, *if any*, who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25 percent or more of the equity interests of a legal entity customer.⁴ If a trust owns directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, 25 percent or more of the equity interests of a legal entity customer, the beneficial owner is the trustee.⁵ Identification of a beneficial owner under the ownership prong is *not required* if no individual owns 25 percent or more of a legal entity customer. Therefore, all legal entity customers will have a total of between one and five beneficial owner(s) – one individual under the control prong and zero to four individuals under the ownership prong.

Banks may rely on the information supplied by the legal entity customer regarding the identity of its beneficial owner or owners, provided that it has no knowledge of facts that would reasonably call into question the reliability of such information.⁶ However, bank staff who know, suspect, or have reason to suspect that equity holders are attempting to avoid the reporting threshold may, depending on the circumstances, be required to file a SAR.⁷ More information on filing of SARs may be found in the “Suspicious Activity Reporting Overview” section on page 60 of the *FFIEC BSA/AML Examination Manual*.

Identification of Beneficial Ownership Information

A bank must establish and maintain written procedures detailing the identifying information that must be obtained for each beneficial owner of a legal entity customer opening a new account after May 11, 2018. At a minimum, the bank must obtain the following identifying information for each beneficial owner of a legal entity customer:

- Name.
- Date of birth.
- Address.⁸

³ See 31 CFR 1010.230(d)(2)

⁴ See 31 CFR 1010.230(d)(1)

⁵ See 31 CFR 1010.230(d)(3)

⁶ See 31 CFR 1010.230(b)(2)

⁷ Department of the Treasury, Financial Crimes Enforcement Network (2016), “Customer Due Diligence Requirements for Financial Institutions,” final rules (RIN 1506-AB25), *Federal Register*, vol. 81 (May 11), p. 29410.

⁸ For an individual: a residential or business street address, or if the individual does not have such an address, an Army Post Office (APO) or Fleet Post Office (FPO) box number, the residential or business street address of next of kin or of another contact individual, or a description of the customer’s physical location. For a person other than an individual (such as a corporation, partnership, or trust): a principal place of business, local office, or other physical location. See 31 CFR 1010.220(a)(2)(i)(3)

- Identification number.⁹

A bank may obtain identifying information for beneficial owner(s) of legal entity customers through a completed certification form¹⁰ from the individual opening the account on behalf of the legal entity customer, or by obtaining from the individual the information required by the form by another means, provided the individual certifies, to the best of the individual's knowledge, the accuracy of the information. A bank may rely on the information supplied by the individual opening the account on behalf of the legal entity customer regarding the identity of its beneficial owner(s), provided that it has no knowledge of facts that would reasonably call into question the reliability of such information. If a legal entity customer opens multiple accounts a bank may rely on the pre-existing beneficial ownership records it maintains, provided that the bank confirms (verbally or in writing) that such information is up-to-date and accurate at the time each account is opened.¹¹

Banks must have procedures to maintain and update customer information, including beneficial ownership information for legal entity customers, on the basis of risk. Additionally, banks are not required to conduct retroactive reviews to obtain beneficial ownership information on legal entity customers that were existing customers as of May 11, 2018. However, the bank may need to obtain (and thereafter update) beneficial ownership information for existing legal entity customers based on its ongoing monitoring. For further guidance on maintaining and updating of customer information including beneficial ownership information, please see the “Ongoing Monitoring of Customer Relationship” section of the “Customer Due Diligence Overview” section of the *FFIEC BSA/AML Examination Manual*.¹²

Verification of Beneficial Owner Information

A bank must establish and maintain written risk-based procedures for verifying the identity of each beneficial owner of a legal entity customer within a reasonable period of time after the account is opened. These procedures must contain the elements required for verifying the identity of customers that are individuals under 31 CFR 1020.220(a)(2), provided, that in the case of documentary verification, the bank may use photocopies or other reproductions of the documents listed in paragraph (a)(2)(ii)(A)(I) of 31 CFR 1020.220. Guidance on documentary and non-documentary verification methods may be found in the core overview section “Customer Identification Program,” of the *FFIEC BSA/AML Examination Manual*.

⁹ An identification number for a U.S. person is a taxpayer identification number (TIN) (or evidence of an application for one), and an identification number for a non-U.S. person is one or more of the following: a TIN; a passport number and country of issuance; an alien identification card number; or a number and country of issuance of any other unexpired government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard. TIN is defined by section 6109 of the Internal Revenue Code of 1986 (26 USC 6109) and the IRS regulations implementing that section (e.g., Social Security number (SSN) or individual taxpayer identification number (ITIN), or employer identification number (EIN)). See 31 CFR 1010.220(a)(2)(i)(4)

¹⁰ See 31 CFR 1010.230, Appendix A, *Certification Regarding Beneficial Owners of Legal Entity Customers* (2016)

¹¹ FinCEN, FIN-2018-G001, *Frequently Asked Questions Regarding Customer Due Diligence Requirements for Financial Institutions*, Question #10, April 2018.

¹² FFIEC, *Core Examination Overview and Procedures, Customer Due Diligence Overview*, May 2018.

A bank need not establish the accuracy of every element of identifying information obtained, but must verify enough information to form a reasonable belief that it knows the true identity of the beneficial owner(s) of the legal entity customer. The bank's procedures for verifying the identity of the beneficial owners must describe when it uses documents, non-documentary methods, or a combination of methods.

Lack of Identification and Verification of Beneficial Ownership Information

Also consistent with 31 CFR 1020.220, the bank should establish policies, procedures, and processes for circumstances in which the bank cannot form a reasonable belief that it knows the true identity of the beneficial owner(s) of a legal entity customer. These policies, procedures, and processes should describe:

- Circumstances in which the bank should not open an account.
- The terms under which a customer may use an account while the bank attempts to verify the identity of the beneficial owner(s) of a legal entity customer.
- When the bank should close an account, after attempts to verify the identity of the beneficial owner(s) of a legal entity customer have failed.
- When the bank should file a SAR in accordance with applicable law and regulation.

Recordkeeping and Retention Requirements

A bank must establish recordkeeping procedures for beneficial ownership identification and verification information. At a minimum, the bank must maintain any identifying information obtained, including without limitation the certification (if obtained), for a period of five years after the date the account is closed.

The bank must also keep a description of any document relied on (noting the type, any identification number, place of issuance and, if any, date of issuance and expiration), of any non-documentary methods and the results of any measures undertaken, and of the resolution of each substantive discrepancy for five years after the record is made.

Reliance on Another Financial Institution

A bank is permitted to rely on the performance by another financial institution (including an affiliate) of the requirements of the Beneficial Ownership Rule with respect to any legal entity customer of the covered financial institution that is opening, or has opened, an account or has established a similar business relationship with the other financial institution to engage in services, dealings, or other financial transactions, provided that:

- Reliance is reasonable, under the circumstances.
- The relied-upon financial institution is subject to a rule implementing 31 USC 5318(h) and is regulated by a federal functional regulator.¹³

¹³ Federal functional regulator means: Federal Reserve, FDIC, NCUA, OCC, U.S. Securities and Exchange Commission (SEC), or U.S. Commodity Futures Trading Commission (CFTC).

- The other financial institution enters into a contract requiring it to certify annually to the bank that it has implemented its AML program, and that it will perform (or its agent will perform) the specified requirements of the bank's procedures to comply with the requirements of the Beneficial Ownership Rule.

Examination Procedures

Beneficial Ownership

Objective: *Assess the bank's written procedures and overall compliance with regulatory requirements for identifying and verifying beneficial owner(s) of legal entity customers.*

1. Determine whether the bank has adequate written procedures for gathering and verifying information required to be obtained, and retained (including name, address, taxpayer identification number (TIN), and date of birth) for beneficial owner(s) of legal entity customers who open an account after May 11, 2018.
2. Determine whether the bank has adequate risk-based procedures for updating customer information, including beneficial owner information, and maintaining current customer information.

Transaction Testing

3. On the basis of a risk assessment, prior examination reports, and a review of the bank's audit findings, select a sample of new accounts opened for legal entity customers since May 11, 2018 to review for compliance with the Beneficial Ownership Rule. The sample should include a cross-section of account types. From this sample, determine whether the bank has performed the following procedures:
 - Opened the account in accordance with the requirements of the Beneficial Ownership Rule (31 CFR 1010.230).
 - Obtained the identifying information for each beneficial owner of a legal entity customer as required (e.g. name, date of birth, address, and identification number).
 - Within a reasonable time after account opening, verified enough of the beneficial owner's identity information to form a reasonable belief as to the beneficial owner's true identity.
 - Appropriately resolved situations in which beneficial owner's identity could not be reasonably established.
 - Maintained a record of the identity information required by the Beneficial Ownership Rule, the method used to verify identity, and verification results (31 CFR 1010.230(i)).
 - Filed SARs as appropriate.
4. On the basis of the examination procedures completed, including transaction testing, form a conclusion about the adequacy of procedures for complying with the Beneficial Ownership Rule

Appendix 1 – Beneficial Ownership

Exclusions from the definition of Legal Entity Customer

Under 31 CFR 1010.230(e)(2) a legal entity customer does not include:

- A financial institution regulated by a federal functional regulator¹⁴ or a bank regulated by a state bank regulator;
- A person described in 31 CFR 1020.315(b)(2) through (5):
 - A department or agency of the United States, of any state, or of any political subdivision of any 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 United States or 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 Stock Exchange or the American Stock Exchange (currently known as the NYSE American) or have been designated as a NASDAQ National Market Security listed on the NASDAQ stock exchange (with some exceptions);
 - Any subsidiary (other than a bank) of any “listed entity” that is organized under the laws of the United States or of any state and at least 51 percent of whose common stock or analogous equity interest is owned by the listed entity, provided that a person that is a financial institution, other than a bank, is an exempt person only to the extent of its domestic operations;
- 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, investment adviser, an exchange or clearing agency, or any other entity that is registered with the SEC;
- A registered entity, commodity pool operator, commodity trading advisor, retail foreign exchange dealer, swap dealer, or major swap participant that is registered with the CFTC;
- A public accounting firm registered under section 102 of the Sarbanes-Oxley Act;
- A bank holding company or savings and loan holding company;
- A pooled investment vehicle that is operated or advised by a financial institution that is excluded under paragraph (e)(2);
- An insurance company that is regulated by a state;

¹⁴ Federal functional regulator means: Federal Reserve, FDIC, NCUA, OCC, U.S. Securities and Exchange Commission (SEC), or U.S. Commodity Futures Trading Commission (CFTC).

- A financial market utility designated by the Financial Stability Oversight Council;
- 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;
- Any legal entity only to the extent that it opens a private banking account subject to 31 CFR 1010.620.

Trusts

Trusts are not included in the definition of legal entity customer, other than statutory trusts created by a filing with a Secretary of State or similar office.¹⁵

Exemptions from the Ownership Prong

Certain legal entity customers are subject only to the control prong of the beneficial ownership requirement, including:

- A pooled investment vehicle operated or advised by a financial institution not excluded under paragraph 31 CFR 1010.230(e)(2); and
- Any legal entity that is established as a nonprofit corporation or similar entity and has filed its organizational documents with the appropriate state authority as necessary.

Exemptions and Limitations on Exemptions

Subject to certain limitations, banks are 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 categories of accounts:

- Accounts established at the point-of-sale to provide credit products, including commercial private label credit cards, solely for the purchase of retail goods and/or services at these retailers, up to a limit of \$50,000;
- 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;
- Accounts established to finance the purchase or leasing of equipment and for which payments are remitted directly by the financial institution to the vendor or lessor of this equipment.

These exemptions will not apply:

- If the accounts are transaction accounts through which a legal entity customer can

¹⁵ FinCEN, [FIN-2016-G003](#), *Frequently Asked Questions Regarding Customer Due Diligence Requirements for Financial Institutions*, Question #22, July 19, 2016.

- make payments to, or receive payments from, third parties.
- If there is the possibility of a cash refund on the account activity opened to finance the purchase of postage, to finance insurance premiums, or to finance the purchase or leasing of equipment, then beneficial ownership of the legal entity customer must be identified and verified by the bank as required either at the initial remittance, or at the time such refund occurs.