

Customer Due Diligence Requirements for Financial Institutions

January 2018

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Section 1: New Rules and Their Effect on BSA Overview

As financial institutions continue to deal with the ever-changing landscape of regulatory enforcement, internal processes and procedures continue to change and evolve. Therefore, it is prudent that the BSA program of the Bank operate in close communications with other areas of the Bank. Failure to ensure effective communication could result in significant BSA deficiencies.

The following items are suggestions that a BSA manager can utilize in ensuring continuity throughout the BSA program when the Bank is making ongoing changes to products, processes and procedures.

- Attend applicable committee and task force meetings related to new products and regulatory changes.
- Ask for copies of minutes from any committee or task force meeting you were not able to attend.
- Attend bank-wide and departmental training sessions related to products, internal processes, and regulatory changes.
- Meet regularly with applicable colleagues who may have insight as to how internal changes may effect the BSA program. These individuals may include:
 - Compliance Officer
 - IT Officer
 - Security Officer
 - Senior Lender
 - Bank President
 - Lending Manager
 - Deposit Operations Manager
 - Audit Committee Chairman
 - Training Manager

Section 2: Customer Due Diligence Requirements for Financial Institutions (May 11, 2018)

Summary

FinCEN issued final rules under the Bank Secrecy Act to clarify and strengthen customer due diligence requirements for banks. The rules contain explicit customer due diligence requirements and include a new requirement to identify and verify the identity of beneficial owners of legal entity customers, subject to certain exclusions and exemptions.

Effective Dates

The final rules are effective July 11, 2016. Banks must comply with these rules by May 11, 2018 (Applicability Date).

Executive Summary

Banks are not presently required to know the identity of the individuals who own or control their legal entity customers (also known as beneficial owners). This is viewed as a weakness of the system that they are trying to correct.

FinCEN believes that there are four core elements of CDD).

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, and
4. ongoing monitoring for reporting suspicious transactions and, on a risk-basis, maintaining and updating customer information.

Beneficial Ownership

Banks must identify and verify the identity of the beneficial owners of all legal entity customers (other than those that are excluded) at the time a new account is opened (other than accounts that are exempted). They may comply either by obtaining the required information on a standard certification form or by any other means that comply with the regulation.

Banks may rely on the beneficial ownership information supplied by the customer, provided that it has no knowledge of facts that would call into question the reliability of the information. The identification and verification procedures for beneficial owners are very similar to those for individual customers under a bank's customer identification program (CIP), except that for beneficial owners, the institution may rely on copies of identity documents. Banks are required to maintain records of the beneficial ownership information they obtain, and may rely on another bank for the performance of these requirements, in each case to the same extent as under their CIP rule.

Anti-Money Laundering Program Rule Amendments

The AML program requirement for banks now explicitly includes risk-based procedures for conducting ongoing CDD, to include understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile.

A customer risk profile refers to the information gathered about a customer at account opening used to develop a baseline against which customer activity is assessed for suspicious activity reporting. This may include self-evident information such as the type of customer or type of account, service, or product. The profile may, but need not, include a system of risk ratings or categories of customers.

CDD also includes conducting ongoing monitoring to identify and report suspicious transactions and, to maintain and update customer information. For these purposes, customer information includes information regarding the beneficial owners of legal entity customers. The regulation requires that banks conduct monitoring to identify and report suspicious transactions. Because this includes transactions that are not of the sort the customer would be normally expected to engage, the customer risk profile information is used (among other sources) to identify such transactions. This information may be integrated into the bank's automated monitoring system, and may be used after a potentially suspicious transaction has been identified, as one means of determining whether or not the identified activity is suspicious.

When a bank detects information (including a change in beneficial ownership information) about the customer in the course of its normal monitoring that is relevant to assessing or reevaluating the risk posed by the customer, it must update the customer information, including beneficial ownership information. Such information could include, e.g., a significant and unexplained change in the customer's activity, such as executing cross-border wire transfers for no apparent reason or a significant change in the volume of activity without explanation. This applies to all legal entity customers, including those existing on the Applicability Date.

This provision does not impose a categorical requirement that banks must update customer information, including beneficial ownership information, on a continuous or periodic basis. Rather, the updating requirement is event-driven, and occurs as a result of normal monitoring.

Section-by-Section Analysis

Section 1010.230 Beneficial Ownership Requirements for Legal Entity Customers

This paragraph delineates the scope of the beneficial ownership obligation - i.e., that covered banks are required to establish and maintain written procedures reasonably designed to identify and verify the identities of beneficial owners of legal entity customers. It was adopted as proposed with the addition that the procedures adopted will be included in the institution's AML program.

This requirement is separate from a policy objective of requiring States to obtain beneficial ownership information from the legal entities they create at the time of formation and upon specified circumstances thereafter. Presently, corporate laws and regulations differ from State to State, and from FinCEN's regulations, but generally do not require information regarding beneficial ownership. The information that will be provided under FinCEN's regulations will significantly augment information presently available to law enforcement from State authorities, thereby improving the overall investigative, regulatory, and prosecutorial processes.

There is no categorical, retroactive requirement. Based on the significant changes to processes and systems that will be required to implement this requirement simply on a prospective basis, retroactive application would be unduly burdensome. However, the absence of a categorical mandate to apply the requirement retroactively would not preclude banks from deciding that collecting beneficial ownership information on some customers on a risk basis during the course of monitoring may be appropriate for their institution.

Section 1010.230(b) Identification and Verification

Section 1010.230(b)(1)

The NPRM proposed the required use of a standard certification form (Certification Form) in order to promote consistent practices and regulatory expectations, reduce compliance burden, and provide a uniform customer experience across much of the U.S. financial system. To facilitate banks' abilities to rely upon the Certification Form, the proposed Certification Form included a section that required the individual opening the account on behalf of a legal entity customer to certify that the information provided on the form is true and accurate to the best of his or her knowledge.

The Form balances the benefits and burdens of this new requirement with the benefits to law enforcement and regulatory authorities. Many institutions obtain and maintain customer data electronically rather than in paper form to the greatest extent possible, and mandating the use and retention of a specific form would require significant technological and operational changes that could be costly and challenging to implement for some banks. The final rule permits banks to use the Certification Form to collect beneficial ownership information. Banks must identify the beneficial owner(s) of each legal entity customer at the time a new account is opened, unless the customer is otherwise excluded or the account is exempted. Banks may accomplish this either by obtaining certification in the form of appendix A of the section from the individual opening the account on behalf of the legal entity customer, or by obtaining from the individual the information required by the form by another means, provided the individual certifies, to the best of the individual's knowledge, the accuracy of the information.

Banks can satisfy this requirement through use of the form or some similar method that accomplishes this on bank forms, or any other means that satisfy the substantive requirements of the regulation. These records may be retained electronically and incorporated into existing databases as a part of overall management of customer files, and you will have flexibility in integrating the beneficial ownership information requirement into existing systems and processes. The certification of accuracy by the individual submitting the information may be obtained without use of the Certification Form in the same way the bank obtains other information in connection with its account opening procedures. To facilitate use of the Certification Form by those institutions that choose to utilize it, FinCEN will also make an electronic version available, although it will not be an official U.S. Government form.

FinCEN believes that banks should be able to integrate this new requirement into their existing procedures with little disruption. Banks generally have long-standing policies and procedures, based on sound business practices and prudential considerations, governing the documentation required to open an account for a legal entity; these typically include resolutions authorizing the entity to open an account at the institution and identifying the authorized signatories. Such resolutions are typically certified by an appropriate individual. It would be appropriate for the same individual to certify the identity of the beneficial owners.

Some commenters urged FinCEN to permit banks to rely upon alternative sources, such as previously collected customer information in their databases, or the IRS Form W-8BEN, to satisfy the certification requirement. To be of greatest use, FinCEN believes that beneficial ownership information must be, at the time of account opening, both (1) current, and (2) certified by an individual authorized by the customer to open accounts at banks to be accurate to the best of his or her knowledge. FinCEN declined to permit reliance solely upon previously gathered alternate sources of beneficial ownership information.

FinCEN stated that, while not requiring periodic updating of the beneficial ownership information of all legal entity customers at specified intervals, the opening of a new account is a relatively convenient and otherwise appropriate occasion to obtain current information regarding a customer's beneficial owners. Accordingly, FinCEN has added to the final rule a definition for "new account".

The Certification Form should serve as the starting point for banks' risk-based due diligence into a legal entity's beneficial ownership. The final rule provides a description of the extent to which banks can rely upon the beneficial ownership information provided by the person opening the account. There is no safe harbor in the final rule triggered by the use and collection of the standard Certification Form.

Section 1010.230(b)(2)

FinCEN proposed that verification of identity of identity meant that banks were required to verify the identity of the individual identified as a beneficial owner (i.e., to verify the individual's existence), and not his or her status as a beneficial owner. This verification was to be done via risk-based procedures that are identical to the institutions' CIP procedures required for verifying the identity of customers that are individuals.

FinCEN revised the rule to clarify that a covered bank 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.

The final regulation was amended to require that at a minimum, these procedures must contain the elements required for verifying the identity of customers that are individuals, but are not required to be identical. The final rule clarifies that in the case of documentary verification, the bank may use photocopies or other reproductions of the documents listed in the CIP rule.

Because the risk-based verification procedures must contain the same elements as required by the applicable CIP rule to verify the identity of individual customers, verification must be completed within a reasonable time after the account is opened. The beneficial ownership identification procedures must address situations in which the bank cannot form a reasonable belief that it knows the true identity of the beneficial owner of a legal entity customer after following the required procedures.

Given the vulnerabilities inherent in the reproduction process, banks should conduct their own risk-based analyses of the types of photocopies or reproductions that they will accept in accordance with this section, so that such reliance is reasonable. For example, a bank could determine that it

will not accept reproductions below a certain optical resolution, or that it will not accept reproductions transmitted via facsimile, or that it will only accept digital reproductions transmitted in certain file formats. As with CIP, banks are not required to maintain these copies or reproductions, but only a description of any document upon which the bank relied to verify the identity of the beneficial owner. Banks are not prohibited from keeping them in a manner consistent with all other applicable laws or regulations.

FinCEN generally expects beneficial ownership information to be treated like CIP and related information, and to be used to ensure that banks comply with other requirements. For example, the Office of Foreign Assets Control (OFAC) requires covered banks to block accounts (or other property and interests in property) of, among others, persons appearing on the Specially Designated Nationals and Blocked Persons List (SDN List), which includes any entity that is 50 percent or more owned, in the aggregate, by one or more blocked persons, regardless of whether the entity is formally listed on the SDN List. Therefore, banks should use beneficial ownership information to help ensure that they do not open or maintain an account, or otherwise engage in prohibited transactions or dealings involving individuals or entities subject to OFAC-administered sanctions. Covered banks should also develop risk-based procedures to determine whether and/or when additional screening of these names through, for example, negative media search programs, would be appropriate.

With respect to aggregation of transactions for Currency Transaction Reporting (CTR) purposes, FinCEN expects banks to apply existing procedures consistent with CTR regulations and applicable FinCEN guidance. While banks should generally recognize the distinctness of the corporate form and not categorically impute the activities or transactions of a legal entity customer to a beneficial owner, they must aggregate multiple currency transactions if the bank has knowledge that these transactions are by or on behalf of any person and result in either cash in or cash out totaling more than \$10,000 during any one business day. While the requirement to identify the beneficial owners of legal entity customers does not modify this existing CTR aggregation requirement, the beneficial ownership identification may provide banks with information they did not previously have, in order to determine when transactions are “by or on behalf of” the same person.

If a bank determines that a legal entity customer or customers are not being operated independently from each other or from their primary owner (the institution determines that legal entities under common ownership have common employees and are repeatedly used to pay each other’s expenses or the personal expenses of their primary owner), then the bank may determine that aggregating the transactions of a legal entity or entities and their primary owner would be appropriate. Under such circumstances, if a bank were aware that a beneficial owner made a \$5,000 cash deposit into his personal account, and later the same business day, he made a \$6,000 cash deposit into the account of a legal entity not being operated as an independent entity, the institution would be required to aggregate those transactions and file a CTR. In addition, to the extent that the bank determined that such transactions had no other apparent purpose than to avoid triggering a CTR filing, the bank would need to consider whether filing a SAR about the transactions would be appropriate.

FinCEN does not expect the information obtained pursuant to the beneficial ownership requirement to add additional requirements with respect to Section 314(a) for banks. The rule implementing Section 314(a), does not authorize the reporting of beneficial ownership information associated with an account or transaction matching a named subject. Under that

rule, banks need only search their records for account or transactions matching a named subject, and report to FinCEN whether such a match exists using the identifying information that FinCEN provides.

Section 1010.230(c) Account.

There were no significant comments here. The definition of account did not change.

Section 1010.230(d) Beneficial Owner.

There are two prongs for the definition of beneficial owner: Each individual, if any, who directly or indirectly owned 25 percent of the equity interests of a legal entity customer (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 or any other individual who regularly performs similar functions (the control prong).

The number of beneficial owners identified would vary from legal entity customer to legal entity customer due to the ownership prong -there could be as few as zero and as many as four individuals who satisfy this prong. All legal entities, however, would be required to identify one beneficial owner under the control prong. Banks have the discretion to identify additional beneficial owners as appropriate based on risk.

Examples

Mr. and Mrs. Smith each hold a 50 percent equity interest in “Mom & Pop, LLC.” Mrs. Smith is President of Mom & Pop, LLC and Mr. Smith is its Vice President. Mom & Pop, LLC is required to provide the personal information of both Mr. & Mrs. Smith under the ownership prong. Under the control prong, Mom & Pop, LLC is also required to provide the personal information of one individual with significant responsibility to control Mom & Pop, LLC; this individual could be either Mr. or Mrs. Smith, or a third person who otherwise satisfies the definition. Thus, in this scenario, Mom & Pop, LLC would be required to identify at least two, but up to three distinct individuals—both Mr. & Mrs. Smith under the ownership prong, and either Mr. or Mrs. Smith under the control prong, or both Mr. & Mrs. Smith under the ownership prong, and a third person with significant responsibility under the control prong.

Acme, Inc. is a closely held private corporation. John Roe holds a 35 percent equity stake; no other person holds a 25 percent or higher equity stake. Jane Doe is the President and Chief Executive Officer. Acme, Inc. would be required to provide John Roe’s beneficial ownership information under the ownership prong, as well as Jane Doe’s (or that of another control person) under the control prong.

Quentin, Inc. is owned by the five Quentin siblings, each of whom holds a 20 percent equity stake. Its President is Benton Quentin, the eldest sibling, who is the only individual at Quentin, Inc. with significant management responsibility. Quentin, Inc. would be required to provide Benton Quentin’s beneficial ownership information under the control prong, but no other beneficial ownership information under the ownership prong, because no sibling has a 25 percent stake or greater.

This obligation should be considered a snapshot, not a continuous obligation. FinCEN does expect banks to update this information based on risk, generally triggered by a bank learning through its normal monitoring of facts relevant to assessing the risk posed by the customer.

The Ownership Prong

The phrase “directly or indirectly,” is intended to mean that the bank’s customer identify its ultimate beneficial owner or owners as defined in the rule and not their nominees or “straw men.” Banks may rely on information provided by the customer to identify and verify the beneficial owner.

The 25 percent threshold is the baseline regulatory benchmark, but banks may establish a lower percentage threshold for beneficial ownership (i.e., one that regards owners of less than 25 percent of equity interests as beneficial owners) based on their own assessment of risk in appropriate circumstances. FinCEN does not expect covered banks’ compliance with this regulatory requirement to be assessed against a lower threshold.

Some commenters thought that FinCEN should provide additional guidance and examples of how legal entity customers should calculate ownership interests when natural persons have indirect equity interests. FinCEN expects that banks will generally be able to rely on the representations of the customer when it identifies its beneficial owners. It would not be unreasonable to expect that a legal entity that has a complex structure would have personnel who necessarily have a general understanding of the ownership interests of the natural persons behind it for operational, management, accounting, and other purposes.

Exclusions in the rule include any entity organized under the laws of the United States or of any State, at least 51 percent of whose common stock or analogous equity interests are held by an entity listed on a U.S stock exchange. In the relatively unusual situations where an excluded entity holds a 25 percent or greater equity interest that is not covered by the exclusion, banks are not required under the ownership prong to identify and verify the identities of a natural person behind these entities; this is because the definition of “beneficial owner” under the ownership prong refers to “[e]ach individual, if any, . . .”, and in such a case there would not be any individual who is the ultimate owner of such interest. On the other hand, where 25 percent or more of the equity interests of a legal entity customer are owned by a trust (other than a statutory trust), covered banks would satisfy the ownership prong of the beneficial ownership requirement by collecting and verifying the identity of the trustee, and FinCEN has amended the definition consistent with this approach.

The Control Prong

Legal entity customers are required to provide information on only one control person who satisfies the definition, so they should be able to readily identify at least one natural person within their management structure who has significant management responsibility. There may be legal entities for which there are no natural persons who satisfy the ownership prong; without the control prong, this would create a loophole for legal entities seeking to obscure their beneficial ownership information. Requiring the identification and verification of, at a minimum, one control person ensures that banks will have a record of at least one natural person associated with the legal entity, which will benefit all parties.

The control prong provides for a straightforward test: The legal entity customer must provide identifying information for one person with significant managerial control. It further provides as examples a number of common, well-understood senior job titles, such as President, Chief Executive Officer, and others. Taken together, these clauses provide ample information for legal entity customers to easily identify a natural person that satisfies the definition of control person.

The definition does not encapsulate all possible concepts of control, including effective control, however, the definition strikes a balance between including sufficiently senior leadership positions and practicability.

Section 1010.230(e) Legal Entity Customer

This paragraph defines the term “legal entity customer” and delineated a series of exclusions from this definition.

Section 1010.230(e)(1).

A legal entity customer means a corporation, limited liability company, or other entity that is created by the filing of a public document with a Secretary of State or similar office, a general partnership, and any similar entity formed under the laws of a foreign jurisdiction, that opens an account.

This means that “legal entity customer” would include, in addition to corporations and limited liability companies, limited partnerships, business trusts that are created by a filing with a state office, any other entity created in this manner, and general partnerships. (It would also include similar entities formed under the laws of other countries.) It would not include sole proprietorships or unincorporated associations even though such businesses may file with the Secretary of State in order to register a trade name or establish a tax account. This is because neither a sole proprietorship nor an unincorporated association is an entity with legal existence separate from the associated individual or individuals that in effect creates a shield permitting an individual to obscure his or her identity. The definition of “legal entity customer” also does not include natural persons opening accounts on their own behalf.

Trusts

The definition would also not include trusts (other than statutory trusts created by a filing with a Secretary of State or similar office). This is because, unlike the legal entities that are subject to the final rule, a trust is a contractual arrangement between the person who provides the funds or other assets and specifies the terms (i.e., the grantor or 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.

This does not and should not supersede existing obligations and practices regarding trusts generally. While banks 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.” Moreover, where trusts are direct customers of banks, banks generally also identify and verify the identity of trustees,

because trustees will necessarily be signatories on trust accounts (which in turn provides a ready source of information for law enforcement in the event of an investigation). 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 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.” Consistent with existing obligations, banks are already taking a risk-based approach to collecting information with respect to various persons associated with trusts in order to know their customer, and that we expect banks to continue these practices.

“Account” Definition

A legal entity customer is defined as one that opens an account, but the NPRM did not define the term “account.” In order to maintain consistency with the CIP rules, FinCEN is adding to the final rule the definition of the term “account” that is found in the CIP rules, which by its terms excludes an account opened for the purpose of participating in an employee benefit plan established under the Employee Retirement Income Security Act of 1974.

Section 1010.230(e)(2) Exclusions

The NPRM proposed ten exclusions from the legal entity customer definition. The final rule adopts all of those proposed exclusions, except under the heading, Charities and Nonprofit Entities. The final rule also adds a number of other exclusions. All of the exclusions are a result of an assessment of the risks and determination that beneficial ownership information need not be obtained at account opening, because the information is generally available from other credible sources:

A bank regulated by a Federal functional regulator or a bank regulated by a State bank regulator - 1010.230(e)(2)(i)

These entities are excluded because they are subject to Federal or State regulation and information regarding their beneficial ownership and management is available from the relevant Federal or State agencies.

A person described in § 1020.315(b)(2) through (5) of this chapter - § 1010.230(e)(2)(ii)

This includes the following:

1. A department or agency of the United States, of any State, or of any political subdivision of a State.
2. 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 of any such State or political subdivision.
3. Any entity (other than a bank) whose common stock or analogous equity interests are listed on the New York, American, or NASDAQ stock exchange. This exclusion is appropriate because such entities are required to publicly disclose the beneficial owners

of five percent or more of each class of the issuer's voting securities in periodic filings with the SEC, to the extent the information is known to the issuer or can be ascertained from public filings. In addition, beneficial owners of these issuers' securities may be subject to additional reporting requirements.

4. Any entity organized under the laws of the United States or of any State at least 51 percent of whose common stock or analogous equity interests are held by a listed entity. Because such subsidiaries of listed entities are controlled by their parent listed entity, information regarding control and management is publicly available.

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 - § 1010.230(e)(2)(iii)

These issuers are excluded because they are required to publicly disclose the beneficial owners of five percent or more of each class of the issuer's voting securities in periodic filings with the SEC, to the extent the information is known to the issuer or can be ascertained from public filings. In addition, beneficial owners of the issuer's securities may be subject to additional reporting requirements.

An investment company, as defined in Section 3 of the Investment Company Act of 1940, that is registered with the SEC under that Act - § 1010.230(e)(2)(iv)

An investment adviser, as defined in section 202(a)(11) of the Investment Advisers Act of 1940, that is registered with the SEC under that Act - § 1010.230(e)(2)(v)

These entities are excluded because registered investment companies and registered investment advisers already publicly report beneficial ownership in their filings with the SEC.

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 - § 1010.230(e)(2)(vi)

Any other entity registered with the SEC under the Securities and Exchange Act of 1934 - § 1010.230(e)(2)(vii)

These entities are excluded because the SEC registration process requires disclosure and regular updating of information about beneficial owners of those entities, as well as senior management and other control persons.

A registered entity, commodity pool operator, commodity trading advisor, retail foreign exchange dealer, swap dealer, or major swap participant, each as defined in section 1a of the Commodity Exchange Act, that is registered with the CFTC - § 1010.230(e)(2)(viii)

These entities are excluded because the CFTC registration process requires disclosure and regular updating of information about beneficial owners of those entities, as well as senior management and other control persons.

A public accounting firm registered under section 102 of the Sarbanes-Oxley Act - § 1010.230(e)(2)(ix)

These firms are required to register with the Public Company Accounting Oversight Board (PCAOB), a nonprofit corporation established by Congress to oversee the audits of publicly

traded companies, and are required to file annual and special reports with the PCAOB. In addition, States require public accounting firms to register and to file annual reports identifying their members (e.g., partners, members, or shareholders). Such information is often available online.

Additional Regulated Entities

A bank holding company, as defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), or savings and loan holding company, as defined in section 10(n) of the Home Owners' Loan Act (12 U.S.C. 1467a(n)) - § 1010.230(e)(2)(x)

A pooled investment vehicle that is operated or advised by a bank excluded under this paragraph - § 1010.230(e)(2)(xi)

An insurance company that is regulated by a State - § 1010.230(e)(2)(xii)

For insurance companies regulated by a State of the United States, these companies must disclose and regularly update their beneficial owners, as well the identities of senior management and other control persons.

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 - § 1010.230(e)(2)(xiii)

FinCEN understands that entities designated as financial market utilities by the Financial Stability Oversight Council pursuant to Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 are subject to extensive supervision and oversight by their Federal functional regulators, including the disclosure of beneficial ownership information. Accordingly, FinCEN believes that it is appropriate to exclude them from the definition.

Excluded Foreign Entities

A foreign bank established in a jurisdiction where the regulator of such institution maintains beneficial ownership information regarding such institution - § 1010.230(e)(2)(xiv)

With regard to regulated foreign banks, some commenters noted that in the rules implementing section 312 of the USA PATRIOT Act, even in the case of foreign banks subject to enhanced due diligence, a U.S. bank need obtain ownership information only if such foreign banks are not publicly traded, and that it would be inconsistent to impose a more burdensome requirement in the case of correspondent accounts for foreign banks (and arguably other foreign banks) that are not subject to enhanced due diligence. FinCEN agrees with this analysis and has broadened the exclusions to the definition of legal entity customer in the final rule to include foreign banks established in jurisdictions 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 - § 1010.230(e)(2)(xv)

Although the delineation between governmental and commercial activities arises out of well-recognized principles of sovereign immunity, FinCEN does not expect front-line employees of

covered banks to engage in any type of legal analysis to determine the applicability of this exclusion. Rather, FinCEN expects covered banks to rely upon the representations of such customers, absent knowledge to the contrary.

Any legal entity only to the extent that it opens a private banking account subject to 31 CFR 1010.620 - § 1010.230(e)(2)(xvi)

FinCEN's private banking account rule already requires banks maintaining such accounts to ascertain the identity of all beneficial owners of such accounts, but utilizes a different definition. Because covered banks have established a process for complying with the private banking account regulation, FinCEN has determined that it is appropriate to exclude such legal entity customers from the beneficial ownership requirement only when they establish such accounts.

Non-excluded Pooled Investment Vehicles

Because of the limited utility and difficulty of collecting beneficial ownership information under the ownership prong, in the case of pooled investment vehicles whose operators or advisers are not excluded from this definition, such as non-U.S. managed mutual funds, hedge funds, and private equity funds, banks would be required to collect beneficial ownership information under the control prong only.

Intermediated Account Relationships

In the NPRM it stated that if an intermediary is the customer, and the bank has no CIP obligation with respect to the intermediary's underlying clients pursuant to existing guidance, a bank should treat the intermediary, and not the intermediary's underlying clients, as its legal entity customer. Thus, existing guidance issued jointly by Treasury or FinCEN and any of the Federal functional regulators for broker-dealers, mutual funds, and the futures industry related to intermediated relationships would apply. FinCEN confirms that this principle will apply in interpreting the final rule, as follows: To the extent that existing guidance provides that, for purposes of the CIP rules, a bank shall treat an intermediary (and not the intermediary's customers) as its customer, the bank should treat the intermediary as its customer for purposes of this final rule. FinCEN also confirms that other guidance issued jointly by FinCEN and one or more Federal functional regulators relating to the application of the CIP rule will apply to this final rule, to the extent relevant.

Charities and Nonprofit Entities

In the NPRM, FinCEN proposed an exclusion from the definition of "legal entity customer" for charities and nonprofit entities that are described in sections 501(c), 527, or 4947(a)(1) of the Internal Revenue Code of 1986, which have not been denied tax exempt status, and which are required to and have filed the most recently due annual information return with the Internal Revenue Service.

Rather than limiting its treatment of this category to entities that are exempt from Federal tax and requiring proof of such exemption, FinCEN has determined that it would be simpler, as well as more efficient and more logical, to exclude all nonprofit entities (whether or not tax-

exempt) from the ownership prong of the requirement, particularly considering the fact that nonprofit entities do not have ownership interests, and require only that they identify an individual with significant responsibility to control, manage, or direct the customer. The final rule includes as a type of legal entity customer, subject only to the control prong of the beneficial owner definition, 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.

A nonprofit corporation or similar entity would include, among others, charitable, nonprofit, not-for-profit, nonstock, public benefit or similar corporations. Such an organization could establish that it is a qualifying entity by providing a certified copy of its certificate of incorporation or a certificate of good standing from the appropriate State authority, which may already be required for a legal entity to open an account with a bank under its CIP. Small local community organizations, such as Scout Troops and youth sports leagues, are unincorporated associations rather than legal entities and therefore not subject to the beneficial ownership requirement.

Section 1010.230(f) Covered Bank

This paragraph defines covered bank by reference to the definition set forth in § 1010.605(e)(1), thereby subjecting to this requirement those banks already covered by CIP requirements.

Section 1010.230(g) New account

See discussion above under “Identification and Verification.”

Section 1010.230(h) Exemptions

This paragraph exempts covered banks from the beneficial ownership requirement with respect to opening accounts for legal entity customers for certain specific activities and within certain limitations for the reasons described below.

Private Label Retail Credit Accounts Established at the Point-of-Sale

Covered banks are exempt from the beneficial ownership requirement with respect to private label credit card accounts to the limited extent that they are established at the point-of-sale to obtain credit products, including commercial private label credit cards, solely for the purchase of retail goods and/or services at the issuing retailer and have a credit limit of no more than \$50,000.

In contrast, credit cards that are co-branded with major credit card associations do not possess the same limitations and characteristics that would protect them from abuse. For example, co-branded credit cards can be used at any outlet or ATM that accepts those associations’ cards. FinCEN therefore believes that covered banks should obtain and verify beneficial ownership information with respect to opening accounts for legal entities involving such co-branded cards.

Additional Exemptions

Accounts Established for the Purchase and Financing of Postage

Covered banks are exempt from the beneficial ownership requirement with respect to accounts solely used to finance the purchase of postage and for which payments are remitted directly by the bank to the provider of the postage products.

Commercial Accounts to Finance Insurance Premiums

Covered banks are exempt from the beneficial ownership requirement with respect to accounts solely used to finance insurance premiums and for which payments are remitted directly by the bank to the insurance provider or broker.

Accounts To Finance the Purchase or Lease of Equipment

Covered banks are exempt from the beneficial ownership requirement with respect to accounts solely used to finance the purchase or leasing of equipment and for which payments are remitted directly by the bank to the vendor or lessor of this equipment.

Section 1010.230(h)(2) Limitations on Exemptions

These three exemptions are subject to further limitations to mitigate the remaining limited money laundering risks associated with them, as follows:

1. The exemptions identified in paragraphs (h)(1)(ii) through (iv) do not apply to transaction accounts through which a legal entity customer can make payments to, or receive payments from, third parties.
2. If there is the possibility of a cash refund on the account activity identified in paragraphs (h)(1)(ii) through (iv), then beneficial ownership of the legal entity customer must be identified and verified by the bank as required by this section, either at the time of initial remittance, or at the time such refund occurs.

Section 1010.230(i) Recordkeeping.

Under the proposal, a bank must have procedures for maintaining a record of all information obtained in connection with identifying and verifying beneficial owners, including retention of the Certification Form and a record of any other related identifying information reviewed or collected, for a period of five years after the date the account is closed. Furthermore, a bank must also retain records for a period of five years after such record is made, including a description of every document relied on for verification, any non-documentary methods and results of measures undertaken for verification, as well as the resolution of any substantive discrepancies discovered in verifying the identification information.

Because collection of the Certification Form is no longer a requirement, there was a corresponding change to the recordkeeping requirement for the final rule. Section 1010.230(i)(1)(i) now states that at a minimum, the record must include, for identification, any identifying information obtained by the covered bank pursuant to paragraph (b), including without limitation the certification (if obtained).

Section 1010.230(j) Reliance on Another Bank.

In the NPRM, banks could rely on the performance by another bank of the requirements of this section under the same conditions as set forth in the applicable CIP rules. The final rule maintains this position. Section 1020.210 Anti-money laundering program requirements for banks regulated only by a Federal functional regulator, including banks, savings associations, and credit unions.

FinCEN proposed to amend its existing AML program rules to expressly incorporate both the minimum statutory elements of an AML program prescribed by 31 U.S.C. 5318(h)(1), as well as the elements of the minimum standard of CDD that are not otherwise already accounted for in either the existing AML regulatory scheme (i.e., CIP) or in the proposed beneficial ownership requirement.

Paragraphs (b)(1) through (4) correspond to the minimum statutory elements of section 5318(h)(1), while proposed paragraph (b)(5) set forth the remaining elements of CDD by requiring appropriate risk-based procedures for conducting ongoing customer due diligence including, but not limited to

1. understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile, and
2. conducting ongoing monitoring to maintain and update customer information and to identify and report suspicious transactions.

These elements of CDD were necessary and critical steps required to comply with the existing requirement under the BSA to identify and report suspicious transactions. Thus, expressly incorporating them into the AML program rules would serve to harmonize these elements with existing AML obligations.

Under the existing requirement for banks to report suspicious activity, they must file SARs on a transaction that, among other things, has “no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage.” Banks specifically are expected to “obtain information at account opening sufficient to develop an understanding of normal and expected activity for the customer’s occupation or business operations.” In short, to understand the types of transactions in which a particular customer would normally be expected to engage necessarily requires an understanding of the nature and purpose of the customer relationship, which informs the baseline against which aberrant, suspicious transactions are identified. In some circumstances, an understanding of the nature and purpose of a customer relationship can also be developed by inherent or self-evident information about the product or customer type, such as the type of customer, the type of account opened, or the service or product offered, or other basic information about the customer, and such information may be sufficient to understand the nature and purpose of the relationship. Depending on the facts and circumstances, other relevant facts could include basic information about the customer, such as annual income, net worth, domicile, or principal occupation or business, as well as, in the case of longstanding customers, the customer’s history of activity.

Conducting ongoing monitoring to maintain and update customer information and to identify and report suspicious transactions is consistent with current industry practice. Banks are expected to have in place internal controls to “provide sufficient controls and monitoring systems for timely detection and reporting of suspicious activity.”

FinCEN views this “fifth pillar” as nothing more than an explicit codification of existing expectations; as these expectations should already be taken into account in a bank’s internal controls, FinCEN would expect the confusion caused by this codification, if any, to be minimal. In order to bring uniformity and consistency across sectors, it is important that these due diligence elements be made explicit, and that they be part of the AML program of depository institutions (as well as of the other covered banks).

For banks, the term “customer risk profile” is used to refer to the information gathered about a customer to develop the baseline against which customer activity is assessed for suspicious transaction reporting. As such, we would not expect there to be any significant changes to current practice that is consistent with existing expectations and requirements, and certainly not in the form of inappropriate profiling.

The final rule amends the ongoing monitoring prong to state that ongoing monitoring is conducted to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information. For these purposes, customer information shall include information regarding the beneficial owners of legal entity customers (as defined in § 1010.230).

When banks become aware of new information during the course of their normal monitoring relevant to assessing or reevaluating the risk of a customer relationship, for instance a significant and unexplained change in customer activity, it could also include information indicating a possible change in beneficial ownership, when such change might be relevant to assessing the risk posed by the customer. In any event, it is appropriate to update the customer information accordingly. Including the ongoing monitoring element in the AML program rules serves to reflect existing practices to satisfy SAR reporting obligations. Although the beneficial ownership information collection requirement was not in place at the time of the proposal, this information may be relevant in assessing the risk posed by the customer and in assessing whether a transaction is suspicious.

FinCEN believes it is also consistent that this updating requirement should apply not only to customers with new accounts, but also to customers with accounts existing on the Applicability Date. That is, should the bank learn as a result of its normal monitoring that the beneficial owner of a legal entity customer may have changed, it should identify the beneficial owner of such customer. For example, envision a situation where an unexpected transfer of all of the funds in a legal entity’s account to a previously unknown individual would trigger an investigation in which the bank learns that the funds transfer was directly related to a change in the beneficial ownership of the legal entity. The obligation to update customer information pursuant to this provision, including beneficial ownership information, is triggered only when, in the course of its normal monitoring, the bank detects information relevant to assessing the risk posed by the customer; it is not intended to impose a categorical requirement to update customer or beneficial ownership information on a continuous or ongoing basis.

FinCEN believes that the revision of the ongoing monitoring element for the final rule as the requirement is consistent with current practice, and monitoring-triggered updating of beneficial ownership information (as with other customer information) should only occur on a risk basis when material information about a change in beneficial ownership is uncovered during the course of a bank’s normal monitoring (whether of the customer relationship or of transactions). There may be unusual cases where transaction monitoring might lead to information about a possible change in beneficial ownership. However, there is no expectation that a bank obtain updated beneficial ownership information from its customers on a regular basis, whether by using the Certification Form in Appendix A or by any other means.

Section 1023.210 Anti-money laundering program requirements for brokers or dealers in securities.

As this does not apply to the attendees, it has been omitted.

Section 1024.210 Anti-money laundering program requirements for mutual funds.

As this does not apply to the attendees, it has been omitted.

Section 1026.210 Anti-money laundering program requirements for futures commission merchants and introducing brokers in commodities.

As this does not apply to the attendees, it has been omitted.

Appendix A to § 1010.230 --Certification Regarding Beneficial Owners of Legal Entity Customers

Appendix A: Certification Form

31 CFR § 1020.230 CERTIFICATION REGARDING BENEFICIAL OWNERS OF LEGAL ENTITY CUSTOMERS

I. GENERAL INSTRUCTIONS

This is an optional form provided for your convenience. The required information may be provided in other formats. When completed, this form is provided to the financial institution where the account is opened. DO NOT SEND TO FinCEN.

Where may I obtain a copy of the form?

A copy (pdf) may be downloaded from the FinCEN website at www.fincen.gov under the "Filing Information" tab. The form may be completed on a computer using the free [Adobe Reader](#) software.

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

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

What information do I have to provide?

When you open a new account on behalf of a legal entity, the financial institution will ask for information about the legal entity's **beneficial owner(s)**, including their name, address, date of birth and social security number (or passport number or other similar information, in the case of Non-U.S. persons). 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.

Beneficial owners are:

- (1) Each individual, if any, who owns, directly or indirectly, 25 percent or more of the equity interests of the legal entity customer (e.g., each natural person that owns 25 percent or more of the shares of a corporation; **and**
- (2) An individual with significant responsibility for managing the legal entity customer (e.g., a Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, or Treasurer).

The number of individuals that satisfy this definition of "beneficial owner" may vary. Under section (1), 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 (1), you must provide the identifying information of one individual under section (2). It is possible that in some circumstances the same individual might be identified under both sections (e.g., the President of Acme, Inc. who also holds a 30% equity interest). Thus, a completed form will contain the identifying information of at least one individual (under section (2)), and up to five individuals (i.e., one individual under section (2) and four 25 percent equity holders under section (1)).

a legal entity may have multiple "beneficial owners," this form requires you to list only those that own 25% or more (up to five) under each of the two prongs of the definition above. If appropriate, the same individuals may be listed under both prongs.

Rev. 6.6 Aug. 2017

CERTIFICATION OF BENEFICIAL OWNER(S)

The information contained in this Certification is sought pursuant to Section 1020.230 of Title 31 of the United States Code of Federal Regulations (31 CFR 1020.230).

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

1. Last Name and title of Natural Person Opening Account	2. First Name	3. Middle Initial	
4. Name and type of Legal Entity for Which the Account is Being Opened			
4a. Legal Entity Address	4b. City	4c. State	4d. ZIP/Postal Code

SECTION I

(To add additional individuals, see page 3)

Please provide the following information for an individual(s), if any, who, directly or indirectly, through any contract arrangement, understanding, relationship, or otherwise owns 25% or more of the equity interests of the legal entity listed above. **Check here if no individual meets this definition and complete Section II.**

5. Last Name	6. First Name	7. M.I.	8. Date of birth (MM/DD/YYYY)
9. Address	10. City	11. State	12. ZIP/Postal Code
13. Country	14. SSN (U.S. Persons)	15. For Non-U.S. persons (SSN, Passport Number or other similar identification number)	
		15a. Country of issuance:	

Note: In lieu of a passport number, Non-U.S. Persons may also provide a Social Security Number, an alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

SECTION II

Please provide the following information for an individual with significant responsibility for managing or directing the entity, including, an executive officer or senior manager (e.g., Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, Treasurer); or Any other individual who regularly performs similar functions.

16. Last Name	17. First Name	18. M.I.	19. Date of birth (MM/DD/YYYY)
20. Address	21. City	22. State	23. ZIP/Postal Code
24. Country	25. SSN (U.S. Persons)	26. For Non-U.S. persons (SSN, Passport Number or other similar identification number)	
		26a. Country of issuance:	

Note: In lieu of a passport number, Non-U.S. Persons may also provide a Social Security Number, an alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

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

Signature: _____ Date: _____
(MM/DD/YYYY)

Legal Entity Identifier (Optional) _____

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Additional Section 1 - Second Beneficial Owner (If required)

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

5. Last Name		6. First Name	7. M.I.	8. Date of birth (MM/DD/YYYY)
9. Address		10. City	11. State	12. ZIP/Postal Code
13. Country	14. SSN (U.S. Persons)	15. For Non-U.S. persons (SSN, Passport Number or other similar identification number)		
		15a. Country of issuance:		

Note: In lieu of a passport number, Non-U.S. Persons may also provide a Social Security Number, an alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

Additional Section 1 - Third Beneficial Owner (If required)

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

5. Last Name		6. First Name	7. M.I.	8. Date of birth (MM/DD/YYYY)
9. Address		10. City	11. State	12. ZIP/Postal Code
13. Country	14. SSN (U.S. Persons)	15. For Non-U.S. persons (SSN, Passport Number or other similar identification number)		
		15a. Country of issuance:		

Additional Section 1 - Fourth Beneficial Owner (If required)

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

5. Last Name		6. First Name	7. M.I.	8. Date of birth (MM/DD/YYYY)
9. Address		10. City	11. State	12. ZIP/Postal Code
13. Country	14. SSN (U.S. Persons)	15. For Non-U.S. persons (SSN, Passport Number or other similar identification number)		
		15a. Country of issuance:		

Note: In lieu of a passport number, Non-U.S. Persons may also provide a Social Security Number, an alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

Rev. 6.7 Sept., 2017

Frequently Asked Questions Regarding Customer Due Diligence Requirements for Financial Institutions

On July 19, 2016, FinCEN released a series of Questions and Answers regarding the customer due diligence requirements for financial institutions. Those FAQs are as follows:

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.

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 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.” 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 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.