



LEGAL ALERT

May 10, 2018

New Customer Due Diligence Rule Effective May 11, 2018: Are you Prepared?

The Customer Due Diligence Rule (“CDD”) expands the anti-money laundering rules imposed on banks by the United States Department of the Treasury’s Financial Crimes Enforcement Network (“FinCEN”) to require enhanced due diligence on legal entity customers. Under CDD, banks must collect and maintain customer information regarding beneficial ownership of legal entities when opening accounts. Although CDD does not require you to update beneficial ownership information on a continuous basis, it should be updated if you have reason to believe the customer had undergone a change in control.

I. Which customers are subject to the CDD Rule?

Legal entities affected by CDD include corporations, limited liability companies, limited partnerships, general partnerships, business trusts, foreign business entities, and any other entity created by a filing with a state office. Customers not covered by CDD include natural persons, sole proprietorships, unincorporated associations, federal or state regulated financial institutions, banks and savings and loan holding companies, and state-regulated insurance companies.

II. What is CDD?

CDD requires banks to discover the beneficial owners of legal entities upon account opening. When an individual seeks to open a new account on behalf of the entity, the bank must establish the legal entity’s ownership and control regardless of whether the individual is an existing customer of the bank. A customer will need to submit a Certification Form to the bank containing details about the individuals who have significant responsibility within the legal entity.

If the individual identified as the beneficial owner is an existing customer of the bank and is subject to the bank’s Customer Identification Program (“CIP”), a bank is permitted to rely on the existing information to fulfill the identification and verification requirements, provided that the existing information is confirmed by the legal entity’s representative to be current and accurate. FinCEN advises that there is no “grace period” during which such confirmations are deemed to remain valid. Each instance of an account opening requires confirmation. Rollovers of CDs or renewal of a loan occurring after May 11, 2018 are subject to CDD although subsequent rollovers and renewals need no confirmation if the customer agrees to notify the bank of any change of information in the future.

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controlling legal entity until ownership and control can be traced to a natural person. For example, if Alpha LLC is the beneficial owner of Beta Corporation and Beta Corporation seeks to open an account, the bank is required to determine the beneficial ownership of Alpha LLC.

III. What is “beneficial ownership” and how can I identify beneficial owners?

Under CDD, beneficial ownership includes two prongs: the Ownership Prong and the Control Prong. A beneficial owner is any individual who, directly or indirectly, owns 25% or more of the legal entity customer (the “Ownership Prong”) and an individual who has significant managerial responsibility, such as a CEO, President, or Managing Member (the “Control Prong”). Non-governmental organizations, charities, and religious organizations such as churches are excluded from the Ownership Prong, but the Control Prong still applies.

Identification can be accomplished a number of ways. You can gather the identifying information on the FinCEN form included as Appendix A to the [Final Rule](#) or use an internal form as long as it complies with CDD. In general, you can verify the identity of a beneficial owner by performing your normal CIP for the individuals listed on the Certification Form. After you have collected the information, FinCEN generally expects banks to treat the information like CIP and related information. For example, you will need to perform an Office of Foreign Assets Control (“OFAC”) screening at a minimum. Although you must verify the identity of the beneficial owners, you are not required to verify their status as beneficial owners. In other words, you may rely on the certification submitted by the customer unless you have reason to believe the information is false.

Need More Information?

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