

insights

TYPES NOT MAPPED YET October 16, 2018 | TTR not mapped yet | Sarah A. Wade, Garrett M. Fischer

FinCEN exempts certain rollovers, renewals, modifications and extensions from beneficial ownership rules

On September 7, 2018, the Financial Crimes Enforcement Network (FinCEN) issued [Ruling FIN-2018-R003](#) (the “Ruling”) to exempt covered financial institutions (CFIs) from the requirement to collect beneficial ownership information on legal entity customers (such as corporations, limited liability companies and partnerships) in connection with specified rollovers, renewals, modifications and extensions of certain accounts.

The general beneficial ownership due diligence requirements for CFIs are set forth in a FinCEN regulation with a required compliance date of May 11, 2018 (the “[Beneficial Ownership Rule](#)”).

The new Ruling replaces and supersedes FinCEN’s [May 16, 2018 ruling](#), which provided a temporary exemption from the Beneficial Ownership Rule requirements for CFIs in the case of certain rollovers, renewals, modifications and extensions.

For more information about FinCEN’s Beneficial Ownership Rule, see our previous post, “[New FinCEN beneficial ownership requirements for legal entity customers to become effective in May 2018](#).”

Scope of exemption

The Ruling grants an exemption for CFIs from the Beneficial Ownership Rule’s requirement to identify and verify beneficial ownership information of a legal entity customer when the following occurs with regard to such a customer’s account (each occurrence an “Exempt Transaction”) on or after May 11, 2018:

1. Certificate of deposit (CD) rollover;
2. Loan renewal, modification or extension (e.g., setting a later payoff date) that does not require underwriting review and approval (e.g., an existing loan that is renewed, extended or otherwise modified without substantively changing the terms or requiring additional underwriting, or a loan that is automatically renewed, modified or extended within a specified time without further action by the customer);
3. Commercial line of credit or credit card account renewal, modification, or extension (e.g., setting a later payoff date) that does not require underwriting review and approval; and
4. Safe deposit box rental renewal.

Effectively, the Ruling’s exemptions mean that when an Exempt Transaction occurs, the existing account (e.g., loan or deposit account) is not treated like a “new account” for purposes of the Beneficial Ownership Rule.

Continued compliance with anti-money laundering requirements

Despite the Ruling’s relief for Exempt Transactions, CFIs must continue to comply with all other applicable anti-money laundering (AML) requirements under the Bank Secrecy Act and its implementing regulations, including AML program, recordkeeping, and reporting requirements.

Considerations for the Ruling

FinCEN cites multiple reasons for issuing the Ruling, including CFIs presenting information that shows that triggering Beneficial Ownership Rule requirements for every Exempt Transaction would impose a large burden on CFIs due to IT system limitations, large volumes of renewals, and the automatic nature of the Exempt Transactions.

Additionally, FinCEN found that the Exempt Transactions present low risk for money laundering and terrorist financing activity because they are generally non-transactional, and the information collected by CFIs at the time these accounts are opened (including beneficial ownership information) is sufficient to assess risk and monitor account activity.

Finally, FinCEN considered that the exemptions will not have a significant impact upon the information available and useful to law enforcement, since AML requirements already call for financial institutions to “conduct ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.”

Moving forward, CFIs should continue to comply with the Beneficial Ownership Rule information collection requirements at the time all accounts are opened, but CFIs will not be required to collect such information each time an Exempt Transaction occurs.

[Sarah Wade](#) and [Garrett Fischer](#) are attorneys in Thompson Coburn's [Banking practice](#).

authorsTest

sarah

Sarah A. Wade

garrett

Garrett M. Fischer