

insights

FinCEN guidance provides answers on new beneficial ownership rule

The Financial Crimes Enforcement Network (FinCEN) issued a set of [“frequently asked questions” \(FAQs\) on April 3, 2018](#), to provide guidance and clarifications for the new FinCEN beneficial ownership regulations (the “New Rule”), which will become effective May 11, 2018.

The New Rule will require covered financial institutions, including banks, to:

- Enhance their due diligence practices when opening new accounts for legal entity customers by obtaining and maintaining information identifying the beneficial owners of those legal entity customers, and
- Amend their anti-money laundering (AML) program requirements related to collecting, monitoring, and maintaining this information.

More information on the New Rule is found in our prior blog article, [“New FinCEN beneficial ownership requirement for legal entity customers to become effective in May 2018.”](#)

The FAQs supplement [prior New Rule guidance that was issued by FinCEN in July, 2016](#).

The new FinCEN FAQs provide guidance to address a variety of issues under the New Rule, such as the following:

Option to go below 25-percent threshold

The New Rule requires identification of a beneficial owner of a legal entity customer if the owner directly or indirectly holds 25 percent or more of the legal entity customer’s equity interest. However, the FAQs clarify that covered financial institutions can implement more stringent policies for collecting information on beneficial owners than the New Rule requires, such as using a threshold for identifying beneficial owners that is lower than the New Rule’s 25-percent threshold.

Complex ownership structures

A legal entity customer may have more than one layer of ownership. In other words, it may be owned by one or more other legal entities, which may be, in turn, owned by individuals or other legal entities. The FAQs explain that, in these fact patterns, the New Rule effectively requires the covered financial institution to “look through” the layers of ownership to find the *individuals* who indirectly hold 25 percent or more of the equity interest of the legal entity customer. For example:

- if a legal entity customer is owned by two other legal entities (holding companies) that each hold 50 percent of the legal equity customer, and
- each of those two holding companies is owned by two individuals who own 50 percent of the respective holding company (with no individual owning equity in both holding companies), then
- each of these four individuals would be a “beneficial owner” of the legal entity customer—because of each individual’s indirect ownership of 25 percent of the equity of the legal entity customer.

Note: the FAQs did not address certain other types of complex ownership structure issues, such as a legal entity customer having various types of equity with different voting rights and financial interests.

Differences in verification procedures for beneficial owners vs. individual customers

The FAQs confirm that the procedures used by a covered financial institution to verify the identity of beneficial owners do not have to be identical to the procedures used to verify the identity of an individual who is a customer.

This is to accommodate the fact that a beneficial owner of a legal entity customer will not always be involved in the entity's business or in the entity's account set up process. For example, a covered financial institution may accept a photocopy of a beneficial owner's driver's license if that beneficial owner is not present.

Required address of beneficial owner

The FAQs clarify that the required address for a beneficial owner can be a business address.

Duties regarding an existing customer who is a beneficial owner of a new legal entity customer

The FAQs provide that, if an individual is named as a beneficial owner of a new legal entity customer of a covered financial institution and that individual is also an existing customer of the financial institution, the financial institution can rely on its existing customer identification program information for that individual, as long as that information is up-to-date and accurate and the accuracy has been confirmed by the legal entity customer's representative. The FAQs allow a similar confirmation procedure for beneficial owner information when an existing legal entity customer opens up multiple accounts with the same financial institution.

No routine duty to update

According to the FAQs, unless a covered financial institution finds a specific risk-based concern, the New Rule does not require the institution to update beneficial ownership information for an existing account during routine periodic reviews.

Trusts with multiple trustees

Under the New Rule, if a non-statutory trust (e.g., an estate planning trust) is the owner of 25 percent or more of a legal entity customer, the trustee is a beneficial owner. The New Rule did not address the scenario in which such a trust has multiple trustees. However, the FAQs provide that, if such a trust has multiple trustees, covered financial institutions are only required to identify one of the trustees as a beneficial owner. The financial institutions may require all of the co-trustees to be identified, but are not required by the New Rule to do so.

Equipment finance and lease exemption

The FAQs explain the New Rule's exemption for legal entities that require financing or lease arrangements to obtain equipment to conduct ongoing business operations. The exemption reflects the fact that these types of transactions are considered to be low-risk with regard to money laundering issues. The exemption provides that the New Rule does not require a covered financial institution to identify (and verify the identity of) a legal entity customer's beneficial owners for such equipment finance and lease accounts.

According to the FAQs:

- The types of transactions intended to be covered by the exemption include, for example, leases and finance arrangements for farm equipment, construction machinery, aircraft, computers, printers, photocopiers, and automobiles.
- The FAQs also clarify that the equipment lease and purchase exemption applies when a legal entity customer leases directly from the covered financial institution.

The FAQs provide additional guidance on several other topics not listed above, such as the New Rule's treatment of customers that are sole proprietorships or not-for-profit organizations, as well as aggregating transactions between beneficial owners and legal entity customers.

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