



Beneficial Ownership Compliance – Part 1

Here at RegSmart, we want to equip you with as much knowledge as possible. In part 1 of this two-part series, we will review 5 important facts to consider with regard to Beneficial Ownership.

For most institutions, compliance with the beneficial ownership rules of 31 CFR 1010.230 has been a race to meet obligations that the industry does not fully understand and that the regulators have not fully defined. A recipe for success, no doubt. The original rule was and is required reading, but some very critical questions were not completely answered until FinCEN published [FAQs](#) April 3, 2018, just about one month before the rule would take effect.

If you're looking for a summary of all the FAQs including on more obscure rules such as the treatment of private label retail credit accounts (FAQ 29) or equipment leasing transactions (FAQ 31), you need to slog through the FinCEN FAQs. If you want to understand 90+% of your compliance obligations (including some obscure ones like how to treat beneficial ownership information with a 314(a) request), read on...

1. Your written BSA program includes CDD procedures that address the beneficial ownership rules of 31 CFR 1010.230.

You must establish written CDD procedures reasonably designed to identify the "beneficial owners" (for definition, see commentary for questions 3 and 4) of legal entity customers and to verify the identify using risk-based procedures. The procedure must be incorporated into the CDD portion of your BSA program. [31 CFR 1010.230(a)]

2. Your CDD procedures include steps to identify the "beneficial owners" of each legal entity customer each time a "new account" (e.g., loan renewal or certificate of deposit) is opened.

The beneficial ownership rules (the "Rules") apply to any new account opened on or after May 11, 2018. Under the Rules, "account" is defined as a formal banking relationship established to provide or engage in services, dealings, or other financial transactions including a deposit account, a transaction or asset account, a credit account, or other extension of credit. Account also includes a relationship established to provide a safety deposit box or other safekeeping services, or cash management, custodian, and trust services. This definition is consistent with the CIP rules. [31 CFR 1020.220(a)(1); For specific exemptions, see 31 CFR 1020.220(a)(2)]

Your policies and procedures related to the Rules must be included in your CDD procedures, which for many institutions are separate from CIP. [31 CFR 1010.230(a)-(b)] According to FinCEN's April 3, 2018 FAQs: "Covered financial institutions must verify the identity of each beneficial owner according to risk-based procedures that contain, at a minimum, the same elements financial institutions are required to

use to verify the identity of individual customers under applicable...CIP requirements. This includes the requirement to address situations in which the financial institution cannot form a reasonable belief that it knows the true identity of the legal entity customer's beneficial owners. Under the CIP rules, a financial institution's CIP must include procedures for responding to circumstances in which the financial institution cannot form a reasonable belief that it knows the true identity of a customer.

A "legal entity customer" is defined as a corporation, limited liability company, or other entity that is created by the filing of a public document with a Secretary of State or similar office, a general partnership, and any similar entity formed under the laws of a foreign jurisdiction that opens an account. [31 CFR 1010.230(e)(1)]

Unlike CIP, existing legal entity customers are not exempt from the Rules. So, you must collect beneficial ownership information for an existing legal entity customer that opens new account on or after May 11, 2018. You are generally not required to identify beneficial owners for an existing legal entity customer for which you have previously collected beneficial ownership information unless you have reason to believe the current information is inaccurate. [FinCEN's FAQs April 3, 2018, Questions 3, 6, and 13]

The Rules apply a two-pronged approach to the definition of "beneficial owner." "Beneficial owner" means: (1) a natural person who, directly or indirectly, owns 25% or more of the interests in the entity ("25% Owner"), and (2) a natural person with significant responsibility to control, manage, or direct the legal entity, including an executive officer or senior manager ("Controlling Person").

FinCEN's FAQs April 3, 2018, Question 12 provide that a loan renewal or the rollover of a financial product like a CD is a "new account" and triggers the requirement to collect beneficial ownership information or at least a certification or confirmation that the beneficial ownership information is correct. BUT, Question 12 also says: "... if at the time the customer certifies its beneficial ownership information, it also agrees to notify the financial institution of any change in such information, such agreement can be considered the certification or confirmation from the customer and should be documented and maintained as such, so long as the loan or CD is outstanding."

3. In circumstances in which you cannot immediately identify beneficial owners in accordance with the Rules, your policies and procedures describe when you should not open an account, the terms under which a customer may use an account during the verification process, when you should close an account because of failure to identify beneficial owners, and when you should file a SAR.

FinCEN's April 3, 2018 FAQs, Question 4 says that your policies and procedures "should describe: (1) when the institution should not open an account; (2) the terms under which a customer may use an account while the institution attempts to verify the customer's identity; (3) when it should close an account, after attempts to verify a customer's identity have failed; and (4) when it should file a Suspicious Activity Report in accordance with applicable laws and regulations. See, e.g., 31 CFR 020.220(a)(2)(iii)."

4. Your policies and procedures require that you identify any natural persons and non-exempt legal entities who own 25% or more of the interests in the legal entity customer unless the legal entity customer is exempt under 31 CFR 1010.230 ("25% Owner").

“Beneficial owner” means a natural person or a legal entity [see FinCEN FAQs April 3, 2018, Question 3] who owns 25% or more of the interests in the entity customer. You are not required to make your own calculation of ownership percentage. You may rely on the certification unless you have reason to believe the certification is inaccurate [see FinCEN FAQs April 3, 2018, Questions 3, 6, and 13]. If no one owns 25% or more, then you are not required to list a 25% Owner. You are not required to determine if the entity was structured to avoid the 25% ownership inquiry. [31 CFR 1010.230(d)(3)]

If another legal entity owns 25% or more, you are required to collect beneficial ownership information on that entity. FinCEN’s April 3, 2018 FAQs say: “... covered financial institutions must obtain from their legal entity customers the identities of individuals who satisfy the definition, either directly or indirectly through multiple corporate structures...” But, if a trust owns 25% or more, then the relevant 25% Owner is the trustee. FinCEN’s April 3, 2018 FAQ Question 19 says. “Where there are multiple trustees or co-trustees, financial institutions are expected to collect and verify the identity of, at a minimum, one co-trustee of a multi-trustee trust who owns 25 percent or more of the equity interests of a legal entity customer that is not subject to an exclusion.”

Exempted entities include ERISA-qualified employee benefit plans, federal or state regulated financial institutions, departments of the US or state governments, entities publicly listed on the NYSE, American, or NASDAQ stock exchanges, SEC-registered investment companies or advisors, and public accounting firms registered under Sarbanes-Oxley are exempt from the beneficial ownership inquiries. For specific information, see 31 CFR 1010.230(e)(2)(i)-(xvi). Entities subject to the Controlling Person inquiry only (see question 4) include: pooled investment vehicles, NGOs, charities, and religious organizations. [31 CFR 1010.230(e)(3)]

5. **Your policies and procedures require that you identify one or more natural persons who have significant responsibility to control, manage, or direct the legal entity unless the legal entity customer is exempt under 31 CFR 1010.230 (“Controlling Person”).**

For the Controlling Person requirement, you must identify one or more natural persons who have significant responsibility to control, manage, or direct the legal entity. FinCEN requires that you collect information on at least one person with “significant managerial control” over the entity—such as a president or CEO.

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Stay tuned for part 2, coming next week!