

I. OVERVIEW

Anti-money laundering and Bank Secrecy Act compliance programs (collectively “AML”) currently consist of four pillars: 1) written policies and procedures; (2) a designated AML compliance officer; (3) independent testing of the institution’s AML program; and (4) employee training.

On May 5, 2016, the Financial Crimes Enforcement Network (“FinCEN”) amended the Bank Secrecy Act (“BSA”) rules to require covered financial institutions to conduct and document customer due diligence on all beneficial owners of legal entity customers that open new accounts no later than May 11, 2018, the compliance date (or, “Applicability Date”). This amendment is known as the Customer Due Diligence Final Rule (“CDD Final Rule”) and is now incorporated as a fifth pillar within AML compliance programs.

Final Rule in Brief

Beginning May 11, 2018, The CDD Final Rule requires community banks to develop and implement written procedures to identify and verify the beneficial owners of legal entities – corporations, limited liability companies and partnerships -- who open new accounts.

[Link to Final Rule](#)

II. KEY DEFINITIONS¹

Covered Financial Institutions - insured banks, federally chartered credit unions, savings associations, and other defined institution types listed in 31 CFR 1010.605(e)(1).

Legal Entity Customer - a corporation, limited liability company, or partnership formed by the filing of a public document with a Secretary of State or similar office or formed under the laws of a foreign jurisdiction.

Legal Entity Customer Exemptions - regulated financial institutions, certain governmental agencies, entities listed on stock exchanges, bank holding companies, savings and loans, and state-regulated insurance companies.

Beneficial Owners - individuals who own 25% or more of the equity interests of a legal entity customer, a single person with “significant responsibility” to manage a legal entity customer, or a trustee.

¹ Terms defined in detail at 31 CFR § 1010.605(e)(1) and §1010.230(d).

New Account - an account opened at a covered financial institution by a legal entity customer on or after the applicability date.

III. PROVISIONS

Customer Due Diligence (CDD)

The new CDD Final Rule requires covered financial institutions to implement written procedures to identify and verify a legal entity customer's beneficial owner(s) at the time a new account is opened unless the customer or account is exempt. CDD procedures must contain required elements of a community bank's customer identification program (CIP).

Beginning May 11, 2018, community banks must comply with the CDD Final Rule either by obtaining required information on the standard certification form found at the bottom of the rule by clicking **Appendix A to the Final Rule** or by any other means that allows the institution to collect the required information. A financial institution that does not use the Certification Form may rely on information provided by the customer, only if, it has "no knowledge of facts that would reasonably call into question the reliability of the information." While use of the Certification Form provides a convenience, FinCEN does not provide a safe harbor in regards to compliance. The method used to comply with this requirement must be incorporated into the covered institution's Anti-Money Laundering Compliance Program.

New Account

The beneficial owner definition applies to new accounts only. It should be noted that while this rule does not require obtaining information on existing beneficiary customer accounts, it does, however, apply to existing beneficiary customers that open a new account on or after the Applicability Date. The need to obtain CDD information from a legal entity customer with an account that existed before the Applicability Date may arise if, during risk-based monitoring, the covered financial institution becomes aware of facts or circumstances that warrant it to identify and verify the customer.

Developing Customer Risk Profiles

The CDD Final Rule requires covered financial institutions to develop a risk profile based on the information collected at account opening. Such information is designed to establish a baseline of activity to detect (and potentially report) suspicious activity within the account.

On-Going Monitoring

The CDD Final Rule adds explicit requirements to the core pillars that are currently included within the AML program rules. The rule adds a fifth pillar that includes understanding the nature and purpose of customer relationships and conducting ongoing monitoring.

While the CDD Final Rule does not require covered financial institutions to obtain updated beneficial ownership information from legal entity customers, the institution is required to obtain such information when it learns of new information, new facts, a change of beneficial ownership, etc., discovered by risk-based monitoring. Additionally, as it is incorporated into the AML program core pillars, community banks should use beneficial ownership information as they use other information they gather regarding customers through their CIP procedures, including for compliance with the Office of Foreign Assets Control (OFAC) regulations, and the currency transaction reporting (CTR) aggregation requirements.

Record Keeping

Consistent with established CIP record-keeping requirements, covered financial institutions must maintain all beneficial ownership records obtained from legal entity customers. Records used for identification must be retained for five years after the date the account is closed. Records used for verification must be retained for five years after the record is created.²

² See 31 CFR 1010.230(i)(2) for more information on record retention and a description of records to retain.