



Ruling

Financial Crimes Enforcement Network / U.S. Department of the Treasury

FIN-2018-R004

Issued: September 7, 2018

Subject: Exemptive Relief from Beneficial Ownership Requirements for Legal Entity Customers of Rollovers, Renewals, Modifications, and Extensions of Certain Accounts

The Financial Crimes Enforcement Network (FinCEN) grants exemptive relief under the authority set forth in 31 U.S.C. § 5318(a)(7) and 31 CFR § 1010.970(a) to covered financial institutions from the obligations of the Beneficial Ownership Requirements for Legal Entity Customers (Beneficial Ownership Rule)¹ and its requirement to identify and verify the identity of the beneficial owner(s) when a legal entity customer opens a new account as a result of the following:

- A rollover of a certificate of deposit (CD) (as defined below);
- A renewal, modification, or extension of a loan (e.g., setting a later payoff date) that does not require underwriting review and approval;
- A renewal, modification, or extension of a commercial line of credit or credit card account (e.g., a later payoff date is set) that does not require underwriting review and approval; and
- A renewal of a safe deposit box rental.

The exception only applies to the rollover, renewal, modification or extension of any of the types of accounts listed above occurring on or after May 11, 2018, and does not apply to the initial opening of such accounts.² Notwithstanding this exception, covered financial institutions must continue to comply with all other applicable anti-money laundering (AML) requirements under the Bank Secrecy Act (BSA) and its implementing regulations, including program, recordkeeping, and reporting requirements.

1. 31 CFR §1010.230. "Covered financial institutions" are banks, brokers or dealers in securities, mutual funds, futures commission merchants, and introducing brokers in commodities.

2. Covered financial institutions are not excepted from the obligation to identify and verify the identity of the beneficial owner(s) of legal entity customers at the initial account opening for such accounts occurring on or after May 11, 2018.

Background

In its response to Question Number 12 in the April 3, 2018 Frequently Asked Questions Regarding Customer Due Diligence Requirements for Financial Institutions (FAQs),³ FinCEN stated “[c]onsistent with the definition of ‘account’ in the CIP [Customer Identification Program] rules and subsequent interagency guidance, each time a loan is renewed or a certificate of deposit is rolled over, the bank establishes another formal banking relationship and a new account is established.”⁴ FinCEN therefore noted that because CD rollovers (or certain loan renewals) are the establishment of a new account relationship and covered financial institutions are required to obtain information on the beneficial owners of a legal entity that opens a new account, even for existing customers, covered financial institutions must obtain the required information at the first renewal following the applicability date of the Beneficial Ownership Rule. Since the FAQs were issued, financial institutions represented that it is industry practice not to treat such rollovers and renewals as the opening of a new account, because, among other factors, there is generally no change to account information. Accordingly, industry representatives requested that FinCEN either except these accounts from the obligations of the Beneficial Ownership Rule or delay the implementation of the Rule for the products and services referenced in the FAQ to allow the industry adequate time to come into compliance.

In response, on May 16, 2018, FinCEN issued a 90-day temporary and limited exceptive relief, retroactive to May 11, 2018, and which FinCEN extended an additional 30 days, to covered financial institutions from the obligations of the Beneficial Ownership Rule in order to determine whether, and to what extent, a further exception would be appropriate for certain products and services. The exception applied to covered financial products and services that automatically rollover or renew (i.e., CD or loan accounts) and were established before the Beneficial Ownership Rule’s Applicability Date of May 11, 2018. This exceptive relief replaces and supersedes the May 16, 2018, 90-day limited exceptive relief, as well as the August 8, 2018, 30-day extension.

Since May 11, 2018, FinCEN has met with stakeholders, including representatives from financial institutions, trade associations, regulators, and law enforcement to obtain feedback on implementation of the Beneficial Ownership Rule for CDs and loans, including rollovers and renewals, established before May 11, 2018 and that are expected to rollover or renew after that date. FinCEN also received feedback from stakeholders through the FinCEN Resource Center.

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3. See, “Frequently Asked Questions Regarding Customer Due Diligence Requirements for Financial Institutions,” (April 3, 2018), https://www.fincen.gov/sites/default/files/2018-04/FinCEN_Guidance_CDD_FAQ_FINAL_508_2.pdf.
 4. See, “Interagency Interpretive Guidance on Customer Identification Program Requirements under Section 326 of the USA PATRIOT Act, FAQs: Final CIP Rule,” p. 8 (April 28, 2005) <https://www.fincen.gov/sites/default/files/guidance/faqsfinalciprule.pdf>.
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Based on those discussions and feedback, FinCEN obtained additional information on the characteristics and the money laundering risks posed by those products and the practical impact the Beneficial Ownership Rule had on those products.

COVERED PRODUCT DESCRIPTIONS AND CHARACTERISTICS

Certificates of Deposit

For purposes of this Ruling, a certificate of deposit (CD) is a deposit account that has a specified maturity date, but cannot be withdrawn before that date without incurring a penalty.⁵ During the term of the CD, a customer cannot add additional funds to the CD. The term of a CD may vary from a week to several years. At the end of the term, when the CD matures, the customer is entitled to the amount deposited and any interest that has accrued; the customer may also have the ability to elect to either renew or close the account. Typically, the account will automatically renew absent affirmative action by the customer to close the account.

Loan Renewals, Modifications, and Extensions

Generally, a loan account is an account created to track transactions related to a loan that has terms and conditions tailored to the needs and circumstances of the customer, such that the issuance of a new loan would result in a new account relationship. However, once a loan application process is finalized and a loan approved, a financial institution may renew, extend, or otherwise modify the loan without substantively changing the terms or requiring additional underwriting. Industry has also represented that, as with CDs, some loans are subject to automatic renewal, modification, or extension within a specified time and require no action from the customer for that renewal, modification, or extension to take effect.

Commercial Lines of Credit and Credit Cards

A commercial line of credit account is a type of revolving loan account that allows a commercial enterprise to draw upon a predetermined amount of funds and generally use those funds only for specified business purposes. Small businesses rely on this mode of financing to cover short-term needs such as paying suppliers and addressing payroll needs. A business customer can repay the line at any time by making payment to the financial institution through the account, at which point those funds become available for borrowing again. Credit card accounts are revolving

5. The definition of “CD” for the purposes of this Ruling differs from the definition of “time deposit” in Regulation D of the Board of Governors of the Federal Reserve System (Reserve Requirements of Depository Institutions, 12 CFR Part 204); see 12 CFR 204.2(c)(i).

accounts, similar to commercial line of credit accounts, that grant the customer a maximum credit limit, which can generally be used repeatedly so long as the limit is not exceeded. The financial institution may change certain terms of a commercial line of credit or of a credit card, such as the credit limit, without requiring the affirmative assent of the customer.

Safe Deposit Boxes

Financial institutions maintain safe deposit boxes within their institutions that they rent to individuals and legal entities to store valuables such as collectibles, documents, and jewelry. While financial institutions do not have access to the contents of a safe deposit box rented to a customer, under the terms of the rental agreement, customers are not permitted to store money or dangerous substances in them. In exchange for the use of the safe deposit box, the customer generally pays a rental fee that is electronically deducted from an account provided to the financial institution. During the rental period, the financial institution has minimal or no communication with the customer, so long as the rental payment is made.

ANALYSIS

Additional Information from Industry

After FinCEN issued the temporary exception on May 16, 2018, covered financial institutions explained that the burden of complying with the Beneficial Ownership Rule with respect to renewals of CDs, certain loan and credit accounts, and safe deposit box rentals was not, in their view, commensurate with the low money laundering risks associated with the renewal of these particular products. They indicated that applying the Beneficial Ownership Rule, with its requirement to collect certain information before account rollover, renewal, modification, or extension, would be costly, burdensome, and would have a significant impact on financial products and services that many small businesses rely upon to manage their cash flow and liquidity. The current industry practice for renewing or extending these types of account relationships is generally automated and does not require an affirmative action from the customer. Any delay by the customer in providing the required beneficial ownership information could result in account closure and a corresponding loss of needed liquidity or financial stability (in the case of a loan account) or loss of investment benefit (in the case of a CD).

Furthermore, financial institutions indicated that implementation of the Beneficial Ownership Rule for these accounts would require information technology (IT) system upgrades as some of these accounts, such as a CD, might renew every week or month. Moreover, in the case of a CD, the financial institution's IT operation systems may

automatically roll over the CD if the customer does not communicate to the financial institution that the customer will remove the funds and close the CD. Similarly, a safe deposit box rental may automatically renew through an institution's IT systems, provided that the customer pays the renewal or rental fee, or such fee is available for automatic deduction from an account the customer has provided to the financial institution. The automated rollover or renewal characteristics of these products have therefore presented certain implementation challenges for financial institutions.

Money Laundering and Terrorist Financing Risks

Each of the account relationships described in this exceptive relief presents low risks for money laundering and terrorist financing (ML/TF) because the features of the account make their use for ML/TF activity impractical. For example, CDs and safe deposit boxes are non-transactional, that is, customers cannot use either of them to pay or receive payments from a third party. In addition, funds cannot be transferred into or out of the CD during the term of the account relationship. Moreover, customer information, including beneficial ownership information, is collected about the customer at account opening in order to understand the nature and purpose of the customer relationship, create a customer risk profile, monitor account activity, and report suspicious activity, when appropriate. A financial institution providing a loan or line of credit to a customer must collect customer identification and other background information to determine the creditworthiness of the customer to assess against the institution's risk tolerance. This customer information obtained at the establishment of the relationship, which often includes information on the customer's beneficial owner(s), would generally be sufficient for covered financial institutions to understand who their customers are and the type of transactions they conduct in order to assess ML/TF risks and identify suspicious activity.

Information Available to Law Enforcement

FinCEN also considered the extent to which the application of the Beneficial Ownership Rule would provide information that is of a high degree of usefulness to law enforcement and other FinCEN stakeholders. The exception affects the accounts described in this Ruling in two ways: by removing the obligation to collect beneficial ownership information when an account opened before May 11, 2018 rolls over or renews after May 11, 2018, as if it were a new account, and by removing that same obligation for rollovers, modifications, extensions, and renewals of such accounts opened after May 11, 2018. However, the removal of these obligations does not have a significant impact on the information available and useful to law enforcement.

This exception relieves financial institutions from treating rollovers, loan or safe deposit rental renewals, modifications, or extensions described in this Ruling as new accounts for purposes of the Beneficial Ownership Rule, but it does not relieve

financial institutions from their obligation to collect sufficient information to understand the nature and purpose of customer relationships in order to develop a customer risk profile, as needed as part of the AML program requirement. Regardless of whether an account described in this Ruling was established before or after May 11, 2018, a financial institution has an obligation under its AML program requirement to “conduct ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.”⁶

For accounts with rollover, renewal, modification or extension features opened after May 11, 2018, financial institutions must collect the beneficial ownership information, as part of the account opening process. Financial institutions will no longer be required, however, to collect beneficial ownership information for these accounts at each rollover, renewal, extension, or modification for products described in this Ruling.

CONCLUSION

Under 31 U.S.C. § 5318(a)(7) and 31 CFR § 1010.970(a), FinCEN has the authority to grant exceptions to the requirements of 31 CFR Chapter X. Such exceptions may be either conditional or unconditional and may apply to particular persons or classes of persons, but only to the extent that such limits are expressly stated in the order of authorization. Exceptions may be revoked at FinCEN’s discretion.

Accordingly, FinCEN is granting exceptive relief to covered financial institutions from the Beneficial Ownership Rule’s requirement to identify and verify beneficial ownership information on or after May 11, 2018, as a result of the following: (1) CD rollovers; (2) loan renewals, modifications, and extensions (e.g., setting a later payoff date) that do not require underwriting review and approval; (3) commercial line of credit or credit card account renewals, modifications, or extensions (e.g., setting a later payoff date) that do not require underwriting review and approval; and (4) safe deposit box rental renewals. This exceptive relief does not apply to the initial opening of any of the types of accounts listed above, nor does it apply to relieve any covered financial institution of its customer due diligence requirements under AML program rules. Notwithstanding this permanent excepted relief, covered financial institutions must comply with all other applicable AML requirements under the BSA, such as maintaining an AML program and reporting suspicious activity.

6. See, 31 CFR § 1020.210(b)(5) regarding AML program requirements for banks, savings associations, and credit unions.