

FinCEN Issues a Permanent Exception to the Beneficial Ownership Requirements for Rollovers, Renewals, Modifications and Extensions of Certain Accounts

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The Financial Crimes Enforcement Network (“FinCEN”) has issued a final ruling relieving financial institutions of the obligation to identify and verify the beneficial owners of legal entity customers who have certain existing accounts that rollover or renew, or are modified or extended. This exception applies to (a) rollovers of certificates of deposit, (b) renewals, modifications or extensions of a loan that does not require underwriting review and approval, (c) a renewal, modification, or extension of a commercial line of credit or credit card account that does not require underwriting review and approval, and (d) a renewal of a safe deposit box.

I. Background

On May 6, 2016, FinCEN issued a final rule setting forth enhanced customer due diligence requirements for covered financial institutions^[1] to identify and verify the identity of beneficial owners of certain legal entity customers, and to include procedures regarding beneficial owners in an institution’s anti-money laundering (“AML”) program. All covered institutions were required to comply with this final rule by May 11, 2018.

To provide interpretive guidance with respect to the final rule, FinCEN issued Frequently Asked Questions Regarding Customer Due Diligence Requirements for Financial Institutions (“FAQs”) in 2016 and then updated the FAQs on April 3, 2018. In the April 3rd update, FinCEN took the position that CD rollovers and certain loan renewals should be deemed a new account relationship, thus requiring covered financial institutions to obtain required information on the beneficial owners of an existing legal entity customer upon the renewal of an account following May 11, 2018.

II. Temporary Exceptive Relief

Financial institutions objected to FinCEN’s position and requested an exception from the beneficial ownership requirements for account rollovers and renewals. Institutions explained to FinCEN that in practice, accounts that renew or rollover are not treated as the opening of a new account. In response to these concerns, FinCEN on May 16, 2018 issued a 90-day limited exceptive relief from the beneficial ownership requirements for certain financial products and services (i.e., renewing certificates of deposit and loan accounts) that were established before May

11, 2018. On August 8, 2018, FinCEN extended the limited exception for an additional 30 days, up to and including September 8, 2018, to further consider the issue.

III. Permanent Exemptive Relief

FinCEN has now issued a final ruling granting a permanent exception to the beneficial ownership requirements for certain account rollovers, renewals, modifications and extensions. Specifically, the exemptive relief applies to:

- A rollover of a certificate of deposit that has a specific maturity date, cannot be withdrawn before that date without a penalty, and does not allow additional deposits during its term;
- 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.

Under this exemptive relief, covered financial institutions are not required to collect beneficial owner information for a rollover or renewal of an account referenced above occurring after May 11, 2018. However, institutions are still required to identify and verify the identity of beneficial owners at the initial account opening of accounts occurring on or after May 11, 2018, and are still obligated to collect sufficient information to understand the nature and purpose of customer relationships to develop a customer risk profile pursuant to AML requirements.[2]

IV. Further Information

The FinCEN final ruling on exemptive relief is available [here](#).

Please note that this advisory is not intended as a comprehensive explanation of all aspects of the FinCEN beneficial ownership rule and its exemptive relief, or as formal legal advice. If you have any questions regarding the FinCEN beneficial ownership rule or BSA /AML issues in general, please feel free to contact Joseph D. Simon at (516) 357-3710 or via email at jsimon@cullenanddykman.com, Kevin Patterson at (516) 296-9196 or via email at kpatterson@cullenanddykman.com, Elizabeth Murphy at (516) 296-9154 or via email at emurphy@cullenanddykman.com, or Mandy Xu at (516) 357-3850 or via email at mxu@cullenanddykman.com.

[1] Covered financial institutions include federally regulated banks and federally insured credit unions, mutual funds, brokers or dealers in securities, futures commission merchants, and introducing brokers in commodities.

[2] 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.”

Practices

- Banking and Financial Services

Industries

- Financial Institutions

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