

TREASURY MANAGEMENT Solutions

Tips & Advice for Your Business

THE ISSUE

The Financial Crimes Enforcement Network (FinCEN), part of the U. S. Treasury which exercises regulatory authority over the U.S. anti-money laundering (AML) laws, has added a requirement that financial institutions include identifying Ultimate Beneficial Owners before a new loan, account or CD is established. FinCEN based its rationale on improving cross border tax reporting, compliance with the Foreign Account Tax Compliance Act (FATCA) and “promoting the integrity of the international financial system as a whole”.

Congress passed the bill last year and the Ultimate Beneficial Ownership rule will go into effect on May 11, 2018. The rule requires legal businesses to identify and verify the identities of their beneficial owners when they establish a new account, loan or service. Beneficial owner refers to the natural person who ultimately owns or controls a client that the transaction benefits.

DOES ULTIMATE BENEFICIAL OWNERSHIP RULE ONLY APPLY TO BANKS?

The Ultimate Beneficial Ownership rule applies to banks, brokers or dealers, mutual funds, futures commission merchants, introducing brokers in commodities, and, thereafter to insurance companies, casinos, dealers in precious metals, dealers in stones and jewels, non-bank mortgage lenders or originators and any other entity eventually defined as a “financial institution” by FinCEN.

WHAT IS AN ULTIMATE BENEFICIAL OWNER?

Beginning May 11, 2018, complying with the Client Due Diligence rule will require financial institutions to change how they collect client information. The new Treasury Rule will require financial institutions to verify identities of all beneficial owners with 25% or more equity interest in a legal entity.

A beneficial owner includes individuals who fit within at least one of the following “rules”:

- Any individual who directly or indirectly owns 25% or more of the legal entity client. Let’s call that the ‘Ownership Rule.’
- One individual who has significant responsibility to control, manage or direct the legal entity. We will call this the ‘Control Rule.’

OWNERSHIP RULE

The owners must be natural persons. For the Ownership Rule, this means our client may need to look through several layers of legal entities to determine whether an actual person is a 25% owner.

THE CONTROL RULE

The next rule includes determining who fits within the Control Rule. This is usually straightforward. Typically this is the one person with significant managerial control, such as:

- CEO
- CFO
- COO
- Managing Member
- General Partner
- President
- Vice President
- Treasurer
- Any other person who ‘regularly performs similar functions’

Non-governmental organizations, charities and religious organizations such as churches are excluded from the Ownership Rule, but the Control Rule will still apply.

In these examples the client is requesting a bank product (loan or deposit):

- Jack’s Donuts, Inc. is 100% owned by Jack. Jack is the President and the primary person with management control over the company.
 - o Beneficial Owner: Jack
 - o Control Person: Jack



- Jack's Donuts, Inc. is 100% owned by Jack. Cheryl is the Chief Operating Officer and has management control over the company.
 - Beneficial Owner: Jack
 - Control Person: Cheryl
- Jack's Donuts, Inc. is owned 50% by Jack and 50% by Jill. Cheryl as COO has management control over the company.
 - Beneficial Owner: Jack (50%), Jill (50%)
 - Control Person: Cheryl
- Jack's Donuts, Inc. is owned 20% by Jack; 20% by Jill; 20% by Sally; 20% by Bill; and 20% by Cheryl. Cheryl as COO has management control over the company.
 - Beneficial Owner(s): Not applicable (No individual owns at least 25% of Jack's Donuts)
 - Control Person: Cheryl
- Jack's Donuts, Inc. is owned 50% by Jack and 50% by Jill's Coffee Company, LLC. Cheryl as COO has management control over the company. Jill is 100% owner of Jill's Coffee Company, LLC.
 - Beneficial Owner(s): Jack (50%), and Jill (50% owner through Jill's Coffee Company, LLC).
 - Control Person: Cheryl
- Jack's Donuts, Inc. is owned 50% by Jack and 50% by Jill's Coffee Company, LLC. Cheryl is the COO and has management control over the company. Jill and Jane each have 50% ownership of Jill's Coffee Company, LLC.
 - Beneficial Owner: Jack (50% ownership), Jill (25% ownership through Jill's Coffee Company, LLC) and Jane (25% ownership through Jill's Coffee Company, LLC).
 - Control Person: Cheryl
- Jack's Donuts, Inc. is owned 50% by Jack and 50% by Jill's Coffee Company. As COO, Cheryl has management control over the company. Jill's Coffee Company is owned 50% by Jill, 25% by Jane and 25% by Bill.
 - Beneficial Owner(s): Jack (50% Ownership), and Jill 50% ownership (Jane and Bill are not considered beneficial owners sine each of them only have 12.5% ownership in Jack's Donuts, LLC).
 - Control Person: Cheryl

As you see, there may be no one who owns 25% or more of the business. Therefore there may not be a beneficial owner listed for the ownership rule.



WHAT THIS MEANS FOR OUR CLIENTS

You will be asked to certify those individuals who own 25% or more of your business, and the person who controls the business in order to establish the new account, loan or CD. Even if the beneficial owner is not a signer on the account, banks will be required to obtain the name, date of birth, address, social security number and a copy of the identification of the beneficial owner(s).

Banks will be required to obtain the beneficial ownership information for existing clients each time a new account, loan or CD is opened, or an existing account is modified.

WILL THERE BE MORE REGULATION?

It is possible that there will be more regulation. The Treasury Department has asked Congress to pass legislation requiring a company to disclose ownership identities at the time it is formed. If enacted, the legislation would give U.S. enforcement authorities access to a central registry of beneficial ownership data.

CONCLUSION

Red River Bank is committed to keeping you informed any time we expect changes that could affect you. If you have questions, please contact your account officer for more details.

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