

FinCEN Grants Exemptive Relief From the CDD Rule for Certain CD Rollovers and Credit Renewals

September 10, 2018

EXECUTIVE SUMMARY



On Friday, September 7, 2018, the Financial Crimes Enforcement Network (“FinCEN”) issued relief from the requirements of the customer due diligence rule (“CDD Rule”) to identify and verify the identity of beneficial owners of a legal entity customer that:

- rolls over a certificate of deposit (“CD”);
- renews, modifies or extends the term of a loan, commercial line of credit or credit card account; or
- renews a safe deposit box rental.

This relief (available here: [FIN-2018-R003](#)) supersedes temporary relief that FinCEN earlier issued and attempts to resolve certain interpretive questions faced by financial institutions implementing the CDD Rule. (We discussed the CDD Rule and related developments in [earlier client updates](#): available [here](#) and [here](#).)

In issuing this relief, FinCEN has attempted to clarify the types of products and the circumstances to which the relief applies. For example, FinCEN defines a loan renewal, modification or extension as a situation in which a financial institution renews, extends, or otherwise modifies the loan “without substantively changing the terms.” With respect to the renewal, modification or extension of a loan, line of credit or credit card account, FinCEN states that exemptive relief applies only if such actions do not require underwriting review or approval. Where such steps are necessary, the exception does not apply, and the institution must conduct the identification and verification procedures that the CDD Rule requires for all “new accounts.”

FinCEN also made clear that the exception covers only rollovers, renewals, modifications or extensions of these types of accounts; it does not apply to the initial

opening of such accounts, at which point beneficial ownership information must be collected and verified per the requirements of the CDD Rule.

BACKGROUND

The relief emerges from the long implementation process that has surrounded the CDD Rule, which FinCEN issued on May 11, 2016, with an effective date two years later (May 11, 2018). The CDD Rule requires “covered financial institutions”—including banks, securities broker-dealers, mutual funds, futures commission merchants and introducing brokers in commodities—to: (1) establish procedures to identify and verify the identity of the beneficial owners of legal entity customers that open new accounts unless an exception applies; and (2) ensure that their anti-money laundering compliance programs include appropriate risk-based procedures for ongoing CDD efforts, including developing customer risk profiles and periodically updating the beneficial ownership information of existing customers.

On April 3, 2018, FinCEN issued guidance on the CDD Rule in the form of 37 frequently asked questions (“FAQs”). Our client update (found [here](#)) highlights some key topics covered in this guidance.

In that guidance (FAQ #12), FinCEN explained that, under the relevant definitions, a “new account is established” whenever a “loan is renewed or a certificate of deposit is rolled over.” Thus, FinCEN stated that covered financial institutions would be required to obtain certified beneficial ownership information from legal entity customers in the case of loan or CD renewals at the time of the first renewal following the CDD Rule’s effective date. FinCEN went on to say that at “the time of each subsequent renewal, to the extent that the legal entity customer and the financial service or product (e.g., loan or CD) remains the same, the customer certifies or confirms that the beneficial ownership information previously obtained is accurate and up-to-date, and the institution has no knowledge of facts that would reasonably call into question the reliability of the information, the financial institution would not be required to collect the beneficial ownership information again.” Moreover, FinCEN stated that “in the case of a loan renewal or CD rollover, because we understand that these products are not generally treated as new accounts by the industry and the risk of money laundering is very low, 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.”

This guidance did not conform to industry practice and raised significant practical issues, because, in many cases, CD rollovers and credit product renewals may occur automatically and without affirmative action on the part of either the accountholder or financial institution. FinCEN responded with a ruling ([FIN-2018-R002](#)) that provided 90-day limited exceptive relief from the CDD Rule requirements with respect to any CD rollover or loan renewal that occurred automatically pursuant to an account relationship that was established before May 11, 2018. The exception was later extended to September 8, 2018 by an additional ruling ([FIN-2018-R003](#)).

The September 7th ruling broadens and makes permanent this relief and also seeks to clarify its scope—providing a measure of clarity as financial institutions continue to adjust to the CDD Rule’s requirements and challenges.

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