



Treasury's CDD Rule: One Piece to a Larger Puzzle

Drug traffickers, corrupt officials, rogue nations seeking to evade sanctions, terrorists, and other criminals use anonymous companies to hide the money they steal and maintain the power they hold.

Many of the most dangerous criminal elements now operate sophisticated financial networks. They have updated the way they do “business,” which includes the use of companies with hidden owners. As the rest of the world cracks down on corporate secrecy, the criminals and other wrongdoers are looking increasingly to the U.S.

The U.S. Treasury Department's Customer Due Diligence (CDD) Rule for Financial Institutions¹ is a critical piece in a larger strategy to protect the integrity of our financial system from abuse and the nation from a broad array of harms.

What the CDD Rule Does

- CDD Rule went into effect in May 2018.
- Codifies bank “Know Your Customer” requirements. In particular, the rule requires that banks collect information on the owners of companies for corporate accounts.
- Many banks already did this. The rule makes it a requirement for all banks.

What the CDD Rule Does NOT Do

- Not all companies use banks. While banks are the main gatekeepers to the U.S. financial system, they are not the only ones.
- CDD Rule does NOT cover cash purchases of real estate, airplanes, yachts, art works, jewelry, and other luxury goods.
- CDD Rule does not cover shell companies used to move money from one country to another through the U.S. and thereby gaining legitimacy.
- CDD Rule does not cover companies trading in cyber currencies, and the rules around mobile payment systems/peer-to-peer payment platforms are evolving.

“This final rule thus complements the Administration's ongoing work with Congress to facilitate adoption of legislation that would require the collection of beneficial ownership information at the time that legal entities are formed in the United States.”

Treasury's Preamble to the CDD Rule

¹ 81 FR 29398.

Why We Need Legislation

- Only Congress can create one consistent, national standard that covers companies that bypass the U.S. banking system or exploit other openings.

CDD Falls Short on Definition

A significant concern with the CDD Rule is the definition of beneficial owner. Since bad actors will exploit any openings, legislation needs to ensure the definition is tightly written.

- CDD rule eliminates the concept of entitlement to funds and focuses primarily on control by corporate officers.
- CDD rule enables a corporate officer to be deemed the beneficial owner of a corporation even if that officer has no ownership role or entitlement to the corporation's funds. This allows the true beneficial owner — many of the worst abusers — to effectively control the company without detection.
- This is inconsistent with language adopted by Congress in the 2018 National Defense Authorization Act,² FATF guidance,³ prior Treasury rule,⁴ or virtually any other beneficial ownership definition used in other jurisdictions.

Example of What Can Slip through the Cracks

The son of the President of Equatorial Guinea used a California shell company to disguise his purchase of a \$30 million mansion in Malibu and other investments with stolen money.⁵

The incorporation papers named Michael Berger, Mr. Obiang's lawyer, as the company president; they did not mention Mr. Obiang. No evidence was located proving who actually owned the company shares, but evidence did establish that Mr. Obiang had asked Mr. Berger to form the corporation, supplied millions of dollars to accounts opened in the name of the corporation, and through Mr. Berger, exercised ultimate control over the company's actions and assets. The bank could have named Mr. Berger and stopped there, even though Mr. Berger did not have any ownership interest in the company, did not exercise ultimate control over the company's actions, and was instead acting on behalf of Mr. Obiang.

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² See H.R.2810, the National Defense Authorization Act for Fiscal Year 2018 (Section 2876), 115th Cong., 1st sess. (2017), available at <https://www.congress.gov/bill/115th-congress/house-bill/2810/text#toc-HB71776B05A39465CBEF495585842FOA8>.

³ FATF General Glossary definition.

⁴ 31 CFR § 103.175(b).

⁵ These facts are taken from a report and hearing entitled, "Keeping Foreign Corruption Out of the United States: Four Case Histories," U.S. Senate Permanent Subcommittee on Investigations, S. Hrg. 111-540 (2/4/2020), starting at 141.

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