



Customer Due Diligence Final Rule: One Year Out

Paul Dougherty, Moderator
Cheryl Thompson
Megan Nelson
Monique Anikwue



Purpose and Background



Background and Need for additional due diligence

- Concern regarding risks with shell companies and trusts identified in 2007 National Money Laundering Strategy
- United Nations stated that abuse of illegal entities is an international problem as far back as 1998
- GAO report focused on vulnerabilities with company formation in the United States
- Department of the Treasury's attempts to address beneficial ownership challenges through legislation never gained traction



FATF & the CDD Rule

- Financial Action Task Force (FATF) conducts an evaluation of the United States
- United States was primarily criticized for:
 - lack of sufficient CDD regulatory requirements, particularly for capturing information on beneficial ownership
 - lack of requirements to collect beneficial ownership information under company formation laws



Purposes of the CDD Rule

- Improve transparency for benefit of law enforcement
- Help prevent evasion of sanction
- Improve institutions' ability to assess risk
- Facilitate tax compliance
- Advance U.S. compliance with international standards and commitments



The CDD Rule



CDD Four Core Elements

Customer Due Diligence

1. Customer identification and verification	2. Beneficial ownership identification and verification	3. Understanding the nature and purpose of customer relationships to develop a customer risk profile	4. Ongoing monitoring for reporting suspicious transactions and, on a risk-basis, maintaining and updating customer information
---	---	--	---

The first is already an AML program requirement and the second will be required by this final rule. The third and fourth elements are already implicitly required for covered financial institutions to comply with their suspicious activity reporting requirements.



Impact of Additional Requirements

- **Identifying and verifying the identity of customers**
 - There should be no need for changes to current processes
 - Current CIP requirements meet requirements of CDD
- **Understanding the nature and purpose of customer relationships**
 - May require an evaluation of current risk rating system and EDD processes to ensure they meets minimum standards
- **Conducting ongoing monitoring to maintain and update customer information and to identify and report suspicious transactions**
 - Existing processes and procedures should be sufficient
 - Regulatory expectations around “refreshing” beneficial ownership information



Implementation



Who is the Beneficial Owner?

1. Ownership Prong

- 25% ownership “directly or indirectly”
- FinCEN “does not expect financial institutions or customers to undertake analyses to determine whether an individual is a beneficial owner under the definition”
- If no one meets the 25% ownership level, can be completed as “N/A”
- Trustee is considered “owner” if trust owns 25% or more of equity interest

2. Control Prong

- One person at sufficient level, “significant management responsibility”
- Managerial control, not administrative control

Even if no one meets the 25% ownership level, you must still identify a control person.



What is required for beneficial owners?

- Identification of individuals meeting ownership and control prongs
 - “4 CIP elements” for individuals meeting the beneficial ownership and control prongs
- Verification of beneficial owners and controlling person
 - Verify the identity of the individual as a person, not their status as the owner
 - Copies of photo IDs are acceptable
 - Verification must be completed within a reasonable time period after the account is opened
 - Procedures must address circumstances where the financial institution cannot form a reasonable belief that it knows the true identity of the beneficial owner(s)
 - Banks are not required to maintain copies of IDs, only a description of the document—if planning on retaining copies, talk with consumer compliance for fair lending nuances



Appendix A

II. CERTIFICATION OF BENEFICIAL OWNER(S)

Persons opening an account on behalf of a legal entity must provide the following information:

a. Name and Title of Natural Person Opening Account:

b. Name and Address of Legal Entity for Which the Account is Being Opened:

c. The following information for each individual, if any, who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25 percent or more of the equity interests of the legal entity listed above:

Name	Date of Birth	Address (Residential or Business Street Address)	For U.S. Persons: Social Security Number	For Foreign Persons: Passport Number and Country of Issuance, or other similar identification number ¹

(If no individual meets this definition, please write "Not Applicable.")

d. The following information for one individual with significant responsibility for managing the legal entity listed above, such as:

- An executive officer or senior manager (e.g., Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, Treasurer); or
- Any other individual who regularly performs similar functions.

(If appropriate, an individual listed under section (c) above may also be listed in this section (d)).

Name/Title	Date of Birth	Address (Residential or Business Street Address)	For U.S. Persons: Social Security Number	For Foreign Persons: Passport Number and Country of Issuance, or other similar identification number ¹

I, _____ (name of natural person opening account), hereby certify, to the best of my knowledge, that the information provided above is complete and correct.

Signature: _____ Date: _____

¹ In lieu of a passport number, foreign persons may also provide an alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

Legal Entity Identifier _____ (Optional)



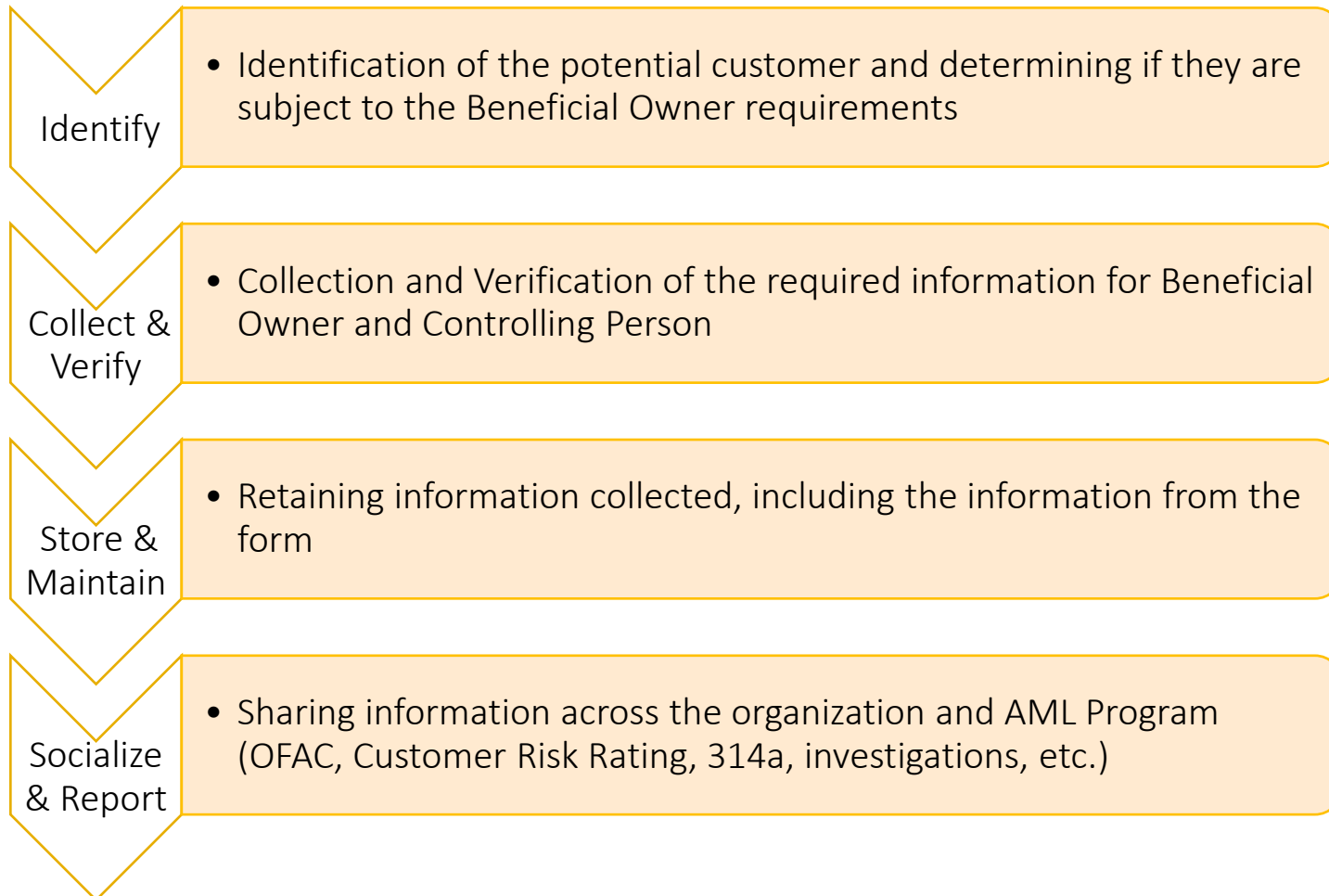
Additional exclusions from the final rule

Although these are not called out in the final rule itself, the following are also not included:

- Does not include sole proprietorships or unincorporated associations
- Does not include trusts (other than statutory trusts created by a filing with a Secretary of State or similar). Trusts are generally a contractual arrangement. However, rule does not supersede existing obligations regarding trusts generally, and FinCEN highlights need to look through, obtain information on trustee and obtaining info on settlor, grantor or others with regards to revocable trusts.
- ERISA accounts continue to be excluded*
- Intermediated account relationships—continue to rely on existing CIP guidance which says the intermediary itself is the customer (such as escrow accounts)

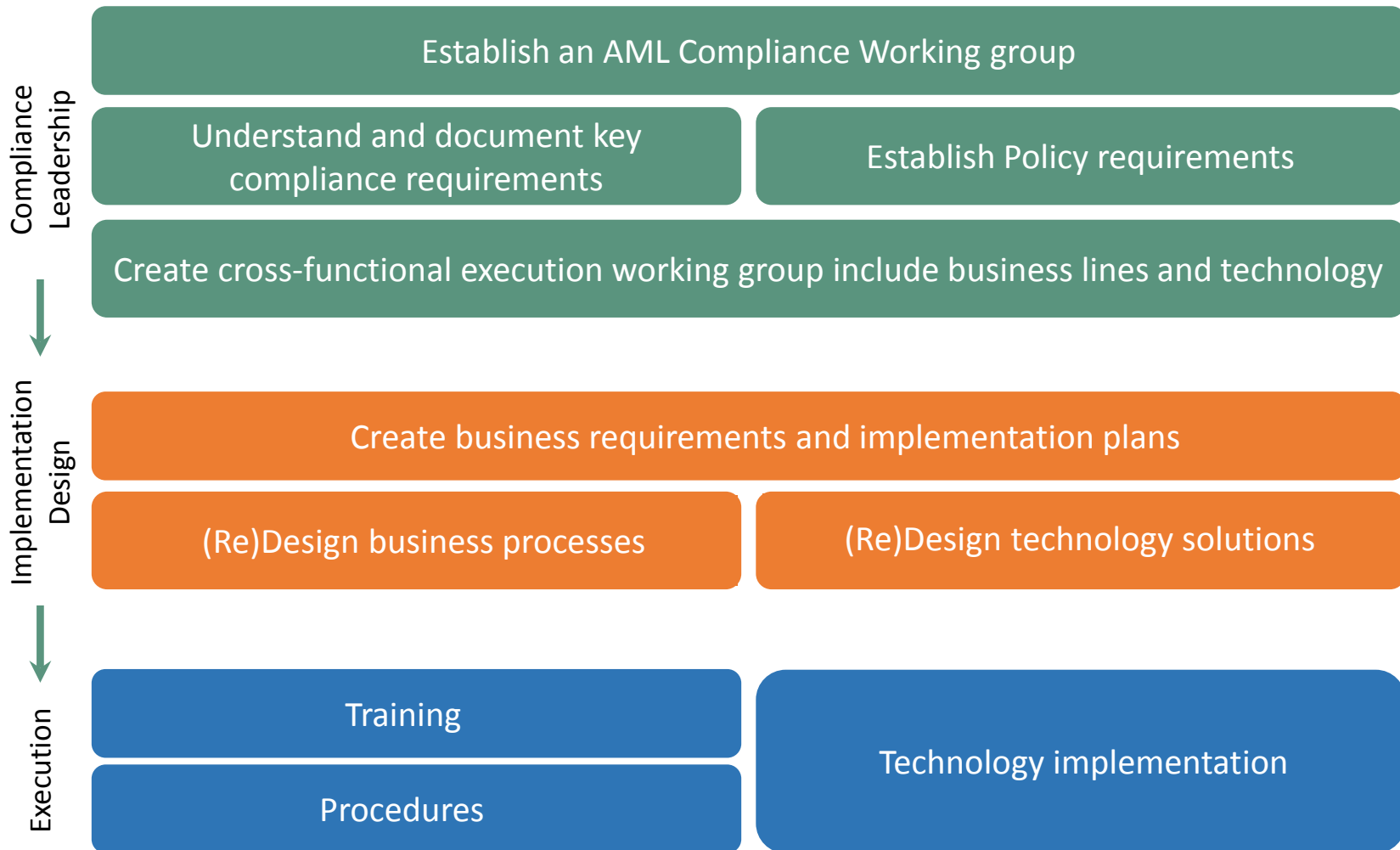
*non-ERISA employee benefit retirement plans, still have to verify beneficial ownership for the employer unless the employer is considered exempt

Approach – example workflow



Customer

Implementation – example approach





Panel discussion