



MEMORANDUM

TO: Bank Officers for Accounts Held by Parishes and Schools of the Roman Catholic Archdiocese of Los Angeles
FROM: Margaret G. Graf, Esq., General Counsel, and Randy Steiner, Chief Financial Officer
DATE: February 27, 2019
SUBJECT: Account Holder Information for Customer Due Diligence Requirements for Financial Institutions

To assist bank officers in responding appropriately to the information required by the most recent updates to the Customer Due Diligence Requirements for Financial Institutions (“CDD Rule” or “Rule”), the Legal Department of the Roman Catholic Archdiocese has prepared this Memorandum. For questions about the Memorandum call 213-637-7511 or email at legal@la-archdiocese.org.

A. QUESTION

To comply with the CDD Rule, what information should banks request from archdiocesan parishes and schools when they open new bank accounts or update existing bank accounts?

SHORT ANSWER

Nonprofit entities that have filed organizational documents with a state authority are exempt from the “ownership prong” of the CDD Rule, as non-profits do not have ownership interests. These entities are only required to identify a “control person” who is defined as an individual with “significant responsibility to control, manage or direct an entity customer.” The Archdiocese qualifies for this exemption because it is a “non-profit corporation or similar entity.” Accordingly, banks need information about the “control person” only.

- For parishes and parish elementary schools, the control person is the pastor or the parish administrator
- For high schools that are not part of a parish, the control person is the principal or president of the school
- For elementary schools that are administered by the archdiocese, the control person is the principal of the school
- If the parish and school have accounts at the same bank, the pastor or administrator should be the control person on all accounts unless the pastor/administrator designates the school principal as the control person for the school.

B. QUESTION

What type of information does the bank have to obtain from the control person?

SHORT ANSWER

- Name and job title
- Date of birth
- Business or residential address
- Personal identification number – e.g., social security number
- Current government issued photo identification – e.g., drivers’ license, U.S. or home country passport, or alien identification card

DISCUSSION OF APPLICABLE REGULATIONS AND ARCHDIOCESAN GOVERNMENT FILINGS

A. Information banks are required to collect about their account holders

When an individual or entity opens a new account or when a current account holder makes certain changes (e.g., adds or changes authorized signers) to an account, banks are required by CDD Rule to collect beneficial ownership information about the account holder. The FAQs providing guidance about the Rule, published by the Financial Crimes Enforcement Network (FinCEN) on April 23, 2018, at https://www.fincen.gov/sites/default/files/2018-04/FinCEN_Guidance_CDD_FAQ_FINAL_508_2.pdf ("FinCEN 2018 FAQs"), explain that "covered financial institutions meet their beneficial ownership obligations by collecting information on individuals, if any, who hold directly or indirectly, 25 percent or more of the equity interests in and one individual who has managerial control of a legal entity customer." (FAQ Question 1.) Thus, the information to be collected has two prongs: one is known as the **ownership/entity prong** and the other is the **control prong**.

B. Non-profit entities are excluded by CDD Rule from the requirement to provide information pertaining to the ownership/equity prong.

12 Code of Federal Regulations § 1010.230(e)(3)(ii) provides that: "Any legal entity that is established as a nonprofit corporation or similar entity and has filed its organizational documents with the appropriate State authority as necessary" . . . "[is] subject only to the **control prong** of the beneficial ownership requirement." FinCEN 2018 FAQs Question 23 explains: that "All nonprofit entities—whether or not tax-exempt—that are established as a nonprofit, or nonstock corporation, or similar entity that has been validly organized with the proper State authority are excluded from the **ownership/equity prong** of the requirement because nonprofit entities generally do not have ownership interests. Financial institutions, however, are required to collect beneficial ownership information under the control prong from any such entity."

According to the FinCEN FAQs published on July 19, 2016 ("FinCEN 2016 FAQs"), the control prong seeks information about "a single individual with significant responsibility to control, manage, or direct a legal entity customer, including an executive officer or senior manager (e.g., a Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, or Treasurer); or any other individual who regularly performs similar functions. . . . This list of positions is illustrative, not exclusive, as there is significant diversity in how legal entities are structured." FinCEN 2106 FAQs, Question 9. https://www.fincen.gov/sites/default/files/2016-09/FAQs_for_CDD_Final_Rule_287_15_16_29.pdf

C. The parishes, schools and other entities in the Roman Catholic Archdiocese of Los Angeles are non-profit tax-exempt organizations registered with the Internal Revenue Service and Franchise Tax Board.

The Roman Catholic Archdiocese of Los Angeles is the Canon law (Church law) term used to describe the territorial jurisdiction of the Roman Catholic Archbishop of Los Angeles. The Archdiocese and all entities recognized by the Archbishop are non-profit tax-exempt organizations. These entities (with a few exceptions not pertinent for this memorandum) derive their tax-exempt status from the Internal Revenue Service through the Group Ruling letter issued annually by the IRS to the United States Conference of Catholic Bishops ("USCCB"). The current copy of the IRS Group Ruling letter is available on the USCCB website, here: <http://www.usccb.org/about/general-counsel/tax-and-group-ruling.cfm>.

The IRS Group Ruling relies on the Official Catholic Directory (“OCD”), published annually, that lists all recognized archdiocesan entities. The pertinent pages of the OCD that identify the parish, school or other entity that opens or holds a bank account can be provided upon request. The OCD itself is not available online.

In addition to the Internal Revenue Service, the California Franchise Tax Board has recognized all archdiocesan parishes and schools as tax-exempt through a State group ruling. The parishes and schools are listed here: <https://www.ftb.ca.gov/businesses/Exempt-organizations/Entity-List.shtml>.

D. *The Archdiocese has filed organizational documents with the California Secretary of State*

For the purpose of conducting business as a civil law entity, the Archdiocese operates under a variety of organizational structures. All parishes and schools are subject to The Roman Catholic Archbishop of Los Angeles, a corporation sole (“RCALA, corp. sole”). The Archbishop is the sole member of RCALA, corp. sole, which does not have a board of directors. Articles of Incorporation for RCALA, corp. sole are available upon request. The Statement of Information for RCALA, corp. sole is available from the Secretary of State, here: <https://businesssearch.sos.ca.gov/CBS/Detail>.

Individual parishes and schools are considered unincorporated associations. They do not have articles. The only organizational-type documents available are the tax identification number letter from the Internal Revenue Service (FEIN letter), available upon request from the parish or school, and the California Franchise Board’s exempt organization letter, available here: <https://www.ftb.ca.gov/businesses/Exempt-organizations/Entity-List.shtml>.

E. *Official signers on Archdiocesan bank accounts are the Archbishop and the Moderator of the Curia/Vicar General.*

As a matter of internal policy and practice, the Archbishop and his deputy, the Moderator of the Curia/Vicar General, are required to be signers on all archdiocesan bank accounts. As signers only on the accounts, and not “customers” of the bank, the Archbishop and the Moderator of the Curia/Vicar General are not required to provide their Social Security numbers by the PATRIOT Act or CIP regulations. Accordingly, the only information that will be provided is their California driver’s license number, place of birth and mother’s maiden name. The reason for this limitation is explained as follows:

QUESTION PRESENTED:

Is the Archbishop or the Moderator of the Curia/Vicar General or any other person required to provide a Social Security Number to banks, savings associations, credit unions, or certain non-federally regulated banks, when acting as attorney-in-fact or agent or signer for the Archdiocese and its numerous entities?

ANSWER:

No. Under federal law only “customers” are required to provide identifying information, which includes taxpayer identification (*i.e.*, Social Security Number). An attorney-in-fact or signer or agent of the person or entity opening a bank account is not defined as a customer. Therefore, an attorney-in-fact or signer or agent does not fall within the scope of the PATRIOT Act’s Customer Identification Program (“CIP”). State laws dealing with this same subject are likely to be preempted.

Note that a financial institution may have its own internal policies that require an attorney-in-fact or signer or agent to provide a Social Security Number as identification, but if the reason cited for the policy is that it is the law, that assertion can be challenged.

APPLICABLE REGULATIONS

In March 2011, the PATRIOT Act's regulations were moved from 31 CFR § 103.121 to 31 CFR § 1020.220 without making any substantive changes. Therefore, various Frequently Asked Questions prepared by agencies within the Treasury Department, when the regulatory number was still 31 CFR § 103.121, remain pertinent. The FAQs include the following:

31 C.F.R. § 103.121(a)(3) -- Definition of "customer"

1. Who is the "customer" when an account is opened by an individual who has power-of- attorney for a competent person who is the named owner of the account?

The CIP rule provides that a "customer" generally is "a person that opens a new account." 31 C.F.R. § 103.121(a)(3)(i)(A). When an account is opened by an individual who has power-of-attorney for a competent person, the individual with a power-of-attorney is merely an agent acting on behalf of the person that opens the account. Therefore, the "customer" will be the named owner of the account rather than the individual with a power-of-attorney over the account. By contrast, an individual with power-of-attorney will be the "customer" if the account is opened for a person who lacks legal capacity. 31 C.F.R. § 103.121(a)(3)(i)(B)(1).

<http://www.fdic.gov/news/news/financial/2005/fil3405a.html>

http://www.ffiiec.gov/bsa_aml_infobase/documents/OCC_DOCs/BUL_2004_3.pdf

<http://www.occ.gov/news-issuances/bulletins/2005/bulletin-2005-16a.pdf>

Only "customers" are required to provide identifying information (emphasis added):

31 C.F.R. § 1020.220(a)(2)(i) – formerly, 31 CFR §103.121(b)(2)(i):

Customer information required--(A) In general. The CIP must contain procedures for opening an account that specify the identifying information that will be obtained from **each customer**.

Note that 31 CFR § 1020.220(a)(2)(i)(4)(i) – formerly, 31 CFR §103.121(b)(2)(i)(4)(i) – calls for **customers** to provide taxpayer identification (*i.e.* Social Security Numbers for individuals, the FEIN for corporate entities).

The website Privacy Rights Clearing House <http://www.privacyrights.org/fs/fs31-CIP.htm>, has the following helpful Q&A:

I am one of several people in my company authorized to sign checks on the company's account. Is my personal identifying information required?

No. The original CIP Rule proposal required signatories to produce personal information, even for a business account. But, based on numerous comments pointing out the impracticality of this as workers leave and new employees are added, the final Rules deleted this requirement.

However, the CIP Rule leaves it up to the bank to decide when additional steps are necessary to identify a customer that is not an individual. This may include gathering information about signatories. In other words, the CIP Rule does not require personal identifying information from people authorized to use business accounts, but the bank's own procedures may require it.