



## **Customer Identification Guidance**

The South Dakota Division of Banking (Division) trust company examination process includes a review and assessment of each trust company's Customer Identification Program (CIP). Customer identification documentation is acquired during the initial account onboarding process. Once documented, the customer identification will not need to be updated unless there is a significant change in the account relationship. Trust company management is strongly encouraged to consult with legal counsel or others with knowledge and expertise in the field in developing a comprehensive CIP that is specific to each trust company's respective business plan.

### Customer Identification Program

The intent of the regulation, at a minimum, is to require financial institutions to implement reasonable procedures to verify the identity of any person seeking to open an account, to the extent reasonable and practicable; maintain records of the information used to verify the person's identity; and determine whether the person appears on any government lists, particularly lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any governmental agency. The CIP covers accounts established to provide custodial and trust services. Generally, a trust company must implement a written CIP commensurate with its size and complexity that at a minimum addresses the following criteria:

- (1) Identity Verification Procedures - The CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable. The procedures must enable the trust company to form a reasonable belief that it knows the true identity of each customer. At a minimum, these procedures must contain the following elements:
  - (A) Required Customer Information – The CIP must contain procedures for opening an account that specify the identifying information that will be obtained from each customer. At a minimum the following information should be obtained from the customer prior to opening the account:
    - (1) Name, date of birth (for an individual), residential address;
    - (2) Principal place of business address for a corporation; and,
    - (3) Identification number, for a U.S. person, a driver's license, taxpayer identification number, or other government issued photo ID. For a Non-U.S. person, a taxpayer identification number, passport number and country of issuance, alien ID card number, or other government issued photo ID.

*Under the Beneficial Ownership Rule, a trust company must establish and maintain written procedures that are reasonably designed to identify and verify the beneficial owner(s) of legal entity customers and include such procedures in its CIP guidance. For purposes of the CIP, financial institutions are required to verify the identity of the customer, which is typically an individual, trust, or a legal entity.*

*If a trust is identified as the customer, the beneficial owner is the trustee(s) or any other person, such as a grantor or protector, who, in accordance with provisions of the governing document, has effective control of the trust or trust property or has the power to amend the trust or remove/appoint trustees.*

*If a legal entity is identified as the customer, the financial institution is required to identify the beneficial owner of the entity. A legal entity customer is defined to include the following types of entities: corporations, limited liability companies, general partnerships, limited partnerships, business trusts, other entities created by the filing of a public document with a secretary of state or similar office, or similar entities formed under the laws of a non-U.S. jurisdiction. Beneficial owner is defined as an individual who owns 25 percent or more of the equity interests of the legal entity customer; a single individual with significant responsibility to control, manage, or direct a legal entity customer, including an executive officer or senior manager (e.g. 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). Financial institutions can develop internal forms or checklists to document the beneficial owner(s) of legal entity customers or obtain a fillable and non-fillable copy of an optional Certification Regarding Beneficial Owners of Legal Entity Customers available on the Financial Crimes Enforcement Network (FinCEN) website.*

*If a trust owns directly or indirectly, through any contractual arrangement, understanding, relationship, or otherwise, 25 percent or more of the equity interest of a legal entity customer, the beneficial owner is the trustee(s) or any other individual, such as a grantor or protector, who in accordance with provisions of the trust document has effective control of the trust or trust property, or has the power to amend the trust or remove/appoint trustees.*

- (B) Customer Verification – The CIP must contain procedures for verifying the identity of the customer, using the information obtained in section (A) above. The procedures must describe when the trust company will use documents, non-documentary methods, or a combination of both:
- (1) Verification through documents – For individuals this may include unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver’s license or passport. For a corporation or partnership, documents showing the existence of the entity, such as articles of incorporation, government issued business license, partnership agreement, or trust agreement.
  - (2) Verification through non-documentary methods – The CIP must contain procedures that describe the non-documentary methods the trust company will use. These methods may include contacting a customer; independently verifying the customer’s identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source; checking references with other financial institutions; and obtaining a financial statement. The trust company’s non-documentary procedures must address situations: (1) where an individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; (2) the trust company is not familiar with the documents presented; (3) account is opened without obtaining documents; (4) customer opens

account without appearing at the trust company; and (5) other circumstances that increase the risk the trust company will be unable to verify the true identity of a customer.

(3) Additional Verification for Certain Customers – The CIP must address situations where, based on the trust company’s risk assessment of a new account opened by a customer that is not an individual, the trust company will obtain information about the individuals with authority or control over such account, including signatories, in order to verify the customer’s identity; this verification method only applies when the above verification methods cannot be utilized.

(4) Lack of Verification – The CIP must include procedures for responding to circumstances in which the trust company cannot form a reasonable belief that it knows the true identity of a customer. These procedures should describe: (1) when the trust company should not open an account; (2) the terms under which a customer may use an account while the trust company attempts to verify the customer’s identity; (3) when the trust company should close an account after attempts to verify a customer’s identity have failed; and (4) when the trust company should file a suspicious activity report in accordance with applicable law and regulation.

(2) Recordkeeping – The CIP must address procedures for making and maintaining a record of all information obtained under the procedures outlined above.

(A) Required Records – At a minimum the records must include:

- (1) All identifying records obtained under Section (1) (A).
- (2) A description of any document that was relied on under Section (1) (B) (1).
- (3) A description of the methods and the results of any measures undertaken to verify the identity of the customer under Section (1) (B) (2) and (3).
- (4) A description of the resolution of any substantive discrepancy discovered when verifying the identifying information obtained.

(B) Retention of Records – The trust company must retain the information in Section (2) (A) for five years after the date the account is closed.

(3) Comparison with Government Lists – The CIP must include procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations issued by any federal government agency. The procedures require management to make such a determination within a reasonable period of time after the account is opened. No federal government agency has provided the Division with a list of known or suspected terrorists or terrorist organizations. Financial institutions will be notified if a list is designated for the purposes of this regulation. In the meantime, there are no interim requirements for checking any lists for CIP compliance.

*Financial institutions should be aware that CIP provisions do not include Office of Foreign Asset Control (OFAC) and FinCEN review and reporting provisions. OFAC identifies countries, entities, and individuals that pose a threat to the national security, foreign policy, or economy of the U.S. Every financial institution is required to periodically review OFAC generated lists to determine and report any “hits.” FinCEN provisions are separate and distinct from OFAC provisions. FinCEN issues Section 314(a) notices,*

*approximately every two weeks. When these notices (which identify individuals and entities suspected of illegal activities) are received, financial institutions are required to compare their customer list with the list of businesses and individuals on the 314(a) notice to determine and report any “hits.”*

*Regulatory authorities impose FinCEN review and reporting provisions on the institutions they supervise. The Division requires all South Dakota-chartered public trust companies to comply with FinCEN reporting provisions. To obtain access to the 314(a) Secure Information Sharing System (SISS), each trust company at inception is required to submit to the Division the following information: trust company tax identification number; point of contact name, title, email address, mailing address, and phone number; trust company tax identification number; and trust company fax number. The Division forwards this information to FinCEN for processing. The designated point of contact will then receive a FinCEN notification whenever new 314(a) case information has been posted on the SISS. After receiving FinCEN notification, each trust company will register their username (which is their full email address) to receive a temporary password to access the system to perform the 314(a) reviews.*

(4) Customer Notice – The CIP must include procedures for providing customers with adequate notice that the trust company is requesting information to verify their identities.

(A) *Adequate Notice* – Notice is adequate if the trust company generally describes the identification requirements of this section and provides the notice in a manner reasonably designed to ensure that a customer is able to view the notice or is otherwise given notice before opening an account. (Examples: post notice in lobby, on website, on account applications, or use any other form of notice written or oral.)

## Customer Examples

Financial institutions are not required to look through trust, escrow, or similar accounts to verify the identity of beneficiaries and will only be required to verify the identity of the named account holder (customer).

Customer examples include the following:

1. Jane Doe wants to open an Investment Management Agency (IMA) for herself  
Jane Doe is the Customer
2. Jane Doe wants to open the Jane Doe Revocable Trust  
Jane Doe is the Customer
3. Jane Doe wants to open the Jane Doe Revocable Trust IMA, Jane Doe Trustee  
Jane Doe is the Customer
4. Jane Doe wants to open an IMA for the John Doe Revocable Trust, Jane Doe Trustee  
Jane Doe is the Customer
5. John and Jane Doe want to open the John and Jane Doe IMA  
John Doe and Jane Doe are each Customers
6. John and Jane Doe want to open the John and Jane Doe Trust  
John Doe and Jane Doe are each Customers
7. Jo Doe dies, ABC Bank is named in the trust document as successor trustee of the Jo Doe Revocable Trust  
Jo Doe Revocable Trust is the customer
8. John Doe is trustee of the Jason Doe Revocable Trust and holds the power to appoint a successor trustee; John resigns in favor of ABC BANK.  
John Doe is the customer
9. Jane Doe is trustee of the Janelle Doe Trust. The trust names ABC BANK successor trustee should Jane no longer desire to serve or is unable to serve as trustee. Jane Doe resigns as trustee.  
The Janelle Doe Trust is the customer
10. John Doe wants to open the John Doe Irrevocable Trust f/b/o Baby Doe  
John Doe is the customer
11. Jack Doe's will provides for the creation of the Jack Doe Testamentary Trust, ABC BANK, Trustee.  
Jack Doe dies  
The Jack Doe Testamentary Trust is the customer

12. ABC BANK is trustee of the Julie Doe Revocable Trust. Julie Doe dies and the trust splits into a family trust and a marital trust  
Julie Doe Revocable Trust is the customer
13. ABC BANK is trustee of the Janice Doe Education Trust f/b/o the Doe Grandchildren. To comply with the terms of the governing instrument, separate trust shares are created for each of the three Doe grandchildren, Jamie, Jackson, Julia Doe  
Janice Doe Education Trust is the customer
14. Jae Doe is a beneficiary of the Jo Doe Trust and is entitled to her distributive share. Jae wishes to open an IMA with her distribution.  
Jae Doe is the customer
15. Judge Somebody appoints ABC BANK executor of the James Doe Estate. ABC BANK opens an estate account  
ABC BANK is the customer – Customer identification is not necessary
16. Judge Anybody appoints ABC BANK conservator of the Jack Doe Conservatorship. ABC BANK opens a conservator ship account.  
ABC BANK is the customer – Customer identification is not necessary
17. John Doe wants to open the Doe Investment Corp Custodial Account  
Doe Investment Corp is the customer
18. John Doe wants to open The John Doe Corp 401(k) Plan  
The account is governed under ERISA and therefore exempt from CIP
19. Josh Doe wishes to roll-over his retirement plan balance into an IRA  
Josh Doe is the customer
20. Jeremy Doe wants to open an IRA. He names his spouse and two children as beneficiaries of the IRA.  
Jeremy Doe is the customer
21. The Doe Investment Corp serves as investment advisor to the Doe Foundation. To facilitate record keeping, securities settlement, statement consolidation, etc., the Doe Investment Corp wants to set-up a series of custodial accounts, one for each of the sub-advisors that the Doe Investment Corp has hired to help manage the Doe Foundation assets.  
The Doe Investment Corp is the customer.