



Simply Speaking

Obscure legal concepts or terms in a loan document explained in plain English

September 2019

Beneficial Ownership Certification

Example

Beneficial Ownership. On or one day prior to the Closing Date, the Borrower shall have delivered to the Administrative Agent and each applicable Lender (through delivery to the Administrative Agent) Beneficial Ownership Certification in relation to the Borrower.

Beneficial Ownership Certification means certification relating to the beneficial ownership or control as required by Federal Regulation §1010.230 in form and substance satisfactory to the applicable Lender or Administrative Agent requesting the same.

What is it and what does it do?

Banks and other financial institutions that are subject to the Bank Secrecy Act and other anti-money laundering laws are required to establish and maintain procedures reasonably designed to identify and verify the beneficial owners of their borrowers that are “legal entity customers” to help the government fight crime. A legal entity customer is defined to include a corporation, limited liability company, or other entity that is created by the filing of a public document with a Secretary of State or other similar office, a general partnership, and any similar entity formed under the laws of a foreign jurisdiction that opens an account.

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Why is it there?

Legal entities, whether domestic or foreign, can be used to facilitate money laundering and other crimes because their true ownership can be concealed. The beneficial ownership certification enables a lender to collect beneficial ownership information about the entity including the name, date of birth, and social security number of natural persons who own or control it so that the ownership and control is more transparent.

Why is it important (or not so important) to Lender?

A bank or other financial institution covered by the Federal regulations (which includes an agency or branch of a foreign bank in the United States) is required to establish and maintain written procedures that are reasonably designed to identify and verify beneficial owner(s) of legal entity customers and to include such procedures in its anti-money laundering compliance program. The collection of beneficial ownership information by banks about legal entity customers can also provide law enforcement with key details about suspected criminals who use legal entity structures to conceal their illicit activity and assets. In addition to the transparency relating to the ownership and control of the legal entity customer, the requirement to provide, at the outset and as a prerequisite to granting a loan, the identifying information of the natural persons who own or control such entity, acts as a deterrent to money laundering and other criminal activity.

How does it affect a Borrower in practical terms?

As a practical matter, a borrower that is a legal entity customer, will need to provide to its lender (which may be included on a preferred form used by its lender) the name, address, date of birth and social security number (or passport or other similar information if a non-U.S. person) of each individual, if any, that owns, directly or indirectly, 25 percent or more of the equity interests of the legal entity customer, and/or an individual with significant responsibility for managing the legal entity customer (e.g. the Chief Executive Officer, Chief Financial Officer, Managing Member, General Partner).

How is it relevant to shipping?

Beneficial ownership certification is increasingly included in shipping loan agreements as a condition precedent to closing a transaction involving borrowers or guarantors that are considered to be legal entity customers.

How is it negotiated?

The legal entity customer may be able to rely on certain exceptions applicable to it thereby either eliminating or reducing the extent of the disclosure needed.

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Questions?

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