

September 8, 2022

Via electronic submission:

Financial Crimes Enforcement Network
Attn: Policy Division, Docket No. FINCEN-2022-0008; OMB 1506-0049
P.O. Box 39
Vienna, VA 22183
<https://regulations.gov>

Re: Comments on Notice and Request for Comment Regarding Information Collection and Sharing Regulations Under the Bank Secrecy Act: Docket No. FINCEN-2022-0008; OMB 1506-0049.

Dear Sirs and Madams:

The following comments are submitted by International Bancshares Corporation ("IBC"), a publicly-traded, multi-bank financial holding company headquartered in Laredo, Texas. IBC maintains 167 facilities and 259 ATMs, serving 75 communities in Texas and Oklahoma through five separately chartered banks ("IBC Banks") ranging in size from approximately \$480 million to \$9.3 billion, with consolidated assets totaling approximately \$16 billion. IBC is one of the largest independent commercial bank holding companies headquartered in Texas.

This letter responds to the notice and request for comment ("Request") by the Financial Crimes Enforcement Network ("FinCEN") regarding the renewal (without change) of certain information collection and sharing regulations under the Bank Secrecy Act ("BSA"). Under the current BSA regulations at issue, a financial institution must search its records to determine whether it maintains or has maintained any account or engaged in any transaction with an individual, entity, or organization named in any information request from FinCEN. If a financial institution identifies an account or transaction named in the request, it must report such information to FinCEN in the manner and timeframe specified in the request. [Notice at 41186]

The Request lists several general requests for comment and ten specific requests for information and comment. IBC has provided comments to the specific issues as noted below.

General request for comments.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (2) the accuracy of the agency's estimate of the burden of the

collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (5) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

IBC Comment: IBC urges FinCEN to focus on providing as much information as possible when it makes a 314(a) request to financial institutions. Currently, a 314(a) request must contain “enough specific identifiers...that would permit a financial institution to differentiate between common or similar names.” 31 C.F.R. 1010.520(b)(1). However, FinCEN has too often left financial institutions to sort out false positives based on incomplete or bad information in the request. If financial institutions have an obligation to identify and vet their customers, then FinCEN has an obligation to provide sufficient information in a 314(a) request in order to decrease the occurrence of false positives. If FinCEN suspects a person or entity of a financial crime, it should be able to sufficiently identify that person or entity in its 314(a) request to financial institutions. This is especially true with the recent Beneficial Ownership Rule and related registry for legal entities, which should provide a robust directory of information related to those entities and which can be leveraged to make 314(a) requests and responses more streamlined.

Comments to Specific Requests

(a) Specific request for comments on the PRA hourly burden and cost. FinCEN invites comments on any aspect of the PRA burden set out in section II of this notice. In particular, FinCEN seeks comments on the adequacy of: (i) FinCEN's assumptions underlying its estimate of the burden; (ii) the estimated amount of time per subject; and (iii) the organizational levels of employees engaged in responding to requests.

IBC Comment: IBC strongly urges FinCEN to consider the current technology and electronic resources available to and used by small and mid-sized institutions when it implements or amends recordkeeping and reporting requirements. While no changes are currently proposed, any additional reporting or recordkeeping requirements should be crafted in order to work with widely-available and implemented electronic resources. IBC is concerned about FinCEN's attitude regarding the burden that 314(a) searches and reports require. In a loaded statement, FinCEN declares that “[f]inancial institutions have well established processes, and in most cases automated processes, in place to conduct 314(a) searches, given the 20 years that the program has been running.” [Notice at 41187] However, just because an onerous regulation has been in effect for decades does not mean that the costs and burdens required for compliance should be overlooked. IBC also cautions FinCEN from basing its time and burden estimates on the “latest and greatest” technology available. Small and mid-sized institutions do not typically have the resources to implement the most cutting-edge technology, and so even though it is possible to comply with regulatory requirements in a short amount of time and with little effort using the best available electronic resources, the majority of financial institutions do not have access to those resources. In fact,

IBC spends well over \$1.3MM dollars a year just on BSA/AML software and related licensing fees, and recently implemented a tool to enhance 314(a) screening and reduce false positives which cost \$15,000. These are no small costs for a bank of IBC's size and character. And these exorbitant costs have only provided a semi-automated BSA/AML process for 314(a) requests, as large portions of the processes remain manual. Small and mid-sized institutions simply do not have the luxury of implementing the fastest, most cutting edge automation and software solutions. Unless FinCEN's goal is to prop up even more fintechs and continue to force banks to operate on reduced margins because of ever-growing software costs, it should consider the effect of its regulations on institutions that cannot rely on technology and automation and must maintain manual processes. FinCEN should not base its estimates on the most modern technology available so that the estimates more accurately reflect the actual time and resources required to comply with the applicable regulation.

(b) Specific questions for comment regarding compliance with information requests as outlined in 31 CFR 1010.520 (if the commenter represents a financial institution, FinCEN asks that the comment provide information particular to that financial institution.)

1. To what extent can a financial institution rely on existing software to conduct its 314(a) search?

IBC Comment: Unfortunately, financial institutions have to rely exclusively on software to conduct its 314(a) searches, as FinCEN itself notes that "Financial institutions are only required to search their records for account and transaction information that is maintained electronically." [Notice 41187] It is true that modern financial products and services are largely conducted, and records maintained, electronically, but this is in no small part due to the burdensome reporting and recordkeeping requirements placed on financial institutions by regulators. This has been incredibly difficult, and has placed an undue burden on small and mid-sized financial institutions that cannot create these electronic resources themselves must rely on service providers and third-party vendors. As noted elsewhere herein, FinCEN should not assume that all financial institutions have the resources to access and implement state-of-the-art technology in order to meet their regulatory compliance requirements.

2. On average, how long does it take your financial institution to perform a search for a particular subject of a 314(a) request ("314(a) subject")?

IBC Comment: IBC estimates that it takes well over FinCEN's estimate of four (4) minutes to review and respond to every 314(a) request. Every search includes both an automatic (data searching) and manual (data retrieval and import) component, as described below. This also includes the additional time and resources necessary to review and confirm the accuracy and applicability of any positive search results, which can be significant given the high volume of false positives that require research and decisioning.

The searching of customer data is automated, but requires initial steps of data and file retrieval and import, which are all manual processes. These steps are completed in roughly one (1) hour every two (2) weeks. Not only does this require significant time, but importing the data reduces system resources for all users during the data and file import process.

3. How often does your financial institution generate a positive match to a 314(a) subject that requires additional research to confirm if the account or transaction is in fact connected to that subject?

IBC Comment: Only 1% of the initial positive results from screening are true positive matches. It takes significant time and resources to review and decision all initial positive matches, only to ultimately confirm the small population of true matches.

4. What steps does your financial institution take once your automated system generates a match to a 314(a) subject to determine if it is an actual match or a false positive? What type of records does your financial institution maintain to document the results of this type of research?

IBC Comment: Again, IBC takes issue with FinCEN's presumption that all institutions have automated systems to handle BSA/AML obligations, including 314(a) requests and reporting. As previously noted, the cost of such infrastructure is just not feasible for most small and mid-sized institutions.

If the match is clearly a false positive (e.g. due to information not matching, such as a name match but no SSN match), the results are acknowledged within the system and a record is created and stored to memorialize the match and confirmation of the grounds for a false or actual positive. If the initial positive match is determined to be a true positive after review, the match is reported and an internal review of activity is conducted to determine if there is any questionable activity.

5. How frequently does your financial institution's automated system identify matches to a 314(a) subject that ultimately result in a false positive?

IBC Comment: 99% of the initial positive matches from screening are false positives that all must be reviewed and confirmed. Only 1% of the initial positive matches are ultimately true positives.

6. What type of records does your financial institution maintain to document that a 314(a) search has been conducted?

IBC Comment: IBC maintains records of the data and file imports, the alerts and results generated through the search and screening process, and documentation

which includes an overview and recap of all findings from the screening and subsequent review and decisioning of initial positive match results.

7. What is the role of the individual at your financial institution that acts as the point of contact for 314(a) requests?

IBC Comment: IBC's BSA Compliance Officer and OFAC Compliance Officer act as the points of contact for 314(a) requests.

8. Is more than one employee at your financial institution involved in conducting the biweekly 314(a) searches?

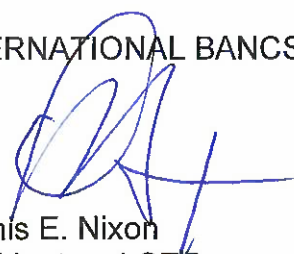
IBC Comment: Yes, IBC manages biweekly searches through a dual-control process. IBC's BSA Compliance Officer is responsible generally for approving searches and the review process and the OFAC Compliance Officer is responsible for final review and approval of the decisioning and reporting of results.

9. Does senior management play a role in reviewing the results of your financial institution's biweekly search for subjects of 314(a) requests?

IBC Comment: Yes, the 314(a) search results are documented and reviewed by senior management, including the BSA Compliance Officer SVP, and executive management, including the EVP to whom the OFAC Compliance Officer reports.

Thank you for the opportunity to share IBC's views on these matters.

INTERNATIONAL BANCSHARES CORPORATION



Dennis E. Nixon
President and CEO