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September 9, 2022

Policy Division
Financial Crimes Enforcement Network
P.O. Box 39
Vienna, VA 22183

RE: Docket Number FINCEN–2022–0008 and OMB Control Number 1506–0049

Dear Sir or Madam:

The Independent Community Bankers of America (“ICBA”)¹ appreciates the opportunity to respond to the Financial Crimes Enforcement Network’s (“FinCEN”) proposed renewal, without change, of Section 314(a) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (“USA PATRIOT Act”).² USA PATRIOT Act. The request is pursuant to the Paperwork Reduction Act (“PRA”) of 1995.

Background

The Bank Secrecy Act of 1970 (BSA) was amended by the USA PATRIOT Act and required the Secretary of the Treasury to adopt regulations to facilitate information sharing between regulatory entities and financial institutions (“FIs”) for the purpose of combatting terrorism and money laundering. FinCEN issued a proposed rule on March 5, 2002, and the final rule on September 26, 2002. Section 314(a) requirements are now published in 31 CFR Part 103.100.

Section 314(a) requires that, upon receiving an information request from FinCEN, a FI 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 the request. If a FI identifies

¹ The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. ICBA is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education, and high-quality products and services.

With nearly 50,000 locations nationwide, community banks constitute 99 percent of all banks, employ nearly 700,000 Americans and are the only physical banking presence in one in three U.S. counties. Holding more than \$5.8 trillion in assets, over \$4.9 trillion in deposits, and more than \$3.5 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers’ dreams in communities throughout America. For more information, visit ICBA’s website at www.icba.org

² Public Law 107-56 (October 26, 2001).

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an account or transaction named in the request, it must report such information to FinCEN in the manner and timeframe specified in the request.

Summary

ICBA supports information sharing between government and FIs. ICBA generally believes communication and cooperation are critical to an effective working partnership among the government, law enforcement, and FIs. Community banks have always been willing participants doing their part to protect the United States (“U.S.”) financial system from all manners of harm. They work diligently to ensure their institutions are not used by bad actors to facilitate criminal enterprises. In addition to internal monitoring, qualitative communication, and information sharing with government and law enforcement are key components in community bank’s ability to protect both their institutions and the U.S. at large.

Section 314(a) is a helpful mechanism for information sharing, but the process is not without its complexities. In this request for comment, FinCEN estimates that it takes just 4 minutes to research and report each subject on 314(a) requests. They also estimate that it takes 24 hours annually. As noted in the request, these estimates assume that all “*financial 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.*”³ FinCEN has been estimating a burden of 4 minutes per subject in PRA renewals since 2010 and has not received public comments questioning or contradicting this estimate.⁴

ICBA does not agree with FinCEN’s time estimate and offers the following feedback in response to this PRA request.

ICBA’s Comments

Based on conversations with community banks, the estimated time of 4 minutes to research and report each subject is not completely accurate, and the basis for its estimate is also inaccurate. ICBA believes a more reasonable and accurate estimate to process each 314(a) request, in its entirety, can range from minutes to several hours. While some large community banks may have the infrastructure to process 314(a) requests within short timeframes, the same is not true for all community banks. The wide range is due to several factors such as the use of software versus manual processes; the time it takes to upload the data into a bank’s system; the number of false-positives requiring additional due diligence to negate false-positive results; the bank’s customer base or demographics; the size of the bank and staffing levels; and the number of systems with

³ FR Doc. 2022-14638 p. 41187

⁴ Ibid p. 41188

customer data the bank utilizes. All of these factors impact the time it takes to upload, research, and report the subjects on a 314(a) list.

As FinCEN is aware, a 314(a) request can consist of multiple pages of individual names and business names. Several of our members have expressed that a multi-page 314(a) request can take several hours to process. One member told us that a 40-page 314(a) request takes his bank 8 hours to process because they have to search four systems containing customer information.

The 4-minute estimate also does not take into account that not all FIs have automated processes for conducting 314(a) searches. The decision to forego automation varies, but the burden associated with manual searches is largely consistent. Several members have told us that they conduct all 314(a) searches manually because of the exorbitant cost for automated systems, the significant amounts of time to train personnel to manage such systems, and the time it takes to frequently test these systems. Some have chosen a manual process to reduce the rampant occurrences of false-positive matches. Community banks that conduct each search manually by individually searching their records for each subject have told us that it can take their institutions anywhere between 4 hours to an entire day per list.

The estimated time also fails to reflect the frequent occurrences of false-positive matches. All false-positive matches must undergo additional analysis to determine whether they are in fact false matches. This additional analysis is time-consuming, especially for FIs without an automated process. Several of our members experience false matches every time they download a 314(a) list which requires them to undergo the time-consuming task of analyzing information to determine whether it is a true match. Members have told us that their software generates hundreds of pages of false-positives which takes days to review to ensure they are in fact false. False-positives are so rampant for some, that they have halted the use of software.

False-positive matches is especially problematic and burdensome for minority depository institutions (“MDIs”) serving immigrant communities with customers that may have foreign names. ICBA has heard directly from MDI members on this issue. One in particular indicated that over a 5-month period, their system generated a total of 402 alerts that needed to undergo additional steps to determine whether they were in fact true matches.

Our members have also expressed that 314(a) requests that contain business terms such as “INC.,” “LLC,” “Investment,” and “Property” generate false matches nearly every time they conduct a search.

Finally, the amount of time that it takes to process a 314(a) list is further exacerbated by the number of pages in the request. As FinCEN is aware, a 314(a) request can consist of numerous pages of individual and business names. Members with manual processes, and those with automated processes have expressed the same burden associated with time. According to some of our members, a 30-plus page 314(a) request can take several hours to process depending on the

number of systems containing customer information; depending on whether a manual or automated process is used; and the amount of time it takes to download a multi-page request.

Conclusion

ICBA appreciates the opportunity to respond to this request for comment and offer counter information relating to 314(a) requests. If you have any questions or would like additional information, please contact me at Rhonda.Thomas-Whitley@icba.org or (202) 821-4451.

Sincerely,

/s/

Rhonda Thomas-Whitley
Vice President and Regulatory Counsel