



February 2, 2023

Via Electronic Submission

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

**Re: Corporate Transparency Act Beneficial Ownership Information Access
Docket No. FINCEN-2021-0005 and RIN 1506-AB49/AB59**

Acting Director Das,

On behalf of ANB Bank (ANB), thank you for the opportunity to respond to the Financial Crimes Enforcement Network (FinCEN) Notice of Proposed Rulemaking (NPRM) regarding access to the centralized beneficial ownership information database as required by the Corporate Transparency Act (CTA).

BACKGROUND

ANB is a \$3.2 billion community bank headquartered in Denver, Colorado with 29 locations in Colorado and Wyoming. The bank serves a number of distinct and diverse communities, ranging from large metropolitan cities in Colorado to rural communities in Wyoming and western Colorado, to high cost resort communities in Colorado. ANB is primarily focused on serving commercial customers, with the majority of the bank's loan portfolio comprised of loans to commercial, agricultural, and municipal borrowers. While our business model is more focused on commercial customers, we are a true community bank and also offer an array of consumer products.

COMMITMENT TO ANTI-FINANCIAL CRIME COMPLIANCE

As a community bank, ANB has a longstanding commitment to safe and sound banking practices through strong compliance programs, including the Bank Secrecy Act (BSA). ANB takes its obligations under the BSA seriously and endeavors to maintain a program that complies with the intent of the BSA. The bank maintains a low to moderate risk profile and invests significant resources complying with the BSA.

RECOMMENDATIONS

The objective of CTA is to establish a database of beneficial ownership information (BOI) that will be highly useful in combatting illicit finance and the abuse of shell and front companies by criminals, corrupt officials, and other bad actors. The BSA requires financial institutions (FIs) to maintain anti-money laundering/counter terrorist financing programs in support of this objective, so it is critical that FIs have access to BOI. In furtherance of this objective, ANB encourages the FinCEN to (1) broadly define

customer due diligence (CDD) requirements to enhance the effectiveness of the BOI database, and (2) limit the barriers to financial institutions (FIs) to access BOI.

Define Customer Due Diligence Requirements Broadly to Conform with Existing Regulations

Question 12 of the NPRM asks whether FinCEN should expressly define “customer due diligence requirements under applicable law” as a larger category of requirement that includes more than identifying and verifying the beneficial ownership of legal entity customers.

Limiting the CDD requirements to identifying and verifying the beneficial ownership of their customers is contrary to the goal of the CTA and ignores a core requirement of FinCEN’s 2016 CDD Rule, the requirement to “conduct ongoing monitoring to identify and report suspicious transactions, and on a risk basis, to maintain and update customer information.”¹

FIs must be able to access the beneficial ownership information of their customers on an ongoing basis, with the customers’ consent and understanding of how the consent is revoked. FIs must be able to obtain consent for an ongoing period of time – as long as the customer remains a customer of the FI – without need to renew consent or notify customers that the FI accessed the information.

The importance of safeguarding private and confidential information is clear to FIs, who have already established administrative, technical and physical safeguards to reasonably protect this information. FIs are therefore capable of managing BOI information securely, under regulator supervision, and this risk would not increase by incorporating ongoing monitoring into the CDD requirements imposed on FIs in this regulation. Customers understand that their FIs maintain sensitive information, including BOI, and will continue to maintain this information regardless of how the information is obtained by the FI.

Limit Barriers to Financial Institutions Obtaining BOI

FinCEN also reported considering obtaining consent directly from reporting companies rather than relying on FIs to obtain and record their customers’ consent. FinCEN rejected the approach based on potential delays and the lack of direct relationships with reporting companies. This decision was correct for those reasons and to ensure that FI investigations into suspicious activity remain confidential. An FI customer who conducts unusual activity that prompts investigation by the FI would be immediately tipped-off to the investigation if they were alerted that the FI requested the information. Professional bad actors would use that information to alter their money laundering and terrorist financing schemes, ultimately making illicit activity harder to detect. Further, the CTA requires, to the extent possible, that the regulation minimize burdens on reporting companies. Requiring additional action of the reporting company whenever an FI attempts to verify BOI is contrary to this requirement.

CONCLUSION

In complying with the BSA, FIs conduct investigations into the activities of their customers on a risk basis and identifying beneficial owners is a critical component of those investigations. FIs must be able to obtain updated customer beneficial ownership information as necessary in support of BSA-related investigations. This information may provide relevant information related to money laundering or terrorist financing related to previously unknown accounts, activities or relationships. Without this key information, FIs may not be able to adequately understand and assess the risk of certain activity. Additionally, they may fail to report and describe critical information to law enforcement.

¹ <https://www.fincen.gov/resources/statutes-and-regulations/cdd-final-rule>

We urge FinCEN to ensure FIs have sufficient access to BOI so that they can effectively meet their regulatory responsibilities. This would be achieved by adopting a broad interpretation of CDD and ensuring simple access for FIs to their customers' BOI. A more restrictive approach is contrary to the risk-based approach to AML advocated by FinCEN, regulators and the Financial Action Task Force. In order for FIs to act as effective partners in combatting illicit finance, up-to-date BOI must be available when BSA-related investigations are warranted.

On behalf of ANB, thank you again for the opportunity to provide input on this rulemaking and we would welcome the opportunity to discuss these comments further. If you have any questions or would like clarification regarding anything contained in our comments, please don't hesitate to contact me at 719-381-5773 or via email at tyler.hibbard@anbbank.com.

Sincerely,

Tyler Hibbard
First Vice President
BSA Officer