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February 10, 2023

Policy Division
Financial Crimes Enforcement Network
PO Box 39
Vienna, VA 22183

Re: Proposal on the Beneficial Ownership Access and Safeguards Rule
Docket No. FINCEN-2021-0005; RIN 1506-AB49/AB59

Dear Madam or Sir:

The Iowa Bankers Association (IBA) is a trade association representing 98 percent of the almost 300 state- and national-chartered banks and federal thrifts operating in the state of Iowa. The IBA submits this letter to the Financial Crimes Enforcement Network (FinCEN) in response to its notice of proposed rulemaking on Beneficial Ownership Access and Safeguards, and Use of FinCEN Identifiers for Entities. The proposed rule aims to ensure that only authorized recipients have access to Beneficial Ownership Information (BOI); that authorized recipients use that access only for the purpose permitted by the Corporate Transparency Act (CTA); and that authorized recipients only disclose BOI in ways that balance protection of the security and confidentiality of the BOI. The CTA requires FinCEN revise the current CDD rule to bring it into conformity with the AML Act as a whole; account for FI access to BOI; and to reduce the unnecessary or duplicative burdens on financial institutions (FIs) and legal entity customers. Members of IBA support FinCEN's efforts to establish the Beneficial Ownership Secure System (the Registry) and its efforts to impose confidentiality and security restrictions of the storage, access, and use of BOI given the sensitivity of the reported information.

The IBA and its members are committed to supporting FinCEN's goals of implementing the CTA to combat illicit finance through the establishment of the Registry, however IBA members express concern about certain aspects of this proposed rule and urge FinCEN to make appropriate modifications to these sections before finalizing. Specifically, IBA members stress:

- FinCEN should not require FIs to access the Registry to meet BSA requirements related to beneficial ownership due to the unverified nature of BOI data, the fact that substantially similar information is already collected through existing CDD processes, and access to the Registry provides limited, if any, benefit.
- Due to the unverified nature of BOI data, FinCEN must provide a safe harbor for FIs that choose to voluntarily utilize the Registry if they rely on BOI contained therein, and clearly state FIs are not responsible for identifying or resolving discrepancies between information obtained during the FIs CDD process and BOI provided by the reporting company to the Registry.

- FinCEN must permit FIs accessing the Registry to share BOI on an enterprise-wide basis, with state regulators and with internal and external auditors for CDD purposes including establishing customer risk profiles, monitoring transactions, filing CTRs and SARs and any related BSA activities.

CTA MANDATE TO ELIMINATE DUPLICATE REQUIREMENTS

Congress intended for the CTA to "minimize the burden on the regulated community". In fact "Congress intended only one [beneficial ownership] reporting regime". IBA members are concerned the proposed rule falls short of meeting Congress's goal of eliminating duplicative requirements and reducing unnecessary regulatory costs and burdens. Before amendments to the Customer Due Diligence (CDD) rule are proposed by FinCEN, IBA members urge FinCEN to clearly state in both the Access Rule and amended CDD Rule that FIs are not required to access the Registry for CDD purposes for the reasons stated below:

- The CTA authorizes FinCEN to disclose BOI to certain entities, however it does not require FIs to access the registry to obtain BOI. The CTA mandated the rescission of all sections of 1010.230 except for section (a) which states "Covered financial institutions are required to establish and maintain written procedures that are reasonably designed to identify and verify beneficial owners of legal entity customers and to include such procedures in their anti-money laundering compliance program required under 31 USC 5318(h) and its implementing regulations". Since 2018, FI's have met this requirement through the establishment and maintenance of their CDD program and currently collect BOI similar to that which will be reported to FinCEN under the final rule. FIs have committed and continue to commit substantial resources to comply with the CDD Rule as currently written. These well-developed systems and processes already identify and verify the identities of their customers' beneficial owners and ensure FIs maintain accurate customer risk profiles to appropriately monitor for and report suspicious activity.
- Based on the proposed report format released by FinCEN, several fields allow the reporting company to select an "unknown" response further degrading the value of this data. Requiring FIs to access the Registry is unnecessarily duplicative.
- Requiring FIs to access the Registry increases the regulatory costs of collecting such data via personnel costs (e.g., need to hire and train specific individuals to access the Registry according to the proposed mandates and to manage the technical process associated with the Registry).

Therefore, since FIs already collect their customers' BOI through their own CDD processes, and in most cases this information is the same as contained in the Registry, IBA members urge FinCEN clarify that FIs are not required to access the Registry for any purpose including those related to CDD responsibilities.

ACCESS CONCERNS

In contrast to the broad BOI access granted to domestic and foreign government organizations and law enforcement, the proposal grants only limited BOI access for FIs. The CTA authorizes FinCEN to disclose a reporting company's BOI to a FI only to the extent that such disclosure facilitates the FI's compliance with CDD requirements and only if the reporting company first consents. FinCEN is not planning to permit FIs to run broad or open-ended queries or to receive multiple search results. While IBA members understand the sensitive nature of BOI, if a FI is required to collect BOI for all reporting companies opening new accounts, larger FIs may need to access the Registry dozens or hundreds of times per day. Allowing for batch requests that contain reporting company information sufficient to identify each specific reporting company would be needed similar to what is allowed when validating active duty status for Military Lending Act. In addition, if the modified CDD rule retains the requirement to collect

beneficial ownership with each new account or when the bank learns of a change of beneficial owners, this number will increase exponentially. With proper FI controls, an appropriately developed batch information retrieval process that contains specific fields to properly identify each reporting company would still reduce the overall risk of inappropriate use or unauthorized disclosure of BOI.

FinCEN states the CTA prohibits officers and employees of the US; State, local and Tribal agencies; and FIs and regulatory agencies from disclosing BOI reported under the statute. FinCEN therefore proposes to extend this prohibition to agents, contractors, and in the case of FIs, directors as well. IBA member banks find this restriction concerning. FinCEN asks whether a broader reading of the phrase "customer due diligence" is warranted under the CTA. Regardless of whether access to the Registry is voluntary or mandatory, IBA members believe a broader reading is warranted. The proposal provides a strict interpretation of CDD purposes by indicating the BOI can only be used to verify the identity of beneficial owners. As written, the proposal states it cannot be used for CIP purposes and implies that it also can't be used for the broader customer due diligence requirements, such as the requirement to understand the nature and purpose of customer relationships for the purpose of developing a customer risk profile and conduct ongoing monitoring to identify and report suspicious transactions. BOI could play a role in understanding the customer relationships and if suspicious transactions are identified, the filing of a Suspicious Activity Report. In addition, FI directors may have need of this information to determine risks related to SAR filings. Directors are subject to the BSA's strict confidentiality rules and therefore should not be restricted from BOI when appropriate. IBA members request FinCEN clarify in the final rule that BOI can be shared across FI enterprises including with directors and also used for all BSA requirements, if applicable, not just beneficial ownership.

The CTA further authorizes FinCEN to disclose BOI to Federal functional regulators and other appropriate regulatory agencies consistent with certain requirements. Information disclosed to these agencies would be limited to information that a relevant FI has already received directly from FinCEN. While the proposal defines Federal functional regulators as the Federal Reserve, OCC, FDIC, NCUA, SEC and CFTC, the rule leaves questions related to the definition of "other appropriate regulatory agencies". FinCEN states they believe the requirement in 31 USC 5336(c)(2)(C)(i) indicates such an agency must be authorized by law to assess, supervise, enforce, or otherwise determine the compliance of such FIs with customer due diligence requirements. The proposal questions whether this should include State banking regulators. IBA members agree these agencies should be **explicitly included** in this definition as state FIs are periodically examined for BSA as part of the bank's Safety and Soundness requirements by their state regulator.

Moreover, since the BSA requires FIs to have an independent audit of a FI's BSA program – including beneficial ownership - on a periodic basis, IBA members urge FinCEN to clarify the FI would be permitted to provide BOI received from the Registry to the FI's internal or external BSA auditor for this purpose. Such auditors are already subject to rigorous vendor due diligence processes. IBA members also suggest FinCEN provide details related to what would be required by the auditors prior to reviewing the BOI supplied to the FI for CDD purposes.

REGULATORY ACCESS TO SUPPORT CDD PROCESSES

As described in the proposal, functional regulators are allowed to access the Registry to examine FI's use of BOI obtained from the Registry as mandated under the CDD rule. The information shared with functional regulators will mirror that obtained by the FI at account opening. If use of the Registry is not required, there is no need for functional federal or state regulators to serve this role. Rather than an over emphasis on technical requirements of the Registry, functional regulators should focus on

compliance with CDD as the BSA requires. As indicated above, the information submitted to the Registry is no more reliable than the information already collected via the FI's current process. Understanding the appreciable risk that BOI obtained from the Registry could contradict BOI obtained directly from customers, functional federal and state regulators should not focus on these contradictions as they cannot be resolved and FI's should not be held responsible for such discrepancies. While allowing functional federal and state regulators to access the Registry for this purpose is acceptable, the value in doing so is non-existent.

Lastly, since the information collected by FinCEN via the Registry will not have been validated, the proposal should be amended to include a safe harbor from liability for FIs that choose rely on BOI obtained from the Registry.

REQUIREMENT FOR FIS TO OBTAIN CONSENT PRIOR TO ACCESSING THE REGISTRY

The CTA authorizes FinCEN to disclose BOI upon receipt of a request made by the FI with the consent of the reporting company to facilitate compliance with CDD requirements under applicable law. The CTA and the rule do not specify the mechanism for obtaining consent. The proposed rule leaves out important details such as whether written consent is required, how this consent must be obtained (e.g., in person, electronically), how often consent is required for a reporting company, and who is able to provide consent on behalf of the reporting company (e.g., person authorized to open the account, beneficial owners, etc.). IBA members strongly urge FinCEN to use its authority to modify the rule to more closely reflect 15 USC 1681 of the Fair Credit Reporting Act regarding permissible purpose of consumer reports. Rather than require an oral or written authorization from the reporting company, IBA members recommend FinCEN establish a set of criteria that would constitute consent, such as applying for an "account" as defined in the rule (e.g., deposit accounts, transaction or asset accounts, credit accounts, safe deposit box leases, etc.). When applying for these types of accounts, the reporting company is providing consent to access BOI via the Registry as part of the account opening process. The FI is already required under this rule to use the information involving the reporting company on whom the information is furnished solely for CDD purposes.

The proposal indicates FI's are well-positioned to obtain consent and to track any revocation of consent. The rule does not provide any details regarding the consent revocation requirements or timing. As with the questions stated above regarding consent, FinCEN must provide similar information if the reporting company can withdraw consent, such as who has the authority to withdraw consent, under what circumstances may consent be withdrawn, how is the FI notified of such withdrawal of consent and what is required of the FI when notification is received. As a reminder, for record retention purposes, the FI is required to retain BOI information for five years after information was last utilized to demonstrate compliance with the CDD rules related to beneficial ownership so such information should not be deleted if/when consent is withdrawn. IBA members urge FinCEN to provide these details prior to finalizing the rule allowing for additional comment.

LIMITATIONS ON RE-DISCLOSURE OF INFORMATION BY AUTHORIZED RECIPIENTS

Although the CTA expressly limits the circumstances under which FinCEN may initially disclose BOI to other agencies or FI's, the CTA does not specify the circumstances under which an authorized recipient of BOI may re-disclose the BOI to another person or organization. FinCEN generally states authorized re-disclosure would be subject to protocols identical to those applicable to initial disclosures of BOI from the beneficial ownership IT system to protect the security and confidentiality of BOI. FinCEN states they envision circumstances in which FI employees may have the need to share BOI with counterparts and uses the example if they are "working together to onboard a new customer". However, for FIs, FinCEN

is proposing to expressly permit the disclosure of BOI to other officers, employees, contractors and agents of the FI only if they are physically present in the U.S. While the example implies the sharing of BOI is limited only to those directly responsible for validating beneficial ownership for new customers, the subsequent statement appears to allow sharing of BOI with other employees and officers within the FI as long as they are located in the US. IBA members ask FinCEN to clarify if BOI must be limited to only those directly involved in opening the account or be available for viewing by other FI employees located in the US. Under the current CDD rule, it is common for a FI to retain BOI information on the FI's core system for help in completing CTRs, SARs and conducting periodic OFAC checks, as well as for record retention purposes related to CDD. If FinCEN intends to limit access to only those involved in opening an account for a new customer, this severely limits the ability of the FI to meet its other BSA and OFAC responsibilities and seems to imply some type of "firewall" would need to be created to limit the viewing of BOI information within the bank. IBA members are strictly against this requirement.

In addition, IBA members suggest FinCEN clarify what they mean by "physically present in the US". Does this mean the individual must be in the US at the time the BOI is shared, the individual must permanently reside in the US, the individual must work for a US company and reside in the US, etc.? If the FI is a US company and has employees physically present in the US but contracts with a third-party located outside of the US to assist with BSA functions including CDD requirements to identify beneficial owners, would this agreement then be a violation of this rule or would this non-US company fall under the requirements of a foreign requestor? As a reminder the FFIEC manual recognizes the need to conduct enterprise-wide CDD stating "The bank may choose to implement CDD policies, procedures and processes on an enterprise-wide basis. To the extent permitted by law, this implementation may include sharing or obtaining customer information across business lines, separate legal entities within an enterprise, and affiliated support units". This seems in direct contradiction to the proposed restrictions on BOI sharing.

LOSS OF ACCESS TO REGISTRY

The CTA includes numerous provisions limiting how BOI may be used. FinCEN iterates their general expectation that authorized recipients cannot obtain BOI for one authorized activity and use it for another unrelated purpose. FinCEN further states authorized recipients who fail to follow applicable use limitations would risk losing the ability to receive BOI. The rule does not provide details related to this statement. For FI's, would this claim of unauthorized access come from their primary Federal regulator and/or state regulator or from FinCEN? What would constitute grounds for loss of access to the Registry? If a FI loses access, how does this affect their responsibilities under the CDD rule if such access is required or even encouraged? IBA members urge FinCEN to develop a process for evaluation, rebuttal, and alternatives to meeting CDD requirements if Registry access is suspended or denied.

SECURITY AND CONFIDENTIALITY REQUIREMENTS FOR FIS

As proposed, section 31 CFR 1010.955(d)(2)(i) contains the safeguards applicable to FIs, including the security standards for managing the BOI data. FinCEN states they will take a principles-based approach by requiring FIs develop and implement administrative, technical, and physical safeguards reasonably designed to protect BOI as a precondition to receiving BOI. Although the rule would not prescribe any specific safeguards, it would establish that the security and information handling procedures necessary to comply with section 501 of the GLBA and applicable regulations issued under it to protect non-public personal information (if applied to BOI under the control of the FI) would satisfy this requirement - in addition to the Interagency Guidelines Establishing Interagency Security Standards issued by the FI's Federal prudential regulator. IBA members agree the same safeguards for NPPI are sufficient for BOI. The proposal appears to indicate BOI would not require a higher level of security than already in place,

confirming that there is no additional requirement to segregate BOI within the FI's systems allowing all employees to view and utilize BOI as described in the Rule. For this reason and those stated above, IBA members would like FinCEN to confirm no "firewall" expectations exist related to BOI and employee access, even if such employees are not involved in opening an account for a new customer.

Further, while the high standard security protocols required under the GLBA include physical and electronic access controls, encryption and training requirements, and testing as detailed in the Interagency Guidelines, FinCEN states in the proposed rule they expect FIs to provide training on these protocols and to require FI system users to complete FinCEN-provided online training about the system and related responsibilities as a condition for creating and maintaining system accounts. From these statements, it appears on-line FinCEN training is only required for FI employees who will access the Registry and not for employees that may view and utilize BOI retained on the FI's system as required under this rule and as expected under the CDD rule. IBA members request FinCEN clearly state this requirement. Further, IBA members bring to FinCEN's attention a significant understatement of the cost of the training requirement – specifically with the assumptions related to the range of authorized recipients per FI. FinCEN estimates a minimum of one FI employee and a maximum of six FI employees per FI would be required to undergo annual BOI training. Assuming the amended CDD rule still requires FIs to verify BOI with every new account, this number is grossly incorrect. Account, as defined in the CDD rule, would include deposit accounts, transaction or asset accounts, credit accounts just to name a few. Currently most FI's assign the BOI collection and validation responsibility to all front-line employees at each branch. If the same process is applied to access the Registry, this number could potentially require dozen, hundreds or even thousands of employees per FI – depending on size and number of locations – to receive such training as access to the Registry would most likely not be centralized in most situations but instead be spread over departments, branches and will include redundancies with back-up personnel. Therefore the estimated costs (training and time) are grossly understated. This increased cost directly contradicts Congress' intent for the CTA to minimize burden on the regulated community.

IMPLEMENTATION PERIOD

Section 6403 requires FinCEN maintain the information that it collects under the CTA in a confidential, secure and non-public database. It further authorizes FinCEN to disclose the information to certain government agencies, domestic and foreign, for certain purposes specified in the CTA, and to FIs to assist them in meeting their customer due diligence requirements. It further requires FinCEN revise the current regulation concerning customer due diligence requirements for FIs under 31 CFR 1010.230. FinCEN has already issued the reporting rule (which was recently finalized) and the proposed Access rule. FinCEN's final Beneficial Ownership rule provides for an effective date of January 1, 2024 with a CTA mandate to propose and finalize the modified CDD rule "within one year" of this date. IBA members stress the financial industry will need to know the revised CDD requirements in sufficient time to work with vendors, update their processes, validate their systems, provide required training and have an appropriate timeline for implementation (similar to the two years provided for the original CDD rule) prior to mandatory compliance date of the modified CDD rule. In essence, the third rule should carry a mandatory effective date no earlier than two years after revised CDD rules is finalized.

SUGGESTIONS FOR CDD RULE REVISION

As mentioned above, the CTA requires FinCEN revise the current CDD rule to bring it into conformity with the AML Act as a whole; account for FI access to the Registry to obtain the beneficial ownership information for AML/CFT and customer due diligence purposes; and to reduce the unnecessary or duplicative burdens on FIs and legal entity customers. Until FinCEN provides insights as to how it

intends to amend the beneficial ownership requirements of the CDD rule, it will be difficult for FIs to fully assess how this proposal and the reporting rule will affect their processes. However, since all three rules are interconnected, IBA members provide FinCEN the following considerations before finalizing the access rule and prior to issuing the proposed conforming CDD rule.

- TIMING REQUIREMENTS TO ACCESS THE REGISTRY
  FinCEN provides an example of sharing between employees when they are working together to onboard a **new** customer. This implies the FI may only be required to access BOI **one time** during the customer relationship and *not* with **each** new account or as the FI learned of beneficial ownership **changes** as required under the current CDD rule. If the FI is only required to collect BOI for the first ongoing relationship, this information will become stale overtime. If FinCEN updates the CDD rule requiring access to the Registry with only the first account opened by the reporting company, IBA members contend there is no business case that supports the bank receiving BOI at all. If FinCEN determines FIs must access the Registry, IBA members contend that the FI's only responsibility is to confirm the reporting company has properly registered. This further protects the BOI confidentiality and still allows law enforcement and Federal regulators to access this information for investigative purposes and confirm the FI verified registration. This further resolves the information sharing concerns within divisions of the FI, sharing with internal; and sharing with external auditors and/or third-parties who assist with BSA responsibilities. In addition, FinCEN should confirm the FI is not required to confirm registration for reporting companies with each new account or for reporting companies with existing relationships.

  If FinCEN retains the requirement for FI's to access the Registry as part of onboarding a new customer, FinCEN must clarify the acceptable and required timeframes for this access such as prior to opening the account, within XX days of opening the account, etc.

- SYSTEM AVAILABILITY
  FinCEN must address the requirements to access BOI when the Registry is unavailable such as in the case of a system outage, cyber-attack, software update, loss of internet connectivity, natural disaster, etc. Further, FinCEN should confirm availability of access in normal situations. Will the Registry be accessible 24/7 or will it only be accessible on business days as defined by various regulations? Will FI's be prohibited from opening accounts during periods of inaccessibility? Or is access required at all as stated in comments related to Table 2 (FinCEN states that as many as 16,671 different domestic agencies and FIs could "elect" to access BOI)? This suggests the use of the Registry may be voluntary and not required. IBA members urge FinCEN to clarify this statement and disclose FI responsibilities under CDD when access is not possible and/or when access is denied.

- BOI INCONSISTENT WITH INFORMATION PROVIDED BY REPORTING COMPANY
  If FI's will be responsible for validating BOI provided by reporting companies - as obtained from the Registry - against the information provided by the reporting company to the FI at account opening, IBA members remind FinCEN that such a mandate would result in the rule falling short of meeting Congress's goal of eliminating duplicative requirements and reducing unnecessary regulatory costs and burdens. Even if access is voluntary, FinCEN must address the process that is required when BOI received from FinCEN varies from that provided to the FI directly from the customer or when registration cannot be confirmed. IBA members are strongly against requiring the FI to access the Registry for CDD purposes and are equally against making the FI be

responsible for identifying and resolving discrepancies in BOI. If the final rule requires such action, what are examples of discrepancies that are permitted versus those that must be resolved? What time frame is required for resolution? Can the FI open the account with such discrepancy? Similarly, what process must the FI follow if the reporting company has not yet registered? Is the FI prohibited from opening the account if the reporting company has not registered? Is the FI required to continue to access the Registry to determine if the information was submitted or updated? Is the FI required to report such discrepancies to FinCEN? Is the FI required to file a SAR and under what circumstances? Again, IBA members strongly advise this responsibility should NOT fall on FIs but rather on FinCEN to resolve under their enforcement responsibilities related to the accuracy of information supplied by the reporting companies.

FINCEN OUTREACH

FinCEN describes their outreach to solicit comments on how to best implement the statutory authorizations and limitations regarding BOI collection and disclosure. Similar outreach - in a greater scale - will be required well in advance of the January 1, 2024 implementation date of the rule to educate companies as to the definition of a reporting company including the extensive and complex exemptions, beneficial owner, company applicant, and related reporting requirements and timeframes. FinCEN admits in the proposal their lack of resources. IBA members stress these education requirements should NOT fall on FIs but should be facilitated primarily via FinCEN with assistance from each states' Secretary of State or similar office. The definitions of reporting company and beneficial owner in this rule are highly complex and answers related to this definition and the rule's requirements should come from the source – FinCEN.

SUMMARY

Given the increased costs and compliance burdens associated with the Registry, requiring FIs to access the Registry for CDD purposes undermines Congress' intent to reduce the regulatory burden for regulated entities and would be of no value to FIs in furthering the efforts to identify and combat money laundering, terrorist financing and other illicit activities. Accordingly, FinCEN should not require FIs to access and rely on the Registry for CDD purposes related to beneficial ownership. FinCEN must therefore state in their CDD amendment proposal that covered FIs may, but are not required, to identify the beneficial owners of their legal entity customers via the Registry nor resolve any related discrepancies. For FIs that elect to access the Registry for this purpose, a safe harbor should be provided if they rely on such information. Additionally FinCEN should permit the use of BOI to meet other responsibilities under BSA including compliance with the Customer Identification Program Rule, the filing of Currency Transaction Reports, for transaction monitoring and suspicious activity reporting, and to share such information with state regulators, internal and external auditors and third-parties contractually obligated to assist the FI with CDD responsibilities regardless of where they are located. The policy objectives of the CTA are extremely important; however, the proposal presents a number of significant challenges and risks that, in some cases, may counterbalance the intended benefits and protections of the law. For questions related to this comment letter, FinCEN may contact me at jgliha@iowabankers.com or at 515-286-2981.

Respectfully Submitted By,

Julie Gliha

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