



February 13, 2023

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

RE: Beneficial Ownership Information Access and Safeguards, and Use of FinCEN Identifiers for Entities;
Docket Number FINCEN-2021-0005 and RIN 1506-AB49/AB59

Dear Policy Division:

Coastal Community Bank (“CCB”) appreciates the opportunity to comment on the Financial Crimes Enforcement Network’s (“FinCEN”) Notice of Proposed Rulemaking (“NPRM”) regarding Beneficial Ownership Information Access and Safeguards.¹ The NPRM would implement the requirement in Section 6403 of the Corporate Transparency Act (“CTA”) to enact access restrictions to Beneficial Ownership Information (“BOI”) reported to FinCEN. We appreciate and support FinCEN in its efforts to fight money laundering, terrorist financing, and other illicit activity.

CCB is a community bank that provides banking services to small and medium-sized businesses, professionals, and individuals through its 14 full-service branches in the Seattle, Washington area. CCB also provides Banking as a Service (“BaaS”) that allows broker-dealer and digital financial service companies, with which CCB partners, to offer banking services such as demand deposit and savings accounts, small loans, and credit cards to their customers. CCB is providing comments to make FinCEN aware of potential operational concerns and challenges with registry access by banks. CCB believes the concerns noted below are similar to concerns voiced by other banks, regardless of size, structure, or markets served. CCB encourages FinCEN to carefully evaluate several components of the NPRM that, if implemented, will severely limit the usefulness of the BOI registry to banks. Without adjustments, many banks will choose not to access the BOI registry.

Summary of Comments

This NPRM is the second of three regulations that FinCEN will issue to implement the CTA. The third regulation, which will amend the requirements of the current CDD Rule, is not yet proposed. Without a proposal for the third regulation, it is difficult to assess how the three rules will interact and impact banks such as CCB. However, the present proposed rule raises the prospect that the BOI registry will be

¹ Financial Crimes Enforcement Network, Department of the Treasury, Beneficial Ownership Information Access and Safeguards, and Use of FinCEN Identifiers for Entities, 87 Fed Reg. 77404 (December 16, 2022), <https://www.govinfo.gov/content/pkg/FR-2022-12-16/pdf/2022-27031.pdf>.

of minimal benefit to banks and could increase costs, cause confusion, and increase regulatory burdens faced by banks. Therefore, CCB requests that FinCEN:

1. allow banks to use BOI more broadly to fulfill their responsibilities under the Bank Secrecy Act (BSA), such as suspicious activity monitoring and reporting;
2. allow banks to share BOI with officers, employees, contractors, and agents of the FI located in foreign jurisdictions;
3. utilize robust technology solutions for access to the registry to ensure efficacy;
4. ensure consent requirements are clear for banks; and
5. reassess the burden estimate regarding obtaining customer consent.

Comments

CCB offers the following comments and recommendations regarding the NPRM:

1. FinCEN should allow banks to use BOI more broadly, including to fulfill their requirements under the Bank Secrecy Act (BSA), throughout the customer life cycle.

The background section of the NPRM indicates that accessing BOI in the registry “will assist banks in complying with AML/CFT and CDD requirements.”³ However, the proposed rule limits the use of BOI received from the registry to facilitating compliance with customer due diligence requirements under applicable law, which the NPRM defines as “the beneficial ownership requirements for legal entity customers at 31 CFR § 1010.230, as those requirements may be amended or superseded.”⁴ Under the existing regulatory framework, banks use BOI obtained from customers for several purposes in addition to compliance with 31 CFR § 1010.230, including conducting enhanced due diligence as described in the FFIEC BSA/AML Examination Manual⁵, and identifying and reporting suspicious activity under 31 CFR § 1020.320. Restricting the use of BOI information received from the registry to facilitate compliance with 31 CFR § 1010.230 significantly reduces the utility and value of the BOI [to the point that many banks will choose not to use the BOI registry].

Limiting the use of BOI information received from the registry also contradicts the fact that banks utilize BOI information received directly from customers for many reasons, including suspicious activity reporting and sanctions screening, among others. banks would have to create separate storage, processes, and indicators for BOI information obtained from the BOI registry versus BOI information received from the customer. This would require additional resources and training, and could lead to confusion.

2. CCB suggests that the NPRM be adjusted to allow banks to share BOI with officers, employees, contractors, and agents of the FI located in foreign jurisdictions

FinCEN proposes to expressly limit banks redisclosure of BOI to officers, employees, contractors, and agents of the FI *physically present in the United States*⁶ despite the absence of a clear statutory basis for this limitation.

³ <https://www.federalregister.gov/d/2022-27031/p-38>

⁴ <https://www.federalregister.gov/d/2022-27031/p-622>

⁵ <https://bsaaml.ffiec.gov/manual/AssessingComplianceWithBSARegulatoryRequirements/02>

⁶ <https://www.federalregister.gov/d/2022-27031/p-678>

CCB understands the potential risks of allowing access to BOI in foreign jurisdictions. However, many banks contract with US entities with operational centers in foreign jurisdictions to complete work that involves the handling of BOI and other sensitive information. Utilizing foreign contract workers is a common strategy among banks of all sizes. Not allowing access to BOI information outside the physical United States will decrease the usefulness of the information, will increase the cost of compliance for banks, and will cause a disruption in the industry as banks seek similar domestic arrangements.

We ask that FinCEN allow banks to redisclose BOI to officers, employees, contractors, and agents of the FI located in foreign jurisdictions so long as appropriate safeguards are in place to ensure the information is safeguarded.

3. CCB suggests that FinCEN utilize robust technical solutions for connection to the BOI registry to ensure banks and other users can connect and retrieve data quickly and with no or minimal manual intervention.

The utility of the BOI registry to banks will be influenced by how users will connect to, and retrieve data from, the registry. FinCEN estimates that one to two employees per small financial institution and five to six employees per large institution would access BOI⁷. In order for those estimates to be accurate, FinCEN must ensure the connection mechanism is fast and easy for the user and must involve minimal manual intervention. Even with a robust method in place, CCB finds the estimate of one to two employees per small financial institution and five to six employees per large institution to be substantially underestimated. As an example, an institution such as CCB with 14 branches will require at least one employee per branch and several back-office employees to have access to the BOI registry. Larger banks with vast branch networks will require significantly higher than the five to six estimated in the NPRM.

4. FinCEN should ensure customer consent requirements are clear and that there is clear guidance regarding what actions banks should take when customers do not consent.

FinCEN should ensure clear guidance is provided to banks regarding consent requirements to help avoid confusion. Banks are required to collect and verify BOI under existing regulations. Customers may be confused when banks ask for consent to access BOI through the registry while at the same time being required to provide BOI directly to banks, regardless of consent. The guidance should be clear about what actions banks should take when customers do not consent to their BOI being accessed through the registry. If clear guidance is not provided, banks may revert to always filing a SAR in those situations, thus unnecessarily increasing the cost and burden on banks.

5. FinCEN should reevaluate the burden estimate regarding banks obtaining customer consent.

CCB believes the estimate of 10 hours in year 1 to update customer consent forms and processes is underestimated. Many banks utilize online account opening, which requires significantly more time to update forms and processes than simply updating a .doc or .pdf template. Updating an online form requires technical development work, testing, and data storage modifications as well as training employees regarding how to access customer consent. In addition, banks that work with affiliates or agents will incur additional expenses as each of their systems is different and requires different

⁷ <https://www.federalregister.gov/d/2022-27031/p-586>

integration and workflows. While small banks will require less than 10 hours, the majority of institutions will require significantly more than 10 hours to implement the required changes.

Conclusion

CCB appreciates the opportunity to comment on the proposed rule and supports FinCEN's efforts to effectively implement the CTA. Unfortunately, CCB believes that the proposed rule will, as proposed, be of limited usefulness to banks and could increase costs and burdens on banks due to reporting exemptions and the proposed restricted use of information obtained from the BOI registry. As proposed, many banks will choose not to utilize the BOI registry. CCB trusts that FinCEN will carefully consider the comments received from CCB and other banks to ensure the final rule meets the objectives of the CTA.

Sincerely,



Jeff Ketelhut
EVP, BSA Officer
Coastal Community Bank