

Feb 14 2023

Financial Crime Enforcement Network

Re: Request for Comments, Docket Number FINCEN-2022-27031 – Notice of Proposed Rulemaking Regarding Beneficial Ownership Information Access and Safeguards, and Use of FinCEN Identifiers for Entities

Submitted electronically through the Federal E-rulemaking portal: <https://www.regulations.gov> by Dr Henry Balani on behalf of Encompass Corporation

Dear Acting Director Himamauli Das:

We thank you for the opportunity to respond to the request for comments that provide feedback on the NPRM. We have provided comments on our changes below. My contact details can be found at the end of this document.

Introduction: To provide context for our comments, Encompass is a regulatory technology (RegTech) firm, working closely with financial institutions (FIs) and other regulated firms globally with the specific purpose of identifying beneficial ownership as part of a customer due diligence process. We represent clients globally, across all major financial centers, including the USA. Encompass automates the governing compliance policies to access bank approved data sources, as required, to provide a full picture of a target legal entity for risk assessment purposes. The full picture includes a complete ownership hierarchy, list of shareholders and related percentages, officers, controllers, and Ultimate Beneficial Owners. While our comments are submitted as an individual technology provider, these views are reflective of the industry as a whole, which provides various data and technology solutions to US based financial institutions that look to comply with anti-money laundering regulations and Bank Secrecy Act requirements.

Under II.Background (A) Access to Beneficial Ownership information, states that “broadly, and critically, BOI can identify linkages between potential illicit actors and opaque business entities, including shell companies”. We wholeheartedly agree with this statement and have built a commercial enterprise designed to support financial institutions (FIs) in creating these linkages by accessing multiple, public data sources of company information. FIs find Encompass’ platform extremely valuable in their customer due diligence (CDD) processes, identifying complex corporate structures, their shareholders and beneficial owners as part of risk determination during onboarding. Our comments are geared towards making the FinCEN database accessible to regulatory technology (RegTech) firms like ours that support FIs in their fight against financial crime. Proposals that limit access only create environments with less accurate information, leading to sub-optimal outcomes (rejecting new customers) at best and to inadvertently onboarding high-risk criminal corporations at worst.

The following are our comments geared towards this perspective (in order of priority):

Access: Access as currently outlined is restricted to law enforcement and relevant financial institutions (pages 77409-77410). There are, however, other stakeholders that need to have access to support both groups in their fight against financial crime. RegTech firms like ours provide technology tools that enable FIs to identify potential illicit ultimate beneficial owners. Limiting access to the new Beneficial Ownership Information (BOI) database will limit the effectiveness in fighting

financial crime. Even assuming access is granted, the proposed access rule limits financial institutions from identifying corporate structures in the pursuit of potential shell companies. The rule indicates financial institutions will have direct access ‘albeit in more limited form’. Without the ability to run open-ended queries, the ability to accurately identify corporate structures is limited. Currently, many banks use web queries which are cumbersome and inaccurate. Without proper access, the ability to run accurate, consistent and reliable searches will be made more difficult.

Further to the access issue, proposed 31 CFR 1010.955©2)(ii) states that “FinCEN envisions that there are circumstances in which FI employees may have a similar need to share BOI with counterparts”. However, FinCEN proposes to limit FIs to sharing BOI with others, including other officers, employees, contractors, and agents of the FI. Note that this also limits the FI from working with RegTech providers of data analysis tools that can identify ultimate beneficial owners through matching algorithms. Accurate understanding of corporate structures is possible with comprehensive data sets, of which the FinCEN BOI database can play a key part. Recognizing that FinCEN is looking to prohibit FIs from moving BOI information outside the US, strict access credentialing requirements can be established for stakeholders with legitimate interests in fighting financial crime, which, in this case, includes RegTech firms like Encompass. Note, a secondary consequence is that FIs that are dependent on offshore service providers for their CDD would also need to move teams onshore, which will be prohibitively costly, driving up the cost of compliance even higher and potentially passed on to US based customers. In today’s global economy, geographic location while one consideration, does not guarantee the security of BOI. Rather with credentialing and other technological security in place, one can limit such security concerns. Current ‘safe harbor’ rules can also be applied here.

Consent of reporting company: Under the NPRM, disclosure of BOI is “made by a financial institution subject to customer due diligence requirements, with the consent of the reporting company, to facilitate the compliance of the financial institution with customer due diligence requirements under applicable law” (31 U.S.C 5336©(2)(8)(iii)). The challenge is the phrase ‘with the consent of the reporting company’. Money launderers and illicit actors who deliberately form shell companies to engage in criminal activity will see this as an opportunity to further complicate their identity. After all, why would these types of reporting companies provide consent knowing full well they deal in crime? Withholding their consent would certainly benefit them and make it even more challenging for financial institutions and their partners to identify the relevant corporate structures and ascertain risk. The absence of such data will mean possible misclassification of these criminal reporting companies as potentially low risk, inadvertently enabling money laundering. ‘Consent of the reporting company’ should be removed.

Verification of the beneficial ownership information: While the onus is to verify the named BOI is an actual person, the gap here is to prove the named BOI is the actual BOI of the reporting company in question. Verification needs to include both identifying the named BOI is an actual person and that the BOI is tied to the reporting company. This seems a carryover of the current CDD rule where regulated financial institutions only verify the natural person but not that they are the beneficial owner. We understand reconciliation of the CDD rules will be in the next phase of the NPRM and look forward to further elaboration.

Inconsistency of BOI between the FinCEN database and State registrars: Currently, many FIs rely on BOI obtained from company incorporation information from State registers. States are the source of incorporated companies and as such represent the ‘golden source’ for FIs in their CDD processes. Upon availability of the FinCEN database, FIs will begin to use this database in addition to the States. Inconsistency between the two sources of information will invariably arise. Given the current access



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rules proposed, FIs will be limited in their ability to validate company structures and will either reject a new customer due to inconsistencies or make an onboarding decision with inconsistent data. FIs need guidance as to the authoritative source of information. An unintended consequence here is that legitimate firms looking to establish bank accounts will be rejected, through no fault of their own.

FinCEN identifier: Issuing an identifier creates another hurdle in being able to identify the ultimate beneficial owner of a company. The additional complication is the use of an 'intermediate entity' that allows the use of its FinCEN identifier in lieu of the reporting company further complicating the ability to track down the ultimate beneficial owner especially when there are multiple corporate structures intentionally created to obfuscate the true identity. Introducing 'intermediate entities' only seeks to further complicate the tracing effort.

We are grateful for the opportunity to provide a response and welcome any clarification you require prior to finalizing the recommendation.

Regards,

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