



February 14, 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-2021-0005-0462 and RIN 1506-AB59; RIN 1506-AB49

To Whom It May Concern:

This letter is submitted to the Financial Crimes Enforcement Network ("FinCEN") on behalf of Alloy¹ and Middesk, Inc. ("Middesk") in response to FinCEN's notice of proposed rulemaking requesting comments regarding access by authorized recipients to beneficial ownership information ("BOI") that will be reported to FinCEN pursuant to Section 6403 of the Corporate Transparency Act ("CTA") (the "Proposed Rule").

I. About Alloy and Middesk

Alloy helps some of the most innovative banks and fastest growing fintech companies grow and scale operations by allowing them to weed out illicit actors, and identify, onboard, and service more good customers while reducing risk of fraud. Founded in 2015, Alloy has grown to meet the rising demand for identity tools that help companies comply with their BSA/AML obligations, and fight fraud while onboarding new customers in the US and abroad. Over 360 companies use Alloy's API-based platform to connect to more than 170 data sources and automate identity decisions during account origination, monitor them on an ongoing basis, and make credit underwriting decisions.

¹ First Mile Group, Inc. dba Alloy.

Middesk provides a suite of identity solutions designed for the largest banks, lenders, and financial service companies to meet their onboarding and ongoing corporate diligence requirements. Founded in 2019, Middesk helps more than 250 companies conduct due diligence on millions of US businesses using corporate formation documents, corporate registration data, beneficial ownership, and global sanctions lists. Middesk also offers a wide range of operational solutions for businesses, including assisting with corporate registration and tax and other business filings to support companies with various corporate reporting requirements.

We believe Alloy and Middesk have a unique perspective on the impact of, and opportunities posed by, the Proposed Rule because of our experience as service providers that partner with financial institutions and fintech companies to help them satisfy their compliance requirements and make informed decisions for onboarding, transaction monitoring, and credit underwriting, including through integrations with a wide range of data sources. We offer the following responses to questions posed in the Proposed Rule.

II. Summary of Our Comments on the Proposed Rule

We appreciate the opportunity to provide our recommendations as to how FinCEN's regulations can ensure that disclosure of BOI to authorized recipients is accomplished in a manner that balances the protection of the security and confidentiality of BOI with the objective of making BOI available for the purposes specified in the CTA. In particular, we offer the following observations as FinCEN moves forward on its rulemaking.

- FinCEN should clarify that a third party-service provider acting on behalf of a covered financial institution ("financial institution") is permitted to request and receive from FinCEN BOI maintained in the beneficial ownership IT system ("BOI System"). Many financial institutions today use service providers as trusted intermediaries to access data maintained by public and private entities, as well as other data products in furtherance of the financial institutions' compliance with applicable legal requirements. Given that many financial institutions use third-party service providers to assist them with their customer due diligence ("CDD") and other regulatory obligations, permitting financial institutions to request and receive BOI via third-party service providers would facilitate financial institutions' ability to comply with these requirements (and with any other legal obligations as may be permitted by the final rule) more efficiently and effectively. Providing this authorization supports Congress' intent of reducing the burden on financial institutions in meeting their CDD requirements.
- In addition, FinCEN should expand the category of organizations to which financial institutions can redisclose BOI they receive from the BOI System to include third-party service providers that are engaged to assist the financial institution for the purpose of complying with their CDD obligations (or as otherwise permitted by the final rule). In particular, the rule should permit a financial institution to provide BOI retrieved from the BOI System to certain third-party service providers that are subject to existing or similar data security requirements and expectations under the Gramm-Leach Bliley Act ("Qualified Service Providers"), either directly on behalf of financial institutions or through

redisclosure, provided the financial institution only does so for the purposes and in the manner permitted under the rule. Alternatively, FinCEN should clarify that “agents” and “contractors” include Qualified Service Providers.

- FinCEN should allow financial institutions to request and receive BOI through application programming interfaces (“APIs”) consistent with industry standard API practices. By developing APIs and granting access rights only to those institutions and Qualified Service Providers permitted by the final rule, FinCEN can allow authorized parties to request and receive BOI securely in real time. Retrieving BOI via API would also enable financial institutions and Qualified Service Providers to securely pull BOI directly into their existing systems used for CDD and other compliance requirements to better support financial institutions in meeting their CDD requirements.
- FinCEN should acknowledge that use of the BOI System for permissible purposes (currently compliance with CDD obligations under the Proposed Rule) is optional for financial institutions. This would clarify that FinCEN is not creating an affirmative obligation for financial institutions to request or use BOI to comply with CDD requirements or under any other circumstances.
- While we are not taking a position on whether to broaden the definition of “customer due diligence” requirements under applicable law, if FinCEN considers broadening the definition, FinCEN should consider the value that BOI provides to financial institutions in addressing regulatory obligations beyond just compliance with the 2016 CDD Rule, such as fraud detection, customer identification and verification, and OFAC sanctions screening.

III. Responses to Specific NPRM Questions

2. *Can the language of the rule text be improved? If so, how?*

To help financial institutions meet their regulatory compliance obligations in an efficient manner, we believe the rule should accurately reflect the established ecosystem participants that financial institutions currently work with to meet these compliance obligations under applicable law. Many financial institutions use third-party service providers to access databases in connection with meeting their legal compliance obligations (such as the 2016 CDD Rule). Financial institutions also use third-party service providers to conduct various operations that are integral to their compliance activities, such as processing and storing sensitive information retrieved from various databases.

The Proposed Rule correctly states that existing Gramm-Leach-Bliley requirements are well-suited to protecting sensitive information generally and BOI in particular. We note, in addition, that financial regulators have promulgated clear requirements and expectations regarding the measures financial institutions should take to ensure that their service providers operate in a manner consistent with applicable Gramm-Leach-Bliley requirements. As companies who are committed to responsible innovation, we believe it is appropriate for service providers to which financial institutions re-disclose BOI to be subject to existing Gramm-Leach-Bliley security

requirements and expectations. Under such requirements, a Qualified Service Provider with access to BOI would have substantially the same data security protections as the financial institution itself, and therefore allowing a Qualified Service Provider to request and receive BOI, on behalf of a financial institution or through re-disclosure, would not jeopardize the security and confidentiality of the BOI.

Permitting financial institutions to request and receive BOI via Qualified Service Providers would facilitate the financial institutions' ability to meet their compliance obligations and more efficiently use BOI without incurring substantial and unnecessary implementation costs or delays. Resources like the BOI System are much more useful to financial institutions if they can be accessed through the Qualified Service Providers that financial institutions already use to conduct such operations and activities.

Under the proposed text of 31 CFR § 1010.955(b)(4)(i), FinCEN would be permitted to disclose BOI to a financial institution subject to CDD requirements under applicable law, and Section 1010.955(c)(2)(ii) would permit any director, officer, employee, contractor, or agent of a financial institution who receives information disclosed pursuant to paragraph (b)(4)(i) to disclose such information to another director, officer, employee, contractor, or agent within the United States of the same financial institution for the particular purposes or activity for which such information was requested, consistent with the security and confidentiality requirements of the Proposed Rule. Paragraph (b)(4)(i) can be improved by a clear acknowledgement that FinCEN may disclose BOI to a Qualified Service Provider that requests BOI on behalf of a financial institution that is authorized to receive the information, to the extent the Qualified Service Provider only requests BOI in accordance with the instructions of the financial institution and upon the reporting company's consent.

Similarly, paragraph (c)(2)(ii) can be improved by adding Qualified Service Providers to the list of entities acting on behalf of a financial institution that can request and receive BOI from FinCEN and by clarifying that a financial institution may redisclose BOI to Qualified Service Provider for the particular purposes or activity for which such information was originally requested from the BOI System.

Alternatively, if FinCEN intends such Qualified Service Providers to be contemplated as "contractors" or "agents" of financial institutions, we suggest that FinCEN clarify this intention in the final rule. Absent such clarification, the ability to obtain BOI from the BOI System may be unnecessarily burdensome for financial institutions that rely on third-party provider-hosted systems for critical compliance insights and decision-making. If financial institutions have to maintain such BOI outside of their third-party hosted compliance systems, rather than alleviating compliance burdens, the final rule could result in the unintended consequence of increasing the compliance risk; it may be more difficult for the financial institution to form an integrated, complete risk profile of a customer because the BOI and other relevant data reside in different systems.

Additionally, not permitting access to BOI by financial institutions' Qualified Service Providers may increase costs for financial institutions, reduce efficiencies, and create a competitive imbalance between large financial institutions that have the resources to develop IT systems in-

house and smaller ones that rely on service providers. Many financial institutions rely on third-party service providers for operational technology that improves their ability to comply with regulatory requirements while lowering costs. As the Federal Reserve Board has stated, "Operational technology solutions aim to reduce potential for error, create efficiencies, and allow for the reallocation of resources to other bank functions."² If a financial institution cannot access the BOI System through the third-party service providers it relies on for operational technology, the financial institution may be forced to redirect resources from other bank functions or otherwise incur new costs. Permitting financial institutions to use Qualified Service Providers to access the BOI System would therefore create a more level playing field, enhance CDD compliance across the industry, and meet Congress' objective of reducing financial institutions' burden of complying with the CDD requirements.

3. Does the proposed rule provide sufficient guidance to stakeholders and the public regarding the scope and requirements for access to BOI?

FinCEN should acknowledge that requesting BOI contained in the BOI System from FinCEN for permissible purposes is optional for financial institutions. This would clarify that FinCEN is not creating an affirmative obligation for financial institutions to use the newly created BOI System to request BOI from FinCEN under any specific circumstances. Financial institutions may elect in their discretion to access the BOI System to meet their CDD obligations under applicable law to the extent permitted by the 2016 CDD Rule (or as otherwise permitted by the final rule), but should be allowed to satisfy those obligations by other means as well. The rule should not create a regulatory expectation that a financial institution must access the BOI System to meet its CDD compliance obligations. For example, a financial institution might choose to continue collecting information directly from its customers to comply with the 2016 CDD Rule rather than requesting BOI from FinCEN, which would enable the financial institution, with a single request, to obtain the information and use it for additional compliance and anti-fraud purposes beyond compliance with the 2016 CDD Rule. This would be particularly important if FinCEN adopts the narrow definition of "customer due diligence requirements under applicable law" included in the Proposed Rule. Otherwise, the financial institution may be in a burdensome and inefficient position of having to obtain information twice – once from the BOI System for the narrow purpose of complying with the 2016 CDD Rule, and a second time for other lawful purposes such as OFAC sanctions screening and fraud detection.

12. FinCEN proposes to define "customer due diligence requirements under applicable law" to mean the bureau's 2016 CDD Rule, as it may be amended or superseded pursuant to the AML Act. The 2016 CDD Rule requires FIs to identify and verify beneficial owners of legal entity customers. Should FinCEN expressly define "customer due diligence requirements under applicable law" as a larger category of requirements that includes more than identifying and

² Board of Governors of the Federal Reserve System, "Community Bank Access to Innovation Through Partnerships," Sept. 2021, pg. 4, available at <https://www.federalreserve.gov/publications/files/community-bank-access-to-innovation-through-partnerships-202109.pdf>.

verifying beneficial owners of legal entity customers? If so, what other requirements should the phrase encompass? How should the broader definition be worded? It appears to FinCEN that the consequences of a broader definition of this phrase would include making BOI available to more FIs for a wider range of specific compliance purposes, possibly making BOI available to more regulatory agencies for a wider range of specific examination and oversight purposes, and putting greater pressure on the demand for the security and confidentiality of BOI. How does the new balance of those consequences created by a broader definition fulfill the purpose of the CTA?

While this should not be viewed as a recommendation to broaden the definition of “customer due diligence requirements under applicable law,” if FinCEN decides to expand the definition of “customer due diligence requirements under applicable law” or the permissible use of BOI, we recommend that FinCEN consider expanding the permissible use to address a range of compliance obligations. Financial institutions can, on an optional basis, use BOI to better understand the nature and purpose of customer relationships, conduct ongoing transaction and customer monitoring to identify and report suspicious transactions, assist with sanctions screening, and improve ongoing customer due diligence through access to updated customer information. For example, many financial institutions monitor the frequency of changes to specific elements of a customer’s identity information as a tool in preventing and detecting fraud.

18. In proposed 31 CFR 1010.955(c)(2)(v) [note that we believe FinCEN may have intended to refer to clause (ix), not clause (v)], FinCEN proposes to establish a mechanism to authorize, either on a case-by-case basis or categorically through written protocols, guidance, or regulations, the re-disclosure of BOI in cases not otherwise covered under 31 CFR 1010.955(c)(2) and in which the inability to share the information would frustrate the purposes of the CTA because of the categorical prohibitions against disclosures at 31 U.S.C. 5336(c)(2)(A). Are there other categories of redisclosures that FinCEN should consider authorizing? Are there particular handling or security protocols that FinCEN should consider imposing with respect to such re-disclosures of BOI?

As discussed in response to Question 2, financial institutions use third-party service providers to process customer-related information to assist their compliance with CDD requirements and other obligations under applicable law. FinCEN should consider clarifying that a financial institution can authorize disclosure of information obtained from the BOI System to Qualified Service Providers for the particular purposes or activity for which such information was originally requested from the BOI System.

29. What specific issues should FinCEN address via public guidance or FAQs? Are there specific recommendations on engagement with stakeholders to ensure that the authorized recipients, and in particular, State, local, and Tribal authorities and small and mid-sized FIs, are aware of requirements for access to the beneficial ownership IT system?

FinCEN should provide BOI through APIs consistent with industry standard API practices. Financial institutions commonly integrate data from third-party sources into the platforms and

systems they use to conduct due diligence and compliance activities. This data facilitates informed decision-making by financial institutions and more efficient and effective compliance with applicable legal requirements. By developing an industry standard API approach to requesting and receiving BOI from the BOI System, FinCEN would enable financial institutions to follow best industry practices for safe and seamless access to data. Specifically, we suggest that financial institutions or their Qualified Service Providers should be able to make the request to FinCEN for BOI through an API call. As part of an API-based approach, FinCEN should return the “electronic transcript” contemplated by the Proposed Rule in a format that is compatible with industry standard API practice so that the requested BOI is readily usable by financial institutions. FinCEN could consider as an example the API-based eCBSV service maintained by the Social Security Administration,³ which permits access by a financial institution or a service provider, subsidiary, affiliate, agent, subcontractor, or assignee of a financial institution and returns results via API in response to API-based queries. More generally, we suggest that FinCEN engage with financial institutions and industry stakeholders to develop API-based access to the BOI System consistent with existing best industry practices.

We are grateful for the opportunity to comment on this important rulemaking and appreciate the FinCEN staff’s time in considering our comments. We look forward to working with you in the future. Please do not hesitate to contact me if you have any questions.

Sincerely,

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³ <https://www.ssa.gov/dataexchange/eCBSV/>