



February 14, 2023

Submitted Electronically

Policy Division
Financial Crimes Enforcement Network,
P.O. Box 39, Vienna, VA 22183
FINCEN-2021-0005

Re: Beneficial Ownership Information Access and Safeguards, and Use of FinCEN Identifiers for Entities; RIN 1506-AB49/AB59

Dear Ladies and Gentlemen,

The Wisconsin Bankers Association (WBA) is the largest financial trade association in Wisconsin, representing nearly 200 state and nationally chartered banks, savings and loan associations, and savings banks. WBA appreciates the opportunity to comment on the Financial Crimes Enforcement Network's (FinCEN) proposed rulemaking (proposal) 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).

Introduction

FinCEN has proposed to implement the strict protocols on security and confidentiality required by the CTA to protect sensitive personally identifiable information (PII) reported to FinCEN. The proposal explains the circumstances in which specified recipients would have access to BOI and outlines data protection protocols and oversight mechanisms applicable to each recipient category. The proposal presents a framework and protocols designed to meet the requirements of the CTA, and ensure that BOI reported to FinCEN, and received by authorized recipients, is subject to certain controls, confidentiality protections and restrictions, and audit and oversight.

Because financial institutions will have access to BOI to maintain compliance with customer due diligence (CDD) requirements, Wisconsin banks will need to consider how to adjust their procedures, training, and technology, in order to conform to FinCEN's finalized framework. WBA offers the following comments in response to FinCEN's specific requests, as well as providing general recommendations.

Discussion

Pursuant to the CTA, FinCEN may release BOI upon request by a financial institution made pursuant to "customer due diligence requirements," by consent of the reporting company. However, the CTA does not specify the method of consent, nor does it define "customer due diligence requirements." FinCEN has proposed that "customer due diligence requirements" shall mean FinCEN's CDD regulations, and also that a financial institution would be responsible for obtaining a reporting company's consent, based upon the rationale that financial institutions are best suited to do so through existing processes and direct contact with the reporting company. While FinCEN considered a broader definition of "customer due diligence requirements," it opted to propose a narrower definition to mean FinCEN's CDD regulations. WBA encourages FinCEN to reconsider a broader definition. As discussed in more detail below, financial institutions use BOI for CDD purposes, as well as other BSA scenarios and "know your customer" procedures such as customer identification procedures. A broader definition would accommodate requests made pursuant to those broader procedures.

WBA also reminds FinCEN to be mindful that financial institutions will need to modify those procedures to now accommodate requests, consider appropriate technologies within existing processes of communication, train staff, and implement new consent processes. This burden will take time and resources, and WBA requests that FinCEN write its final rules in a manner that is clear and straightforward enough to accommodate this task.

Another aspect of the proposal includes limitations on re-disclosure of information. FinCEN has proposed re-disclosure protocols, which would clarify circumstances under which an authorized recipient of BOI may re-disclose to another person or organization. As discussed above, there exists a range of circumstances where a financial institution may need to use BOI information reported by other entities for its own BSA-related purposes. As a result, WBA appreciates that FinCEN has extended re-disclosure authority to financial institutions. As proposed, re-disclosure of BOI for financial institutions would be additionally limited to other officers, employees, contractors, and agents of the financial institution physically present in the United States. WBA believes that prohibiting BOI from moving outside the United States is a reasonable limitation, while permitting financial institutions to utilize BOI where necessary.

While the CTA does not specifically address safeguards financial institutions must implement for requesting BOI, FinCEN has authority to implement necessary safeguards and has proposed a principles-based approach by requiring financial institutions to develop and implement administrative, technical, and physical safeguards. These safeguards must be reasonably designed to protect BOI as a precondition for receiving BOI. Rather than propose specific safeguards, FinCEN has proposed that the security and information handling procedures would comply with the standard for security set under section 501 of the Gramm-Leach-Bliley Act (GLBA). FinCEN has also proposed that financial institutions be required to make certain certifications in writing for each BOI request (and suggests the use of a checkbox. As FinCEN recognizes, this will require new protocols, systems, and technological considerations as well as training. WBA approves of FinCEN's approach to security and confidentiality requirements based upon GLBA, and requests FinCEN to remain mindful of the burdens acknowledged in the proposal when finalizing its security requirements.

Conclusion

WBA appreciates FinCEN's careful consideration of comments received throughout its efforts to implement the CTA. It is necessary to take steps to maintain the highest security and confidentiality protocols to protect sensitive information while achieving the information sharing necessary to combat ongoing financial crimes. Financial institutions play a vital role in this step, and will continue their part, while taking steps necessary to maintain confidence in the security of information sharing systems. In addition to achieving the goal of a secure database of beneficial ownership information, WBA urges FinCEN to be mindful of the time and resources it will require of financial institutions to adjust to additional requirements.

WBA appreciates the opportunity to comment on the Outline.

Respectfully,



Rose Oswald Poels
President/CEO