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Via Email: Federal E-rulemaking Portal: https://www.regulations.gov

Re: Docket Number FINCEN-2021-0005 and RIN 1506-AB49/AB59.

Ladies and Gentlemen,

The following comments are provided on behalf of the Independent Bankers Association of Texas (IBAT), a trade association that represents the independent, community banks of Texas.

We would like to note that it is difficult to provide comments when one crucial piece of the puzzle is missing – that being the anticipated revisions to the current Customer Due Diligence (CDD) rule. Our comments may be impacted by what is in proposed changes to the CDD rule.

Access to Beneficial Ownership Information:

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"Consistent with the CTA, the proposed rule would only permit FIs to request BOI from FinCEN for purposes of complying with CDD requirements under applicable law, and only with the consent of the reporting company to which the BOI pertains. FinCEN thus anticipates that an FI, instead of being able to run open ended queries in the beneficial ownership IT system or to receive multiple search results, would submit identifying information specific to a reporting company and receive in return an electronic transcript with that entity's BOI. This more limited information-retrieval process would reduce the overall risk of inappropriate use or unauthorized disclosures of BOI."

It is bewildering that community banks, who are already obliged to collect information under existing requirements, would, when operating under the NPRM, have to get the explicit *consent* of the reporting company prior to obtaining that same information.

So what changed to make that same information subject to heightened restrictions simply because FinCEN and not a bank is collecting that information? Those requirements to obtain consent will add an unnecessary layer of complexity.

Integrating with Current CIP:

If banks are going to be required to get the consent of a reporting entity prior to obtaining that information, any final rule should integrate with current Customer Identification Program rules (CIP) and allow a bank to obtain that consent to obtain BOI information by including language in a notice in the bank's account opening terms and conditions. That section of the NPRM should be revised to explicitly allow a bank, again consistent with existing notice requirements under CIP §1020.220(a)(5)(i) which requires that a bank's CIP must include procedures for providing bank customers with adequate notice that the bank is requesting information, to verify their identities. Specifically, any final rule should allow a bank to obtain and demonstrate consent at the time of account opening or in any other customer-acknowledged agreement retained by the bank.

Terms, definitions and scope should be consistent to the extent possible between any BOI final rule and existing Customer Identification Program rules.

Staged Access:

…snip

"Without the availability of additional appropriated funds to support this project and other mission-critical services, FinCEN may need to identify trade-offs, including with respect to guidance and outreach activities, and the staged access by different authorized users to the database. FinCEN is currently identifying the range of considerations implicated by potential budget shortfalls and the tradeoffs that are available and appropriate."

What does 'staged access' mean? Any final rule should address specifics about what that 'staged access' is and how it will impact community banks operating under the requirements.

Communications of Updated or Revised BOI

The initial reporting of beneficial ownership provides a point-in-time snapshot of the then current roster of a reporting company's beneficial owners. But the CTA and reporting final rule also provided for updating that initial report "if there is any change with respect to required information previously submitted to FinCEN concerning a reporting company or its beneficial owners, including any change with respect to who is a beneficial owner or information reported for any particular beneficial owner."

There is nothing in the NPRM about banks getting notice from FinCEN when an already-queried reporting company corrects or amends its BOI.

The new section 5336(b)(1)(F) provides that BOI should be highly useful to banks "to facilitate the compliance of the financial institutions with anti-money laundering, countering the financing of terrorism, and customer due diligence requirements under applicable law." However, if a bank's customer files an amended or corrected BOI report with FinCEN, FinCEN will have current and accurate BOI on that reporting company, but the reporting company's bank will not know an amended or corrected BOI was reported. The banks will have information that is stale, incomplete or wrong. That is the opposite of "highly useful".

Suspicious Activity Reporting (SAR) Safe Harbor

Banks should be provided with a specific 'safe harbor' in any final rule that requesting BOI information somehow serves to alert reporting companies that a bank is or may file a SAR.

Accessed BOI Differing from Existing BOI

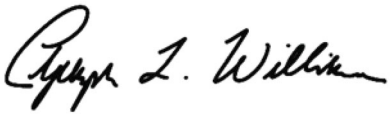
Having information collected at two different points in time by two different collectors and compilers of that information is going to lead to differences and discrepancies. There is nothing in the NPRM about what banks should do when BOI accessed from FinCEN disagrees with or does not match information provided directly by the reporting company to the bank. Community banks found the CDD rule particularly cumbersome with a number of banks noting that it made front line staff 'attorneys in fact' when identifying the various reporting company structures, who is a 'beneficial owner' and who has 'control.' Section 6403(d) of the CTA is clear that the new BOI rules will not repeal the requirement that banks identify and verify beneficial owners under CIP rule 31 CFR 1010.230(a).

By the time the BOI database is functioning, and reporting companies are submitting BOI reports and banks are accessing BOI reports, those banks will likely have obtained beneficial ownership information on all of their legal entity customers. Although the number of potential beneficial owners under the CDD rule differs from the number of potential beneficial owners under the CTA, and the definitions of, and exceptions to, legal entity customers and reporting companies differ, banks will have to manage two versions of BOI.

There is nothing in the proposed rule about what banks are supposed to do if the accessed BOI that comes back is not consistent with what they have obtained or know about their customer (or prospective customer). Community banks urge FinCEN to consider this to be part of the third rule that will bring the current CDD rule into conformity with the current BOI reporting rule and expected final BOI access rule.

Finally, community banks will need to develop risk tolerance provisions and risk assessments; develop policies, procedures, processes, and systems; and train their staff for accessing the BOI data well before the revised CDD Rule is developed by FinCEN. We encourage FinCEN to make additional 'Small Entity Compliance Guides' and FAQs available well in advance of any effective date.

Sincerely,



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