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

Re: *FINCEN-2021-0005 and RIN 1506-AB49/AB59*

To Whom It May Concern:

The Money Services Round Table (“TMSRT”)¹ appreciates the opportunity to provide comments on the notice of proposed rulemaking (the “NPRM”)² regarding access by authorized recipients to beneficial ownership information that will be reported to FinCEN pursuant to § 6403 of the Corporate Transparency Act (the “CTA”).³ TMSRT members, as Money Services Businesses (“MSBs”) as defined by the Bank Secrecy Act (the “BSA”), are particularly interested in the NPRM’s provisions regarding disclosure by the Financial Crimes Enforcement Network (“FinCEN”) of beneficial ownership based on a request by a financial institution. As described herein, we respectfully believe that FinCEN should make amendments to provide that MSBs should be eligible to receive beneficial ownership information from FinCEN if certain conditions are met.

Background

The NPRM would implement the provisions of the CTA that authorize certain recipients to receive disclosures of identifying information associated with reporting companies, their beneficial owners, and their company applicants (“Beneficial Ownership Information”). See 31 U.S.C. 5336(c). Of particular interest to TMSRT members, 31 U.S.C. 5336(c)(2)(B)(iii) authorizes FinCEN to disclose Beneficial Ownership Information upon (among other conditions) receipt of “a request 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.”

FinCEN notes in the NPRM that this statutory language “leaves unspecified both the mechanism by which consent should be registered and the meaning of the term ‘customer due diligence requirements under applicable law.’” Nevertheless, based on this provision, the proposed rule would limit access to Beneficial Ownership Information only to financial institutions subject to the specific customer due diligence requirements for beneficial owners of legal entity customers set forth at 31 CFR 1010.230. These

¹ TMSRT was founded in 1988 as an information sharing and advocacy group for the nation’s leading non-bank money transmitters. TMSRT is a member of the Bank Secrecy Act Advisory Group and its members are money services businesses as defined by the Bank Secrecy Act, 31 CFR Chapter X. TMSRT members are also licensed in all U.S. states that have nonbank licensing laws currently in effect. Current members are RIA Financial Services, Sigue Corporation, American Express Travel Related Services Company, Inc., Western Union Financial Services, Inc. and Western Union International Services, Inc., and MoneyGram Payment Systems, Inc.

² 87 Fed. Reg. 77404 (Dec. 16, 2022).

³ Pub. L. No. 116-283 (Jan. 1, 2021) § 6403; 31 USC § 5336.



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regulations apply to certain types of financial institutions, such as banks, but do not apply to money services business (“MSBs”) as defined by 31 CFR 1010.100(ff).

For the reasons set forth below, TMSRT respectfully believes that MSBs should be included as a type of financial institution to which access to Beneficial Ownership Information is made available.

TMSRT Comments

As MSBs, TMSRT members are required to implement risk-based anti-money laundering compliance programs reasonably designed to prevent the MSB from being used to facilitate money laundering and the financing of terrorist activities.⁴ An MSB’s BSA/AML compliance program must include, among other elements, “policies, procedures, and internal controls reasonably designed” to assure compliance with the BSA that include provisions for complying (to the extent applicable to the MSB) with requirements for verifying customer identification, filing reports, creating and retaining records, and responding to law enforcement requests.⁵

Furthermore, MSBs not only conduct risk-based due diligence including verifying information of their customers (e.g., commercial and consumer senders of funds), but also of their authorized agents. In this regard, FinCEN has expressly affirmed that principal MSBs “are required to develop and implement risk-based policies, procedures, and internal controls that ensure adequate ongoing monitoring of agent activity, as part of the principal’s implementation of its AML program.”⁶ And, FinCEN also interprets the BSA to require that, “When conducting monitoring of their agents, principals must, at a minimum: *Identify the owners of the MSB’s agents*; Evaluate on an ongoing basis the operations of agents, and monitor for variations in those operations; and Evaluate agents’ implementation of policies, procedures, and controls.”⁷

While MSBs are not covered financial institutions under the customer due diligence rules requiring the identification and verification of beneficial owners of legal entity customers at the time a new account (as defined by the rule) is opened,⁸ MSBs may be required by their BSA/AML compliance programs—including in the context of authorized agent onboarding—to identify and verify the beneficial ownership of legal entities. Therefore, financial institutions that are MSBs should be permitted access to beneficial ownership registry information maintained by FinCEN.

In this regard, as the NPRM notes⁹:

FinCEN considered interpreting the phrase “customer due diligence requirements under applicable law” more broadly to cover a range of activities beyond compliance with legal obligations in FinCEN’s regulations to identify and verify beneficial owners of legal entity customers. FinCEN’s separate Customer Identification Program regulations, for example, could be considered customer due diligence requirements. FinCEN decided not to propose this broader approach, however. The bureau believes a more tailored approach will be easier to administer, reduce uncertainty about what FIs may access BOI under this provision, and better protect the security and confidentiality of sensitive BOI by limiting the circumstances under which FIs may access BOI. That said, FinCEN solicits comments on

⁴ 31 CFR 1022.210(a).

⁵ 31 CFR 1022.210(d)(1)(i).

⁶ FIN-2016-G001, Guidance on Existing AML Program Rule Compliance Obligations for MSB Principals with Respect to Agent Monitoring (March 11, 2016).

⁷ *Id.* (emphasis added).

⁸ 31 CFR 1010.230.

⁹ 87 Fed. Reg. at 77404 (Dec. 16, 2022) (internal citations omitted).



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whether a broader reading of the phrase “customer due diligence requirements” is warranted under the framework of the CTA, and, if so, how customer due diligence requirements should be defined in order to provide regulatory clarity, protect the security and confidentiality of BOI, and minimize the risk of abuse.

We respectfully believe that the NPRM characterizes what constitutes “legal obligations in FinCEN’s regulations to identify and verify beneficial owners of legal entity customers” in an overly narrow manner. As noted, TMSRT members, as MSBs, are required to have in place risk-based AML compliance programs that include “Policies, procedures, and internal controls” that include provisions for complying with the requirements of the BSA, “including, to the extent applicable to the money services business, requirements for . . . verifying customer information.”¹⁰ TMSRT members also understand FinCEN’s 2016 guidance regarding agent monitoring to impose upon MSBs an obligation to identify the beneficial owners of their legal entity MSB agents. (If FinCEN does not believe that MSBs are required to do so, we respectfully suggest that FinCEN should rescind or amend the 2016 guidance).

Accordingly, MSBs should be permitted access to beneficial ownership registry information maintained by FinCEN provided that:

- The reporting company has consented to the disclosure of its information;
- The MSB is licensed as a money transmitter under state money transmissions laws and is acting as a principal MSB in making the request;
- The MSB has established written policies and procedures, as part of its BSA-required risk-based AML compliance program, to identify and verify beneficial owners of legal entity customers as required by its customer and authorized agent due diligence programs (if applicable); and
- The MSB uses the beneficial ownership registry information solely to verify beneficial ownership information for purposes of meeting the MSB’s obligations under the BSA, including, but not limited to, conducting due diligence on agents, counterparties, and customers.¹¹

As acknowledged by FinCEN in the NPRM, “[a]ccess by authorized recipients to BOI reported under the CTA would significantly aid efforts to protect U.S. national security and safeguard the U.S. financial system from such illicit use.”¹² For the reasons set forth herein, TMSRT respectfully believes that the protection of the U.S. financial system will be enhanced by including MSBs within the scope of financial institutions eligible to access Beneficial Ownership Information, and that MSBs can be granted this access without increased risk to the security and confidentiality, and overall protection, of this information. If FinCEN requires any clarification or has any questions regarding these comments, TMSRT would be happy to engage in further discussions on this matter.

Sincerely,

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¹⁰ 31 CFR 1010.230(d)(1)(i)(A).

¹¹ We note, however, that if the beneficial ownership registry information does not match information provided to the financial institution, the financial institution should be able to act on that information to conduct an appropriate investigation, including through coordination with appropriate law enforcement personnel.

¹² 87 Fed. Reg. 77404 (Dec. 16, 2022).