



February 28, 2020

Policy Division  
Financial Crimes Enforcement Network  
P.O. Box 39  
Vienna VA 22183  
*Via Federal Portal: <http://www.regulations.gov>*

Re: Docket Number FINCEN-2019-0007  
OMB Control Number 1506-0070

Dear Policy Division:

Prior to May 11, 2018, Western Alliance Bank<sup>1</sup> implemented processes to collect and maintain information regarding the identification and verification of beneficial owners of legal entity customers pursuant to the Beneficial Ownership Requirements for Legal Entity Customers<sup>2</sup> (“Beneficial Ownership Rule” or “Rule”). Since that time, Western Alliance Bank has encountered ambiguities and difficulties in complying with the Beneficial Ownership Rule that were not foreseen at the time it was implemented, and do not serve a justifiable public purpose.

Western Alliance Bank opposes the renewal without change of the Beneficial Ownership Rule, and respectfully proposes the following changes:

Verification of identities of beneficial owners

Western Alliance Bank recommends FinCEN eliminate the requirement that financial institutions verify the identities of beneficial owners. The requirement to verify the identity of such individuals presents additional costs such as tracking, comparing against third party sources, and recordkeeping, without providing corresponding value.

The Beneficial Ownership Rule requires covered financial institutions to verify the identity of each beneficial owner of a legal entity customer according to risk-based procedures to the extent reasonable and practicable. These procedures must contain at a minimum the elements required for verifying the identity of individual customers under the CIP Rule (name, physical address, date of birth, and government-issued identification number), provided that if documentary verification is used, the financial institution may substitute photocopies or reproductions of identifying documents. The Rule permits a covered financial institution to rely on the information supplied by its customer regarding the identity of its beneficial owners, absent information that would call into question the reliability of the customer’s representations.

Given that a financial institution is entitled to rely on its customer’s representations regarding the identity of its beneficial owners, the requirement to verify such identities does not safeguard against misrepresentation by the customer. The specific authorization to permit photocopies of identifying

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<sup>1</sup> Western Alliance Bank operates through the following divisions: Alliance Association Bank, Alliance Bank of Arizona, Bank of Nevada, Bridge Bank, First Independent Bank, and Torrey Pines Bank.

<sup>2</sup> 31 CFR 1010.230

documents anticipates that beneficial owners will generally not appear in person at a bank location where their appearance may be compared to their photographs. Accordingly, the use of such documents, or the use of non-documentary verification, does not indicate the individual's connection to or ownership in the customer.

#### Timing of beneficial ownership collection

Western Alliance Bank also recommends that FinCEN clarify when a bank is required to collect beneficial ownership information for new customers and existing customers opening new accounts.

Currently, the Beneficial Ownership Rule requires banks to identify beneficial owners of new or existing customers "at the time a new account is opened." However, in practice, the process of account opening, including collection of KYC information, credit underwriting, and structuring of financial services, often occurs over a period of time. Western Alliance Bank may begin collecting customer documentation days or weeks before an account is actually opened. The Rule is unclear on how much time may lapse between when a beneficial ownership certification is executed and collected and when the Bank opens the account. FinCEN should modify the Rule to allow banks a reasonable time before or after account opening to identify beneficial owners.

Further, the Rule requires banks to confirm beneficial ownership information every time a new account is opened for an existing customer, regardless of how recently the customer last opened an account. We recommend that the Rule be modified to either require beneficial ownership information only at initial account opening, or to require that it be reconfirmed no more frequently than annually.

#### Trusts that own 25% or more of the equity interests of a legal entity customer

Where a trust owns 25% or more of the equity interests of a legal entity customer, the Beneficial Ownership Rule requires that the customer identify the trustee as a beneficial owner. However, the Rule is ambiguous whom to identify when the trustee is itself a legal entity. FinCEN should specify its expectations when a trustee is a legal entity and whether the Rule requires that the legal entity trustee or some other natural person be identified.

#### Entities that are not considered legal entity customers

Western Alliance Bank requests that the list of legal entities not subject to the Beneficial Ownership Rule be clarified for consistency. For example, the Rule excludes from the definition of legal entity customer a subsidiary that is at least 51% owned by certain domestic publicly traded companies. The Rule does not, however, exclude subsidiaries of other excluded entities, such as entities registered with the Securities and Exchange Commission, pooled investment vehicles operated or advised by exempt financial institutions, and state regulated insurance companies. These inconsistencies lead to confusion and impose an unnecessary burden to collect beneficial ownership information on entities where such information may be publicly or independently available.

In the time since the Beneficial Ownership Rule was implemented, Western Alliance Bank has observed that certain requirements are overly burdensome or do not fulfil what we believe to be their intended

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purposes. Accordingly, Western Alliance Bank opposes FinCEN's proposed renewal without change of the Beneficial Ownership Rule.

Sincerely,

Steven M. Reback  
Director of Enhanced Due Diligence  
Western Alliance Bank  
[sreback@westernalliancebank.com](mailto:sreback@westernalliancebank.com)