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Via Regulations.gov Federal eRulemaking Portal

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

Re: FinCEN Advance Notice of Proposed Rulemaking on Beneficial Ownership Information Reporting Requirements (Docket Number FINCEN-2021-0005 and RIN 1506-AB49)

Dear Sir or Madam:

The Consumer Data Industry Association ("CDIA") is pleased to offer its comments in response to the above-docketed Advance Notice of Proposed Rulemaking ("ANPRM") by the Financial Crimes Enforcement Network ("FinCEN") concerning the implementation of the Corporate Transparency Act ("CTA") requirements relating to the reporting, maintenance, and disclosure of beneficial ownership information. CDIA greatly appreciates the opportunity to comment on this proposed rulemaking and provide feedback on issues impacting the consumer reporting industry.

CDIA is the voice of the consumer reporting industry, including the nationwide consumer reporting agencies, regional and specialized consumer reporting agencies, background check and residential screening companies, and others. CDIA promotes the responsible use of consumer data to help consumers achieve their financial goals and to help businesses, governments and volunteer organizations assess risk and avoid fraud. CDIA members help to ensure fair and safe transactions for consumers, facilitate competition, locate crime victims and fugitives, reunite consumers with lost financial assets, help tenants secure apartments, assist employers in the hiring process, and expand consumers' access to financial and other products suited to their unique needs.

CDIA's Interest in the ANPRM

CDIA has an interest in the issues raised in the ANPRM because its member consumer reporting agencies ("CRAs") provide services to assist financial institutions, including banks and other creditors, with their customer due diligence ("CDD") and other know your customer ("KYC") efforts. CDIA-member CRAs would therefore be affected by these beneficial ownership reporting provisions and would seek, as we explain below, to access reported beneficial ownership information.

CDIA's Comments on Issues Raised in the ANPRM

CDIA makes the following comments on issues raised in the ANPRM, with reference to the questions presented in the ANPRM.

1. CRA and other service providers to financial institutions will need access to the beneficial ownership information in the FinCEN database.

Question 35 asks how FinCEN can make beneficial ownership information available to financial institutions with CDD obligations so as to make that information most useful to those financial institutions.

Financial institutions rely on a range of service providers to underwrite, originate, and process financial transactions, including CDIA-member CRAs. CRAs perform essential underwriting and other risk management functions for financial institutions, with whom they are directly integrated through underwriting systems. These include performing processes as part of a financial institution's CDD efforts. Because financial institutions rely on CRAs to perform CDD functions, CRAs need access to the same beneficial ownership information as financial institutions do, and on the same terms. Providing such access to service providers like CRAs will ensure the smooth functioning of credit and other financial services.

Question 35(b) asks whether financial institutions should be able to use the beneficial ownership information for other customer identification purposes, with the consent of the Reporting Company.

Financial institutions rely on CRAs broadly to perform customer identification or KYC functions more broadly than CDD Rule functions, including identity verification and fraud detection functions as part of their larger risk management procedures. Beneficial ownership information would be useful to financial institutions seeking to prevent fraud and identity theft and ensure the safety and soundness of the financial markets, outside of CDD Rule functions. CRAs performing identity verification and fraud detection functions for financial institutions are experienced with securely accessing, managing, and safeguarding sensitive information, like Military Lending Act data from the Department of Defense and Social Security Administration data. CRAs are well positioned to assist with obtaining and processing consents from the relevant Reporting Company to be able to use this data for customer identification functions in a safe and confidential manner.

2. FinCEN should collect and make available to financial institutions and their CRA service providers sufficient identifying information to match the beneficial ownership information to individuals.

Question 26 asks how FinCEN can best protect the privacy interests of an individual's desire to use a FinCEN identifier and the identifying information that must be provided to FinCEN to obtain the FinCEN identifier.

FinCEN needs to collect the same identifying information on an individual requesting a FinCEN identifier that would be required to report beneficial ownership information without a FinCEN identifier. Use of FinCEN identifiers could otherwise become an avenue for Reporting Companies to shield the identity of their beneficial owners. FinCEN may protect the privacy interests of the individual by thus permitting them to provide to the Reporting Company a FinCEN identifier instead of other unique identifying numbers.

Further, FinCEN should make the underlying identifying information available to financial institutions and their service providers, such as CRAs, accessing the database for CDD or other functions. Because financial institutions are subject to the CDD Rule and otherwise perform KYC checks, financial institutions will need access to the underlying identifying information of beneficial owners on whom reports were filed using FinCEN identifiers. CRAs, who assist with these efforts in connection with financial institutions' credit operations, will need equivalent and interoperable data access.

Specifically, where beneficial owner information is reported to FinCEN with a FinCEN identifier, CRAs will need to be able to access identifying information other than the FinCEN number—that is, a unique identifying number from an acceptable document, per 31 U.S.C. § 5336(b)(2)(a)(iv)(I)—so that it can link the information to other information in the CRA's possession. Such CRA service providers would be able to access such information under strict confidentiality expectations.

3. FinCEN should authenticate the unique identifying numbers submitted in reports and before issuing a FinCEN identifier.

Question 24 asks what steps FinCEN should take to ensure that the beneficial ownership information being reported is accurate and complete.

Question 31(b) asks how, if at all, FinCEN should verify an individual's identity before providing a FinCEN identifier.

In order to ensure that the beneficial ownership information is most useful to CDD and KYC efforts and, ultimately, to preventing money laundering, terrorist financing, and fraud, CDIA strongly urges FinCEN to verify independently the unique identifying number, both in connection with any report and before issuing a FinCEN identifier. FinCEN should also verify any other information submitted in an application for a FinCEN identifier. With use of a unique FinCEN identifier, there is serious risk of misuse of identifying information, whether individuals attempt to share FinCEN identifiers, obtain multiple FinCEN identifiers, or otherwise. FinCEN should verify the unique identifying numbers through third party sources. Depending on the nature of the unique identifying number, this could be through a partnership with the Department of State, state motor vehicle authorities, other federal or state agency, or a private data provider.

CDIA-member CRAs have extensive experience in maintaining the accuracy and completeness of data. FinCEN should also consider leveraging CRAs' expertise to link individuals to companies through public and private data sources. The use of unique identifying numbers and cross-checking with other available data sources on a regulator basis (e.g., monthly) will further enhance the accuracy of the database.

4. FinCEN should limit the collection of data consistent fair information privacy principles and institute good data management practices.

Question 10 asks what information FinCEN should require a Reporting Company to provide about itself to ensure the database is highly useful to authorized users.

Question 34 asks what security and privacy measures FinCEN should implement to protect the beneficial ownership information and limit its use to authorized purposes.

FinCEN is subject to the Privacy Act of 1974, which protects and limits the disclosure of information from systems of record under the control of a government agency. 5 U.S.C. § 552a(a)(5). Among other things, the Act requires that agencies maintaining a system of record to maintain in its records only such information about individuals as is relevant and necessary to accomplish a purpose of the agency required by statute; establish rules of conduct for the design, operation, and maintenance of the system of record; and disclose in the Federal Register the policies and practices of the agency relating to storage, retrievability, access controls, retention, and disposal. 15 U.S.C. § 552a(f).

In deciding what information a Reporting Company must provide about itself and in setting up and managing the database of beneficial ownership information, CDIA urges FinCEN to follow the fair information privacy principles of collection limitation (to that which is relevant, necessary, and proportionate to the purposes), data quality (ensuring accuracy and currency), use limitation (limiting purposes to that which is disclosed publicly and permitted by law), and security safeguards. Further, CDIA urges FinCEN to consider and establish good database management practices, taking in account good data quality practices for a database where the underlying data regarding beneficial ownership will be constantly changing, including data consistency checks, updates, corrections, and disposal, before standing up the database. CDIA members are experienced with database management and are willing to talk about standing up such a system.

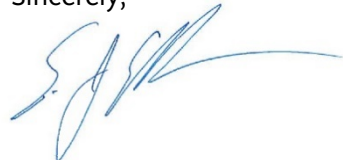
Conclusion

CDIA appreciates the opportunity to comment and provide the perspective of the credit reporting industry on this ANPRM and how we can best support the financial services industry.

CDIA would be happy to make itself available for a meeting to discuss any of the above issues or any other issues that come up in the development of a proposed rule or the standing up of the new system.

Please contact us if you have any questions or we can provide any additional information.

Sincerely,



Eric J. Ellman
Senior Vice President, Public Policy & Legal Affairs