Anti-Money Laundering and Countering the Financing of Terrorism Program Requirements

Email: regs.comments@federalreserve.gov. Include docket and RIN numbers in the subject line of the message. Docket No. R-1835 and RIN No. 7100-AG78.

My name is Kent M. Franzen, VP Henderson State Bank, Henderson Nebraska. We are a small community Bank of about $320 Million in assets with a largely agricultural client base and less than 50 staff members total, including part time. As such, existing regulations and any additional ones are a significant burden for our Bank. I also wear the hats of the head of IT and Security in addition to Compliance which includes BSA/AML/CFT. My experiences in community Banks begins as a loan officer in 1985. I am usually directly involved when we have CTR or SAR related activity and I have filed almost all these reports for our Bank since 2015. The passages in italics are taken directly from the NPRM. The plain text that follows is our comments on the quoted topic in question:

The proposed rule would add CDD as a required component of the Agencies' AML/CFT program rule. CDD is currently a required component in FinCEN's AML program rule, and, therefore, banks are already required to comply with CDD under FinCEN's rules. The inclusion of CDD in the Agencies' proposed rules would mirror FinCEN's existing rule and reflect the Agencies' long-standing supervisory expectations. Long before FinCEN amended its AML program rule to expressly include the CDD component requirement, the Agencies had considered CDD an integral component of a risk-based program, enabling the bank to understand its customers and its customers' activity to better identify suspicious activity.

HSB Response;
This paragraph is very upsetting. That we are going to be forced to continue CDD collection after FinCEN is compelling each of our legal entity customers to self-register BOI information directly to FinCEN is redundant, wasteful of time and expense, and insulting to the regulated customer and institution alike. It illustrates a level of arrogance and condescension toward the regulated that borders on malice. It is bad enough that we are going to have to cover the costs of money and labor for the 1071 and the 1033 rules in process, but to not get relief on CDD certifications when FinCEN is collecting well-nigh the same information directly from our clients, is entirely and completely unacceptable! Your estimate of the value in CDD information to community Banks as partial justification to continue the duplicative collections misses the mark by the proverbial country mile. We did not collect CDD information before the 2016 rule because there is no return of value in this data for our Bank. We started it because the Government, through FinCEN, made us, and now you are going to make us continue this wasteful effort when there is no need to do so.

I just received the link to "Notice to Customers: Beneficial Ownership Information Reference Guide." If you go to the second page, where FinCEN has clearly compared the BOI self-certification to the FinCEN mandated bank CDD collections. It shows that these two data collection methods vary by only two fields of material consequence. These are the SSN numbers of the beneficial owners, and the Entity type. So, if FinCEN adds two fields (SSN# and Entity Type) to its BOI data collection you will have everything you need and the covered customers and the covered lenders would be able to stop repeating this data collection with every new note or account. Plus, the lenders can stop the corresponding, training, record retention, auditing and other compliance costs that are mandatory with CDD collection and reporting. This change at FinCEN should not even be an hour of work for a competent programmer.

In a letter to Secretary Yellen from the House of Representatives, Committee on Financial Services dated April 7th 2021 states in part as follows;

We write regarding the Department of Treasury and the Office of Financial Crimes Network (FinCEN)'s recent announcement to begin implementing Division F of the 2021 National Defense Authorization Act. Division F reflects the bipartisan agreement reached by House and Senate Republicans and Democrats to establish a new beneficial ownership reporting paradigm as part of the Department of Treasury's anti-money laundering program. As FinCEN fulfills its responsibilities to promulgate new regulations, we cannot over emphasize the importance of adhering to congressional intent.

To be clear, beneficial ownership information is the personally identifiable information (PII) of a company's beneficial owners. The bipartisan, bicameral provisions contained in Division F are specifically aimed at eliminating costly, onerous reporting requirements on small businesses while codifying strong protections to safeguard the PII of business owners. These provisions ensure the new reporting paradigm is focused on fighting bad actors such as human traffickers, money launderers, and State actors such as China. In fact, the Hudson Institute back in 2018 noted "[t]he CCP, like other adversarial regimes, routinely hides behind shell companies to exploit the global financial system in pursuit of geopolitical objectives."[1] Thus, it is critical that FinCEN implement the statute as intended, with a particular focus on the following.

I **I.Section 5336(b)(4)(B)(ii) - Minimize the Burdens on Small Businesses**

First, FinCEN must ensure that any new reporting burdens on small businesses are minimal. Minimization under the statute includes rescinding the current beneficial ownership reporting regime set out currently in 31 CFR 1010.230(b)–(j). Congress intended only one reporting regime – thus, any new regulation must first rescind the current reporting paradigm before it is replaced with any new provision.

So, the House of Representatives, Committee on Financial Services specifically told the Treasury, of which FinCEN is a division, that there was to be one and only one system for BOI filing. How can FinCEN, and there for the Treasury Dept, in mandating both systems, be seen as anything but willfully insubordinate to Congress, if not in direct violation of law?

Incorporation of AML/CFT Priorities

1. What steps are banks planning to take, or can they take, to incorporate the AML/CFT Priorities into their AML/CFT programs? What approaches would be appropriate for banks to use to demonstrate the incorporation of the AML/CFT Priorities into the proposed risk assessment process of risk-based AML/CFT programs?

a. Is the incorporation of the AML/CFT Priorities under the risk assessment process as part of the bank's AML/CFT program sufficiently clear or does it warrant additional clarification?

b. What, if any, difficulties do banks anticipate when incorporating the AML/CFT Priorities as part of the risk assessment process?

HSB Response;

We believe that incorporating the priorities into the Risk Assessment (RA) is sufficient, as any finding of significant or moderate risk would logically require additional attention towards mitigation of the risk, if that is possible with the abilities and resources of the bank in question. Our response is predicated on the hope and belief that the new or changed priorities will be small in numbers per year, simple in concept, with concise and plainly written language.

We do have significant concerns here with the pace, brevity, clarity, and content of new proclamations of priority changes or additions. Will FinCEN deadlines upon the regulated for incorporation of these priorities be commensurate with the difficulty and complexity of changes in question? In short, I am very concerned that FinCEN, being given total discretion to issue changes in AML/CFT priorities, will be incapable of self-restraint. If new priorities are decreed without due consideration as to the workload and mitigation expenses such priority shifts will likely impose, either individually or in the aggregate, upon the regulated community banks with limited staff and time resources, this could overload us.

Risk Assessment Process

2. Please comment on how and whether banks could leverage their existing risk assessment process to meet the risk assessment process requirement in the proposed rule. To the extent it supports your response, please explain how the proposed risk assessment process requirement differs from existing practices to address current and emerging risks, react to changing circumstances, and maximize the benefits of compliance efforts.

HSB Response;
At present the HSB RA is a do-it-yourself spreadsheet. I can add rows of new risks or priorities, however it works best with limited word counts per topic/cell or legible printing becomes an issue. I would hope that FinCEN would exhibit restraint and strive to issue concise priority changes in limited numbers so that we may continue with this format for the RA.
One question for FinCEN, are you going to reevaluate the entire pool of AML/CFT priorities annually and cull those no longer needed? Will this culling process be transparent to the regulated? Or do you intend to allow these to accumulate until the pile is too big to manage for a community Bank?

3. Should a bank's risk assessment process be required to take into account additional or different criteria or risks than those listed in the proposed rule? If so, please specify.

HSB Response;
We believe any Bank should be able to add or subtract risks at their discretion, without mandate. Anything less is not prudent and useful to the Bank in question.

4. The proposed rule requires a bank to update its risk assessment using the process proposed in this rule. Are there other approaches for a bank to identify, manage, and mitigate illicit finance activity risks aside from a risk assessment process?

HSB Response;
We see the risk assessment merely as the documentation vehicle for the consideration, evaluation, and mitigation decisions of the bank overall risk management. Once this is documented, it is the actual follow-up on the mitigations where the rubber meets the road, as they say.

7. The proposed rule would require banks to consider the BSA reports they file as a component of the risk assessment process. To what extent do banks currently leverage BSA reporting to identify and assess risk?

HSB Response;
I object to the requirement, as any BSA/AML/CFT officer worth their pay is already quite aware of the Bank's CTR and SAR filings, at least in community banks. Forcing us to repeatedly list them on the RA, even in a summation, is just wasting my time and my Board's time, as they are already reviewing each CTR/SAR at the first Board meeting after submission. I would say that any trends or significant new risks identified in CTR/SAR reporting should be responded to in the RA, but under bank discretion. In other words, banks should be encouraged to do this, if they detect anomalies or trends in the filings. Requiring banks to regurgitate information they already know on the RA, will only cultivate contempt for the regulation and the regulator.

8. For banks with an established risk assessment process, what is the analysis output? For example, does it include a risk assessment document? What are other methods and formats used for providing a comprehensive analysis of the bank's ML/TF and other illicit finance activity risks?

HSB Response;
We format the spreadsheet so that it prints in landscape mode. I would like to make it easier to read, but I have not found a way to do that as of yet, and still present the content in a lucid manner.

Updating the Risk Assessment
9. The proposed rule uses the term "material" to indicate when an AML/CFT program's risk assessment would need to be reviewed and updated using the process proposed in this rule. Does the rule and/or Supplementary Information section warrant further explanation of the meaning of the term "material" used in this context? What further description or explanation, if any, would be appropriate?

HSB Response;
We would appreciate at least 3 or 4 examples of what FinCEN and the FDIC consider to be "material" regarding this proposal for a community bank and an additional 3 or 4 examples of situations considered by FinCEN and the FDIC to be "insignificant".

10. The proposed rule requires a bank to review and update its risk assessment using the process proposed in this rule, on a periodic basis, including, at a minimum, when there are material changes to its ML/TF risk profile. Please comment on the time frame for the bank to update its risk assessment using the process proposed in this rule. What time frame would be reasonable? What factors might a bank consider when determining the frequency of updating its risk assessment using the process proposed in this rule? For example, would the frequency be based on a particular period, such as annually, the bank's risk profile, the examination cycle, or some other factor or period?

HSB Response;
Unless the regulation is more restrictive in its requirements, HSB will continue with an annual review of the RA. Depending upon our perception as to the material nature of any new AML/CFT priorities to our Bank, as they are issued by FinCEN, we will revise our RA as needed, in addition to or in substitution of the routine annual review. We request the ability in the regulation to present only the new or revised priorities that are material to our Bank to the Board and we plan to do so in a reasonable time after they are issued.

Unless these priorities are complex, I would estimate that we would need less than 90 days to get this done under currently foreseeable circumstances. This estimate is predicated on the changes being small in number, concise, and clear. These new material priority items will be reviewed by the Board, and assuming they are approved, will be incorporated into the comprehensive BSA/AML/CFT Risk Assessment.

11. Please comment on whether a comprehensive update to the risk assessment using the process proposed in this rule is necessary each time there are material changes to the bank's risk profile or whether updating only certain parts based on changes in the bank's risk profile would be sufficient. If the response depends on certain factors, please describe those factors.

HSB Response;
Out of respect for my Boards time and attention we would appreciate the option of only presenting those risk priority changes that are "material" towards our Bank, between annual reviews of the full RA. Being forced to present redundant or immaterial information to the Board, has the potential to breed indifference and or contempt for the regulation overall.

Effective, Risk-Based, and Reasonably Designed
12. Does the proposed regulatory text that "an effective, risk-based, and reasonably designed AML/CFT program focuses attention and resources in a manner consistent with the bank's risk profile that takes into account higher-risk and lower-risk customers and activities" permit sufficient flexibility for banks to continue to focus attention and resources appropriately? Does redirection allow banks to appropriately reduce resource allocation to lower risk activities? What approaches would be appropriate for a bank to use to demonstrate that attention and resources are focused appropriately and consistent with the bank's risk profile?

HSB Response;
As the regulated I am always very apprehensive when the regulatory language allows great subjectivity in judgement to the examiner. However, assuming that the FDIC continues with their current patterns and practices towards enforcement, we are agreeable.

13. What are the current practices of banks when allocating resources?

HSB Response;
It is an evaluation and decision by appropriate management and or the Board as needed. We do not have a formal process, nor would forcing a formal process on us yield positive results in our opinion. We are a Community Bank and need to be free to act as such.

14. Do banks anticipate any challenges in assigning resources to a higher-risk product, service, or customer type that is not listed in the AML/CFT Priorities? Are there any additional changes or considerations that should be made?

HSB Response;
Yes, there are always challenges when situations are unique and not directly addressed in regulation. In such an instance we would consult with our Compliance sources, including the FDIC, to arrive at an acceptable solution.

Other AML/CFT Program Components

15. The proposed rule would make explicit a long-standing supervisory expectation for banks that the BSA officer is qualified and that independent testing be conducted by qualified individuals. Please comment on whether and how the proposed rule's specific inclusion of the concepts: 1) "qualified" in the AML/CFT program component for the AML/CFT officer(s) and (2) "qualified," "independent," and "periodic" in the AML/CFT program component for independent testing, respectively, may change these components of the AML/CFT program?

HSB Response;
Codifying a regulation that has already been in effect for all intents and purposes does not bother us to any degree. However, any significant changes with the interpretation and enforcement of this portion of the regulation may have severe repercussions and we would expect a reasonable notice and time to adjust if that is going to be the case.

16. How do banks anticipate timing the independent testing in light of periodic updates to the risk assessment process?

HSB Response;
Provided the independent testing requirements do not change, I have no plans to alter our current practice of an annual independent review of BSA/AML/CFT.

Innovative Approaches

17. The proposed rule encourages, but does not require, the consideration of innovative approaches to help banks meet compliance obligations pursuant to the BSA. Under the proposed rule, a bank's internal policies, procedures, and controls may provide for "consideration, evaluation, and, as warranted by the [bank's] risk profile and AML/CFT program, implementation of innovative approaches to meet compliance obligations." Should alternative methods for encouraging innovation be considered in lieu of a regulatory provision?

HSB Response;
As a community bank we cannot afford to be "experimental" unless the risks are contained. Our Board and our Bank is not here to pioneer new programs as we navigate our way through the BSA/AML/CFT jungle. We will adopt those programs that are proven, both economically and regulatorily, and that fit our Bank and our customer base. As an old boss once told me "It is OK to be cutting edge, just make sure our Bank is not on the bleeding edge."

18. Please describe what innovative approaches and technology banks currently use, or are considering using, including but not limited to artificial intelligence and machine learning, for their AML/CFT programs. What benefits do banks currently realize, or anticipate, from these innovative approaches and how they evaluate their benefits versus associated costs?

HSB Response;
As per the FDIC we are responsible for any data breach even if it comes from a vendor we contract with. Consequently, we are doing everything we can to keep our files on our servers, not in the "cloud," and away from any AI related programs. We will let others cut the trail and learn from their experience. This is also why we oppose the Section 1033 regulations as this will force us to share customer and account details that are best kept closely held, especially in the current scammer environment.

Board Approval and Oversight
19. Does the requirement for the AML/CFT program to be approved by an appropriate governing body need additional clarification?

HSB Response;
No.

20. Should the proposed rule specify the frequency with which the board of directors or an equivalent governing body must review and approve the AML/CFT program? If so, what factors are relevant to determining the frequency with which a board of directors should review and approve the AML/CFT program?

HSB Response;
No, we will continue to approve this policy annually unless the revised regulation forces a different schedule.

21. How does a bank's board of directors, or equivalent governing body, currently determine what resources are necessary for the bank to implement and maintain an effective, risk-based, and reasonably designed AML/CFT program?

HSB Response;
Management identifies the problem or opportunity, develops the plan to mitigate and or exploit it, then presents that plan to the Board, if needed. If one is diligent and thorough, then proposes a reasoned and reasonable request, you usually get what you need.

***Comments are invited on the following**:*
(a) Whether the collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

HSB Response;
As I stated earlier, that we are going to be forced to continue CDD BOI collection after FinCEN is forcing each of our legal entity customers to self-register directly to FinCEN is redundant, wasteful, and insulting. It illustrates a level of arrogance and condescension toward the regulated that is unacceptable. You can set this up for single point collection of BOI data, you just do not want to do so.

(b) the accuracy of the agencies estimates of the burden of the information collections, including the validity of the methodology and assumptions used;
Our Bank typically files about 15 CTRs per year and about 5 or less SARs. I estimated for our Board, that each CTR costs us about $290.00 and a SAR cost is near $950.00. I am including the cost of the composition of the initial filing, along with time for an internal review of each report to prepare for a 100% sampling of CTR and SAR filings during the next examination and another 100% sampling of the same reports during the required external BSA/AML/CFT audit. In addition, I am factoring in expenses for the required annual training of staff. I leave it to FinCEN to evaluate your estimates for alignment with our estimations of expenses incurred under the CTR/SAR dictates for discrete filers.

As far as validity of the methodology goes, I have significant issues with the absolutism in this regulation. We object to filing a CTR on occurrences such as the local high school booster club concessions proceeds over a holiday tournament for example. I also object to filing CTR forms on long time customers who withdraw or deposit cash related to selling a vehicle.

When the $10,000.00 CTR limit was set in the 1970s, this amount of cash would buy 2 possibly 3 brand new vehicles. That this limit has not been changed and or indexed to inflation is inexplicable to us. That the bureaucracy continually lobbies to maintain the $10,000 limit without adjustment, I can only describe as tyrannical. I am also aware from the "Financial Crimes Enforcement Network (FinCEN) Year in Review for FY 2023" that less than 6000 CTR reports out of 20.8 million in total were "material". SAR stats are not much better with less than 11,400 reports being significant out of 4.8 million filed. And all this activity resulted in $1.25 Billion in assets seized from the bad guys, if they really were bad guys. I estimate that the banking system and customers are paying well over $5.00 in compliance "taxes" for every $1 FinCEN captures in seized assets. This estimate does not even account for FinCEN payroll or operating expenses either. Not a very cost-effective system from my point of view. Or as my grandmother used to ask, which is worse, the disease, or the cure?

(c) ways to enhance the quality, utility, and clarity of the information to be collected;

HSB Response;
It is my opinion that you increase quality of the data by simplifying and clarifying the requests made of the reporting parties in the discreet filing process. Mistakes get made when the request is not clearly stated and when there is repetition of data that does not need to be repeated. I would suggest taking any revisions to the discreet filing program to an average high school class and ask them to fill out the CTR based on 4 scenarios with minimal preparatory training relying mostly on the program and accompanying written help or instruction. Offer a small cash reward for accurately completing the tasks inside a reasonable time limit. If this test gives a significant, say over 90%, correct completion rate, then the newly revised system is ready for distribution, provided that any significantly common errors are mitigated.

(d) ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology;

HSB Response;

As I am only familiar with Discreet filing I will limit my comments to this method. My suggestions for improving this CTR discreet reporting mechanism is as follows;
Redesign the discreet filing process, start from scratch, concentrating only on the information to be collected and abandon completely the paper form concept that the current process is modeled after. Present the questions in a Who, What, When and Where format. Use screen space to effectively present the fields needed in more of a decision tree flow. On the explanation and or direction topic quit the pop-up text and fine print, explain each field using as much screen space as required. Also rewrite the directions or help without using government code regulation language please. Some of these instructions are extremely confusing, even for those quite experienced in government speak. Also, the process for choosing NAICS codes in a CTR is horrendous, fix this or delete it.

Set up Banks so that they can input data that does not change once, and only once, such as the data on the Bank itself and its branches. This will save time for the filer and save errors in the database. The Bank can then just check the box for the Bank and any branch locations involved then get on with the pertinent details.