

Via electronic submission

May 28, 2024

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

RE: Docket Number FINCEN-2024-0009

Dear Sir or Madam:

The Independent Community Bankers of America (ICBA)¹ appreciates the opportunity to respond to this request for information (“RFI”). FinCEN, in consultation with staff from the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), and the Board of Governors of the Federal Reserve System (Board) issued this RFI to seek input from banks regarding the Customer Identification Program (“CIP”) Rule’s social security number (“SSN”) collection requirement, including potentially allowing banks to collect partial SSNs from the customer and using a third-party source to collect the full SSN. Partial SSN collection refers to the practice where a bank may collect a certain part of the SSN from individuals who are customers (e.g., the last four digits of an individual’s SSN) and then obtain the full SSN from a reputable third-party service provider (“Provider” or “Vendor”).

Background

Under the CIP Rule, banks must collect the following four pieces of information from an individual customer prior to account opening: the customer’s name, date of birth, address, and identification number, such as an SSN.² While a bank’s procedures for verifying a customer’s identity may be risk-based, the CIP Rule makes clear that certain information must be collected directly from the customer before an account is opened. When the CIP Rule was adopted in 2003, banks were exempted from the requirement to collect identifying information, including an identification number, directly from the customer with respect to credit card accounts. Instead, for credit card accounts, a bank may obtain the customer’s identifying information, such as the SSN, from a third-party source prior to extending credit. FinCEN’s rationale for the exception was that the CIP Rule would change a bank’s business practices by requiring additional information beyond what was already obtained directly from a customer who opened a credit card account at the point of sale or by telephone.³ FinCEN was also cognizant of the legislative history of section 326 of the Bank Secrecy Act (BSA), which conveyed Congress’s expectation for

¹ The Independent Community Bankers of America® has one mission: to create and promote an environment where community banks flourish. We power the potential of the nation’s community banks through effective advocacy, education, and innovation. As local and trusted sources of credit, America’s community banks leverage their relationship-based business model and innovative offerings to channel deposits into the neighborhoods they serve, creating jobs, fostering economic prosperity, and fueling their customers’ financial goals and dreams. For more information, visit ICBA’s website at icba.org.

² 31 C.F.R. § 1020.220(a)(2)(i)(A)

³ 68 FR 25103, at p.103

implementing regulations to be appropriately tailored for accounts opened in situations where the account holder was not physically present at the financial institution and would not impose requirements that were burdensome, prohibitively expensive, or impractical.⁴ According to FinCEN, there has been significant changes in how customers engage banks and receive financial services. There has also been significant innovation in the customer identifying information collection and verification tools available to banks.⁵ Many banks now enter into partnerships with third-party providers to offer new products and services, some of which operate similarly to credit cards. These providers may not be subject to BSA regulations which can result in banks facing supervisory action, particularly if the provider does not collect the required CIP information directly from the customer. Hence, input received through this RFI on allowing banks to collect partial SSNs from customers and collecting full SSNs from third-party sources is intended to inform the agency's understanding of the risks, benefits, and safeguards related to CIP Rule requirements.

Comments

ICBA supports a framework that permits a bank to make an independent risk-based decision to collect a partial SSN from a customer and the whole SSN from a third-party source. Community banks innovate organically and through partnerships with other innovators, such as fintech companies. Partnering with fintech companies can offer valuable relationships that help community banks enhance the customer experience. ICBA has long advocated that through partnerships with fintechs, community banks can forge deeper relationships with their customers and enhance their offerings while reducing costs and increasing access for all consumers and small businesses. However, some challenges and risks inhibit many community banks from engaging in partnerships with fintechs.

The fundamental purpose of the CIP Rule is to make sure the person applying to open an account is not fictitious and that the applicant is who they say they are. In other words, the CIP Rule requirement enables banks to effectively manage and mitigate instances of fraud, identity theft, and other financial crimes. Other uses for CIP information include underwriting, tax reporting, and Office of Foreign Assets Control (OFAC) screening. Any change to the CIP Rule should carefully balance the important uses of CIP information with the potential risks of relying on third parties for this information.

All banks must establish and maintain procedures reasonably designed to ensure BSA compliance and develop and implement BSA/AML programs. Community banks also adhere to third-party risk management regulatory requirements when reviewing and assessing third-party sources. They undergo a robust exercise for reviewing and assessing the capability, quality, and performance of third-party providers. Entities providing BSA/AML services to banks must comply with all relative laws and regulations and should be held to the same strict supervisory and examination standards as banks. Third-party providers should be monitored and held liable for lapses, failures, and violations in the services they provide to banks. Currently, banks cannot contract their liability away and must undergo contract negotiations to include indemnification and subrogation provisions that allow them to seek reimbursement on claims borne out of the failures of the third party.

Nonbank entities that provide a full suite of banking services but sit outside the regulatory perimeter have an unfair advantage while adding risk to the financial system, as these providers are not subject to the same BSA regulatory requirements and oversight as banks. These entities should not be provided a competitive advantage through policy preferences.

⁴ *Id.* at p. 103

⁵ 2024-06763.pdf (govinfo.gov), at p.22232

Conclusion

ICBA appreciates FinCEN's request for information to understand the potential risks and benefits of collecting a partial SSN from a customer and the whole SSN from a third-party source. There has been significant industry innovation since the CIP Rule was adopted and we appreciate FinCEN's desire understand current industry practices. We welcome initiatives that will help community banks enhance their offerings and increase access to banking services. While we support FinCEN permitting the collection of SSN information from a third-party source, we suggest FinCEN carefully weigh the potential risks the practice may cause.

We thank you for the opportunity to respond to this RFI. If you have any questions, please do not hesitate to contact me at Rhonda.Thomas-Whitley@icba.org or 202-821-4451.

Sincerely,

/s/

Rhonda Thomas-Whitley
Senior Vice President, Senior Regulatory Counsel