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October 30, 2023

*Via Electronic Mail*

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

**RE:** Beneficial Ownership Information (BOI) Reports. OMB Control Number: 1506–0076

Dear Sir or Madam:

The Independent Community Bankers of America (“ICBA”)<sup>1</sup> appreciates the opportunity to respond to the Financial Crimes Enforcement Network’s (“FinCEN’s”) decision to pursue a revised approach to the beneficial ownership information report (“BOIR”), that will be used to collect beneficial ownership information (“BOI”) reported to FinCEN pursuant to Section 6403 of the Corporate Transparency Act (“CTA”), enacted into law as part of the Anti-Money Laundering Act of 2020 (“AML Act”), enacted into law as part of the National Defense Authorization Act for Fiscal Year 2021 (“NDAA”).<sup>2</sup>

As explained more fully below, ICBA appreciates FinCEN’s careful consideration of ours, the Congress, and other stakeholders’ comments, urging them to remove all “unknown checkboxes.” However, we are concerned that FinCEN appears to imply that users of the database will determine whether BOI submitted is accurate.

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<sup>1</sup>*The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. ICBA is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education, and high-quality products and services.*

*With nearly 50,000 locations nationwide, community banks employ nearly 700,000 Americans and are the only physical banking presence in one in three U.S. counties. Holding \$5.8 trillion in assets, \$4.8 trillion in deposits, and \$3.8 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers' dreams in communities throughout America. For more information, visit ICBA's website at [www.icba.org](http://www.icba.org).*

<sup>2</sup> 31 U.S.C. § 5336

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## Background

On May 5, 2016, the FinCEN amended the Bank Secrecy Act (“BSA”) regulations to require covered financial institutions (“FIs”) to conduct and document customer due diligence on all beneficial owners of certain legal entity customers that open new accounts no later than May 11, 2018. This amendment is known as the Customer Due Diligence Final Rule (“CDD Rule”).

On January 1, 2021, the CTA was enacted and amended the BSA by imposing new beneficial ownership requirements to impede the use of U.S.-based shell corporations for illicit financial activity and called for the creation of a FinCEN registry. The CTA requires FinCEN to issue rules requiring reporting companies to submit certain information to FinCEN about their beneficial owners;<sup>3</sup> requires FinCEN to maintain this information in a confidential, secure, and non-public database;<sup>4</sup> and authorizes FinCEN to disclose the information to FIs to facilitate compliance with CDD requirements.<sup>5</sup> The CTA also provides for the issuance and use of FinCEN identifiers—unique identifying numbers assigned by FinCEN – that persons may submit to FIs to satisfy certain beneficial ownership reporting requirements.<sup>6</sup> The NDAA also requires the Treasury to revise its existing CDD rules to reduce any burdens on FIs and legal entity customers that are unnecessary or duplicative.<sup>7</sup>

On April 1, 2021, FinCEN issued an Advance Notice of Proposed Rulemaking (“ANPRM”) to solicit public comment on questions related to the implementation of the BOI reporting provisions of the CTA. This was the first in a series of regulatory actions that FinCEN took to implement the CTA.

The ANPRM was followed by a Notice of Proposed Rulemaking (“NPRM”), issued on December 8, 2021, seeking public input on who must file a report of beneficial ownership, what information must be provided, and when a report is due. This NPRM was the first of three to implement the requirements of Section 6403. FinCEN issued a final rule on reporting requirements and FinCEN identifiers on September 30, 2022.<sup>8</sup> On January 17, 2023, FinCEN issued a request for comments on its proposed BOIR. This current comment request seeks input on the agency’s revised BOIR form and is made pursuant to the Paperwork Reduction Act of 1995.

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<sup>3</sup> CTA § 6403 (b)(1)(C)

<sup>4</sup> CTA § 6402(7)

<sup>5</sup> CTA § 6403(c)(2)(B)(iii)

<sup>6</sup> CTA § 6403 (b)(3)

<sup>7</sup> CTA § 6403 (d)(1)(C) [emphasis added]

<sup>8</sup> 31 CFR 1010. The regulations go into effect on January 1, 2024. BOI will not be accepted prior to January 1, 2024.

## ICBA's Comments

### **New Approach to the BOIR Form**

ICBA's position has been and continues to be that if the government has an interest in collecting and maintaining records of beneficial owners of private legal entities, such information should be collected and verified by FinCEN at the time a legal entity is formed rather than requiring FIs to collect this information. ICBA's position also calls for FIs to have access to that information to assist them in performing customer due diligence. ICBA does not advocate for access, for access' sake. But rather, access that furthers along and strengthens the customer due diligence process for community banks with information that is complete, accurate, and reliable, which is why we strongly opposed FinCEN's proposed provision that enables a reporting company the option to not provide information that is required by the CTA on a BOIR form. The initially proposed form allows reporting companies to check a box if they are not able to obtain information pertaining to beneficial owners, the reporting company, or company applicant. In fact, there are 29 places on the form that allow a reporting company to forego providing required BOI, such as full legal names, birthdays, addresses, tax identification numbers, and types of identifying documentation. The purpose of the form - and CTA - is to collect BOI on entities. FinCEN, in effect, created new reporting options that counter the requirements laid out by the CTA.<sup>9</sup>

According to FinCEN, entities are at times used to obfuscate ownership interests and used to engage in illegal activities, such as money laundering, corruption, fraud, terrorist financing, and sanctions evasion. Criminals have exploited the anonymity that legal entity ownership can provide to engage in a variety of crimes. Making legal entities more transparent by requiring identifying information of natural person owners would likely hinder such abuses. But, as initially proposed, the form would aid in the same criminal behaviors and activities that the agency seeks to curtail, and result in additional criminal behavior by enabling the evasion of reporting requirements. The initially proposed form would not only completely defeat the purpose of the CTA but would render the BOI submitted to FinCEN, unreliable. Hence, ICBA appreciates FinCEN's careful consideration to remove all 29 "unknown" checkboxes. In its new approach, FinCEN will require every field to be completed (i.e., have responses entered in text boxes), and the BOIR form can only be submitted once each required field has been filled out. Any field left blank, whether intentionally or accidentally, will prevent the filer from submitting their BOIR form. ICBA fully supports this new approach and believes the spirit of the CTA would be fulfilled under this process.

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<sup>9</sup> CTA § 6403 (b)(2)(B)

## Accuracy of BOI Submitted to FinCEN

Yet, while we appreciate the agency’s revised approach, we are nonetheless concerned with the following statement added to the notice: “It is our hope that... **users of the database will determine that the information collected is accurate...**” The CTA requires FinCEN to collect the required information in a form and manner that ensures the information is highly useful in confirming BOI provided to FIs to facilitate compliance with CDD rules.<sup>10</sup> ICBA strongly believes that BOI submitted to FinCEN should be verified by FinCEN. Otherwise, FIs, depending on such information in furtherance of their CDD obligations will not be able to rely on the information, and thus defeating the purpose of being “highly useful.” Furthermore, verification by FinCEN will remove an unnecessary and duplicative burden from FIs and could also prove valuable in the agency’s efforts to streamline its information sharing with law enforcement or other agencies.

ICBA is firm in our position that community banks should not be required to make determinations of the accuracy of BOI submitted to FinCEN; should not be expected to verify BOI housed in FinCEN’s database; should not be expected to correct discrepancies in FinCEN’s database; nor otherwise, be held responsible for FinCEN’s adherence to the CTA. The rulemaking process must not result in FinCEN broadening the scope of the law nor making the beneficial ownership rule more onerous for banks and legal entities.

FinCEN’s sentiment of “hope” underscores another strong position ICBA maintains, which is the need for safe harbor for FI’s relying on BOI retrieved from the database. Entities will be required to submit their information to FinCEN, at the time of formation and change in ownership, and will be subject to state and federal laws pertaining to perjury, false information, and false statements. Therefore, there is a reasonable expectation that BOI in FinCEN’s database will be accurate and verified. As such, FIs should be able to rely on the information submitted to FinCEN and not bear any responsibility or be subject to any consequences for such reliance. FIs are currently permitted to rely on information obtained by another FI, regarding the beneficial ownership rule.<sup>11</sup> Surely, the same reliance can be extended to FIs relying on information obtained by FinCEN, a federal government agency.

## Conclusion

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<sup>10</sup>NDA § 6403(b)(1)(F)(iv)

<sup>11</sup> [Beneficial Ownership Requirements for Legal Entity Customers – Overview \(ffiec.gov\)](https://www.ffiec.gov/press/20180505) May 5, 2018, p.4

ICBA appreciates the opportunity to provide comments in response to FinCEN's revised approach to the BOIR form. We are confident this approach is aligned with the spirit of the CTA and will assist community banks in facilitating their due diligence efforts. But we are troubled by what seems like an expectation that FIs play a role in the collection of information submitted. We therefore strongly urge that FinCEN remove the "hope" that users of the database determine that the information collected is accurate. If you have any questions, please do not hesitate to contact me at [Rhonda.Thomas-Whitley@icba.org](mailto:Rhonda.Thomas-Whitley@icba.org) or (202) 821-4451.

Sincerely,

/s/

Rhonda Thomas-Whitley  
Senior Vice President, Senior Regulatory Counsel

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