

March 20, 2023

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

RE: Beneficial Ownership Information Reports, Docket Number FINCEN-2023-0002, OMB Control Number 1506-0076, 88 Fed. Reg. 2,760 (Jan. 17, 2023)

Dear Sir or Madam:

On September 29, 2022, the Financial Crimes Enforcement Network (FinCEN) issued a final rule (Final Rule) that requires corporations, limited liability companies, and other legal entities to report beneficial ownership information (BOI) to a database that FinCEN is creating for this purpose (the Registry),¹ pursuant to the Corporate Transparency Act (CTA).² In conjunction with its issuance of the Final Rule, FinCEN is seeking approval by the Office of Management and Budget of a form (the Report) entities will use to report BOI to the Registry,³ as FinCEN is required to do under the Paperwork Reduction Act (PRA Request).⁴ The American Bankers Association⁵ (ABA) appreciates the opportunity to comment on the data fields and other aspects of FinCEN's proposed Report described in the agency's PRA Request.

I. Summary of Comment

ABA has long supported the creation of a Registry of BOI. We remain committed to engaging with FinCEN to support and promote the goals of the CTA, namely combating illicit finance through the establishment of the Registry. We also support Congress' requirement in the CTA that FinCEN ensure the Registry is "highly useful in . . . confirming beneficial ownership information provided to financial institutions" in order to facilitate institutions' compliance with customer due diligence and other requirements to combat money laundering and counter the financing of terrorism.⁶

¹ Beneficial Ownership Information Reporting Requirement, 87 Fed. Reg. 59,498 (Sept. 30, 2022), <https://www.govinfo.gov/content/pkg/FR-2022-09-30/pdf/2022-21020.pdf>.

² The Corporate Transparency Act is Title LXIV of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116–283 (2021) (NDAA). Division F of the NDAA is the Anti-Money Laundering Act of 2020, which includes the CTA.

³ Beneficial Ownership Information Reports, 88 Fed. Reg. 2,760 (Jan. 17, 2023), <https://www.govinfo.gov/content/pkg/FR-2023-01-17/pdf/2023-00703.pdf>.

⁴ 44 U.S.C. § 3501 *et seq.*

⁵ The American Bankers Association is the voice of the nation's \$23.6 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard \$19.2 trillion in deposits and extend \$12.2 trillion in loans.

⁶ NDAA, *supra* note 2, § 6403 (to be codified at 31 U.S.C. § 5336(b)(1)(F)).

However, we are deeply concerned that the Final Rule and the agency’s proposal concerning access to that Registry⁷ are not consistent with the objectives of the CTA and that the Registry will be of limited, if any, value to banks. These actions create a framework in which banks’ access to the Registry will be so limited that it will effectively be useless, resulting in a dual reporting regime for both banks and small businesses, among other deficiencies.⁸ Moreover, the data fields and other aspects of FinCEN’s proposed Report will exacerbate these problems, raising serious questions about the utility of the BOI collected. FinCEN has established no mechanism to validate the information reported to the Registry. The agency also would allow a filer to list “Unknown,” “Unable to identify all Company Applicants,” and “Unable to identify all Beneficial Owners” as responses to key demographic information sought about company applicants and the company’s beneficial owners. The option to choose these response categories is inconsistent with Congress’ direction to FinCEN in the CTA, may allow bad actors to obscure the identity of company applicants and beneficial owners, and will significantly limit the utility of the information available through the Registry to law enforcement, financial institutions, and others who may access the Registry.

Congress enacted the PRA to ensure that, when FinCEN or another federal agency collects information from the public, the information collection provides the “greatest possible” benefit to the public, “maximize[s] the utility” of the information collected to the government, and minimizes the paperwork burden on small businesses and others related to the collection.⁹ We do not believe the proposed Report meets these standards, and we urge FinCEN to delete those responses that would permit a filer to respond “Unknown,” “Unable to identify all Company Applicants,” and “Unable to identify all Beneficial Owners” as responses to key demographic information sought about company applicants and the company’s beneficial owners.

FinCEN also should revise its estimate of burden to regulated entities in its PRA Request to include the impact of the Final Rule on financial institutions. Undoubtedly, legal entity customers that are required to report information to the Registry will ask their bank about the purpose of FinCEN’s reporting requirement and for assistance with fulfilling that requirement. That burden should be reflected in the PRA Request.

II. FinCEN Should Modify the Report to Increase the Value of the Information Provided Through the Registry

As proposed, the Registry would provide limited value to government agencies, the public, or financial institutions that may access the Registry. We ask FinCEN to modify the Report in specific ways, as described in detail below, in order to enhance the Registry’s utility.

Under the Final Rule, reporting companies are required to submit BOI to the Registry.¹⁰ However, FinCEN does not verify the accuracy and reliability of the information provided by the

⁷ Beneficial Ownership Information Access and Safeguards, and Use of FinCEN Identifiers for Entities, 87 Fed. Reg. 77,404 (proposed Dec. 16, 2022), <https://www.govinfo.gov/content/pkg/FR-2022-12-16/pdf/2022-27031.pdf>.

⁸ See Letter from Am. Bankers Ass’n *et al.* to Policy Division, Fin. Crimes Enforcement Network (Feb. 14, 2023), <https://www.aba.com/advocacy/policy-analysis/joint-letter-to-fincen-on-boi-access> [hereinafter, ABA and State Bankers Associations Letter].

⁹ 44 U.S.C. § 3501(1), (2), & (3).

¹⁰ Beneficial Ownership Information Reporting Requirement, 87 Fed. Reg. at 59,591.

companies. FinCEN should create a mechanism for the agency to validate the information submitted to the Registry.

The appendix to the PRA Request provides the data fields that FinCEN proposes to use to collect BOI from reporting companies. The form allows a filer to list “Unknown” in nearly every data field for the company applicant and for the company’s beneficial owners. Specifically, one may list “unknown” for the company applicant’s or beneficial owner’s last name, first name, date of birth, address, city, state, zip code, and country. In addition, the form allows filers to state that they are “Unable to identify all Company Applicants” or “Unable to identify all Beneficial Owners.” Similarly, filers can select “Unknown” for information requested by the form about the document used by the company applicant or beneficial owner to identify himself or herself to the filer.

The availability of these indeterminate responses is contrary to FinCEN’s statutory authority, degrades the benefit provided by the Registry, and may assist bad actors with obscuring the identity of company applicants and beneficial owners. First, FinCEN does not have the statutory authority to invite reporting companies to provide indeterminate answers. The CTA states that “each reporting company *shall* submit to FinCEN a report that . . . identif[ies] each beneficial owner . . . and each [company] applicant.”¹¹ The CTA further specifies that this report “shall” include the beneficial owner’s or company applicant’s full legal name, date of birth, current street address, and unique identifying number from an identification document.¹² FinCEN cannot ignore this mandate from Congress by allowing a legal entity to state that the required information is unknown or unable to be identified.

Second, the ability to select these response categories degrades the benefit of the Registry to law enforcement and to financial institutions that access the Registry, and could present a serious obstacle to investigation or enforcement by FinCEN or the Department of Justice. It also provides an opportunity for bad actors to select one of these options instead of the company applicant’s or beneficial owner’s actual information for each of these fields. A bad actor could successfully obscure the identity of a company applicant or beneficial owner through selection of these options.

Third, after FinCEN establishes the Registry and provides access to banks, it is unclear how banks should respond to a report where the reporting company has given indeterminate responses. It is unclear if FinCEN expects banks to open accounts for companies that are “unable to identify all beneficial owners.”

For all of these reasons, the quality and reliability of the information in the Registry may be low, and the benefit provided to the public and to financial institutions that access the Registry will be limited. ABA would strongly oppose any requirement that banks access the Registry, as we discussed in our comment letter in response to FinCEN’s proposal on access to the Registry.¹³

¹¹ NDAA, *supra* note 2, § 6403 (to be codified at 31 U.S.C. §§ 5336(b)(1)(A); (b)(2)(A)) (emphasis added).

¹² *Id.*

¹³ See ABA and State Bankers Associations Letter, *supra* note 8, at 8.

III. FinCEN Should Quantify the Burden Imposed on Financial Institutions by the Final Rule's Reporting Requirement

The Paperwork Reduction Act directs federal agencies to minimize the burden of the information collection not only on members of the public who are required to respond to the collection request, but on all members of the public who are impacted.¹⁴ In its PRA Request, FinCEN lists as the “Affected Public” only those companies that are required to report BOI to the Registry. FinCEN then attempts to quantify the estimated time each company will expend to report BOI to the Registry.

Financial institutions whose customers are required to report BOI will be impacted by the Final Rule's reporting requirement, but the burden imposed on these institutions is not discussed or quantified in FinCEN's PRA Request. ABA members have expressed that their customers will undoubtedly approach the bank to ask questions about the purpose of, and technical requirements to submit information for, the Registry. FinCEN should revise its estimation of burden imposed on the public by its collection request to include the burden that will be imposed on banks that respond to their customers' questions about the reporting requirement.

Conclusion

ABA supports the creation of the Registry of BOI and remains committed to engaging with FinCEN to support the CTA's goal to combat illicit finance. We are deeply concerned that the data fields in FinCEN's proposed Report will exacerbate existing problems with the Registry, minimizing the utility of the BOI collected. Specifically, the agency would allow a filer to list “Unknown,” “Unable to identify all Company Applicants,” and “Unable to identify all Beneficial Owners” as responses to key demographic information sought about company applicants and the company's beneficial owners. FinCEN should delete these response options. FinCEN also should establish a mechanism to validate the information reported to the Registry.

In addition, FinCEN should revise its estimate of burden to regulated entities in its PRA Request to include the impact of the Final Rule on financial institutions, whose customers will ask questions about the Registry's purpose and how BOI should be submitted.

Sincerely,



Jonathan Thessin
Vice President/Senior Counsel
Consumer & Regulatory Compliance
Regulatory Compliance and Policy

¹⁴ See 44 U.S.C. § 3501(3) (stating that one purpose of the PRA is to improve the efficiency of government programs, including through the “reduction of information collection burdens on the public” without limitation).