

October 27, 2023

Director Shalanda Young  
Office of Management and Budget  
725 17<sup>th</sup> St. NW  
Washington, D.C. 20503  
[www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain)

**RE: Agency Information Collection Activities; Submission for OMB Review; Comment Request; Beneficial Ownership Information (BOI) Reports, OMB Control Number 1506-0076, 88 FR 67443 (September 29, 2023)**

**Agency Information Collection Activities; Submission for OMB Review; Comment Request; Individual FinCEN Identifier Application, OMB Control Number 1506-0076, 88 FR 67449 (September 29, 2023)**

Dear Director Young:

The American Bankers Association (ABA)<sup>1</sup> appreciates the opportunity to comment on two Paperwork Reduction Act (PRA)<sup>2</sup> requests filed by Treasury's Financial Crimes Enforcement Network (FinCEN), which seek approval by the Office of Management of Budget of 1) the Beneficial Ownership Information Reports<sup>3</sup>; and 2) the Individual FinCEN Identifier Application<sup>4</sup>.

### **I. Summary of Comment**

ABA supports FinCEN's ongoing work to establish a registry of beneficial ownership information that is highly useful to law enforcement, banks, and other stakeholders. On March 20, 2023, ABA commented on FinCEN's initial PRA request<sup>5</sup>, criticizing FinCEN's proposal to permit reporting companies to respond "unknown" if certain information about a beneficial owner or company applicant is either unknown or unavailable. We reiterated our support for the aims of the Corporate Transparency Act (CTA) and FinCEN's creation of a highly useful database of beneficial

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<sup>1</sup> The American Bankers Association is the voice of the nation's \$23.5 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2.1 million people, safeguard \$18.6 trillion in deposits and extend \$12.3 trillion in loans.

<sup>2</sup> 44 U.S.C. § 3501 *et seq.*

<sup>3</sup> Agency Information Collection Activities; Submission for OMB Review; Comment Request; Beneficial Ownership Information (BOI) Reports, OMB Control Number 1506-0076, 88 FR 67443 (September 29, 2023); <https://www.federalregister.gov/documents/2023/09/29/2023-21293/agency-information-collection-activities-submission-for-omb-review-comment-request-beneficial>

<sup>4</sup> Agency Information Collection Activities; Submission for OMB Review; Comment Request; Individual FinCEN Identifier Application, OMB Control Number 1506-0076, 88 FR 67449 (September 29, 2023); <https://www.federalregister.gov/documents/2023/09/29/2023-21325/agency-information-collection-activities-submission-for-omb-review-comment-request-individual-fincen>

<sup>5</sup> American Bankers Association Comment Letter on Beneficial Ownership Information Reports, Docket Number FINCEN-2023-0002 (March 20, 2023); <https://www.regulations.gov/comment/FINCEN-2023-0002-0021>

ownership information. However, we noted the inclusion of an “unknown checkbox” on the appendix form permitted Reporting Companies to avoid reporting CTA-mandated information to FinCEN. That “unknown checkbox” option substantially reduces, if not eliminates, the practical utility and public benefit of the beneficial ownership information database. That database is intended to help prevent malign actors from concealing their ownership of legal entities and involvement in corporate structures in order to evade detection.

ABA commends FinCEN for responding to our and other commenters’ concerns about the use of “unknown checkboxes” on the earlier version of the beneficial ownership reporting form and eliminating them.<sup>6</sup> FinCEN now proposes that for initial implementation purposes, beneficial ownership reporting forms must be complete before submission. We support this approach.

However, ABA remains concerned about FinCEN’s statement that it will consider reverting to an “alternative implementation” that shares the same drawbacks as the unknown checkbox approach shortly after initial implementation. It is clear FinCEN is seriously contemplating this approach, as the beneficial ownership reporting form (or BOIR Form) for which it seeks OMB approval would facilitate it. It is very important to the nation’s banks and their customers —many of whom are among the over 32 million small businesses who will face new reporting obligations to FinCEN starting January 1, 2024 —that these proposed forms contain highly useful information are clear and easy to use. Therefore, we urge FinCEN to reconsider those portions of the BOIR Form, and we urge OMB only to approve a BOIR Form that requires complete and compliant filing.

Instead of allowing Reporting Companies to file incomplete and non-compliant BOIR Forms, ABA recommends FinCEN allow Reporting Companies to save their incomplete work and return to it later (including after contacting FinCEN’s Contact Center<sup>7</sup> for help), especially as FinCEN estimates the initial reporting will take between 90 minutes and nearly 12 hours<sup>8</sup>. ABA also recommends that FinCEN provide a receipt upon filing so Reporting Companies have documentation of their submission of a completed BOIR Form to FinCEN.

In addition, because the FinCEN Identifier is a critical unique identifying number, we request FinCEN revise, and OMB approve, a modified Individual FinCEN Identifier Application form to make clear which type of address needs to be reported for the individuals who create or register new businesses with reporting requirements, and harmonize it with the BOIR Form.

ABA also urges OMB to approve a paper version of both forms to allow paper filing for populations for whom electronic filing will present a burden.

Finally, we renew our call for FinCEN to verify reported beneficial ownership information, without which this information collection cannot be useful.

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<sup>6</sup> As required by the Paperwork Reduction Act of 1995, (Pub. L. 104-13, 44 U.S.C. chapter 35), as amended by the Clinger Cohen Act (Pub. L 104-106), FinCEN is soliciting comments for submission to OMB for this collection, which was initially published in the Federal Register on January 17, 2023 (88 FR 2760), and in response to which the ABA commented in a letter of March 20, 2023. ABA appreciates the additional opportunity to comment on the proposed collection of information.

<sup>7</sup> FinCEN states it “expects to establish a Contact Center prior to January 1, 2024, to field questions about the BOI reporting requirements from reporting companies and other stakeholders.” 88 FR 67443, 67444 (Sept. 28, 2023)

<sup>8</sup> See 88 FR 67443, 67445

## II. Background

On September 30, 2022, FinCEN issued the Beneficial Ownership Information Reporting Requirements final rule (the Reporting Rule),<sup>9</sup> which requires certain legal entities (Reporting Companies) to report to FinCEN specified information about 1) the Reporting Company itself, 2) the Reporting Company’s “beneficial owners,”<sup>10</sup> and 3) for Reporting Companies created or registered on or after January 1, 2024, certain information about its company applicant(s) (collectively, Beneficial Ownership Information). The Reporting Rule establishes various deadlines by which Beneficial Ownership Information must be reported to FinCEN based on the date the Reporting Company was created or registered with a state secretary of state. The Reporting Rule, promulgated pursuant to CTA,<sup>11</sup> has an effective date of January 1, 2024. FinCEN proposes that all Reporting Companies fulfill this requirement by submitting BOIR Forms electronically to FinCEN.

Congress passed the CTA to “improve transparency for national security, intelligence, and law enforcement agencies and financial institutions concerning corporate structures and insight into the flow of illicit funds through those structures” and to “discourage the use of shell corporations as a tool to disguise and move illicit funds.”<sup>12</sup> The CTA requires Treasury to “collect [Beneficial Ownership Information] in a form and manner that ensures the information is highly useful in...confirming beneficial ownership information provided to financial institutions to facilitate the compliance of the financial institutions with anti-money laundering [AML], countering the financing of terrorism [CFT], and customer due diligence requirements under applicable law.”<sup>13</sup> As FinCEN indicates in its Supporting Statement, the information collected “is intended to improve financial institutions’ ability to assess and mitigate risk; [and] help prevent evasion of financial sanctions” among other purposes.<sup>14</sup>

ABA strongly supports these important objectives.

## III. ABA supports FinCEN’s new proposal requiring Reporting Companies to submit all CTA-required information at the time of filing, and urges FinCEN to remove and OMB to reject elements of the BOIR Form that would allow incomplete and non-compliant filing

Starting on January 1, 2024, FinCEN proposes to allow Reporting Companies to file BOIR Forms electronically with FinCEN only if every field on the form is complete.<sup>15</sup> ABA supports this new approach and thanks FinCEN for incorporating feedback from ABA and other commenters

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<sup>9</sup> Beneficial Ownership Information Reporting Requirement, 87 FR 59498 (Sept. 30, 2022), <https://www.govinfo.gov/content/pkg/FR-2022-09-30/pdf/2022-21020.pdf>.

<sup>10</sup> Pursuant to the Reporting Rule, a beneficial owner is an individual who either “directly or indirectly:” (1) exercises “substantial control” over the reporting company, or (2) owns or controls at least 25% of the reporting company’s ownership interests. See 31 CFR § 1010.380(d).

<sup>11</sup> The Corporate Transparency Act was enacted into law as 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.

<sup>12</sup> [Pub. L. 116-283, div. F, §6002](https://www.congress.gov/116/plaws/116-283), Jan. 1, 2021, 134 Stat. 4547

<sup>13</sup> [Pub. L. 116-283, div. F, title LXII, §6216](https://www.congress.gov/116/plaws/116-283), Jan. 1, 2021, 134 Stat. 4582 ,

<sup>14</sup> [Supporting Statement](#); OMB Control Number 1506-0076 (RIN 1506-AB49)

<sup>15</sup> “Any field left blank, whether intentionally or accidentally, will prevent the filer from submitting their BOIR Form.” 88 FR 67443, 67444

critical of the earlier version of the BOIR Form that would have permitted a Reporting Company to check a box to select “Unknown” as an option.

However, in proposing this approach, FinCEN states that it plans to consider another “alternative implementation” in the “months following implementation on January 1, 2024” and asks OMB to approve a BOIR Form that includes a “drop-down menu” for filers to temporarily indicate why they cannot obtain mandatory information.<sup>16</sup> This drop-down option would again allow Reporting Companies to file incomplete BOIR Forms with FinCEN that do not comply with the CTA. The drop-down option would allow Reporting Companies to leave out information about an entity’s Beneficial Owners —the most important part of the information collection, and the purpose of the CTA.

FinCEN states this alternative will be considered in the future and will be informed by “feedback from stakeholders, including filers and law enforcement agencies.”<sup>17</sup> Nevertheless, FinCEN asks OMB *now* to approve a BOIR Form that includes the drop-down option. As a key stakeholder in this data collection, along with law enforcement agencies, banks believe the drop-down option shares the same drawbacks as the unknown checkbox approach —namely, it suggests to reporting companies that they need not conduct a diligent inquiry to comply with their reporting obligations. This would seriously undermine the utility of the data collection, and we urge FinCEN to remove the drop-down option from the form.

This “drop-down option” shares the same drawbacks as the “unknown checkbox” approach for banks as described in our letter of March 20. Banks face significant penalties under regulations implementing the Bank Secrecy Act (BSA) for failing to collect and retain information. Banks cannot rely on partial or incomplete beneficial ownership information for BSA and sanctions compliance and other illicit finance prevention efforts.<sup>18</sup> The information collection must contain compete information to be useful to banks. Incomplete and partial Beneficial Ownership Information cannot facilitate accurate and complete compliance with AML, CFT and customer due diligence requirements for banks, frustrating a purpose of the CTA.<sup>19</sup>

Additionally, allowing Reporting Companies to file a BOIR Form with FinCEN that cannot satisfy Reporting Rule obligations risks confusing Reporting Companies and potentially misleading them into believing they have satisfied their reporting obligations under the BSA. For Reporting Companies, failing to report complete and accurate information can result in civil and criminal penalties,<sup>20</sup> which would adversely affect Reporting Companies and their banks, while simultaneously preventing the creation of a highly useful data collection for FinCEN, banks, and other key stakeholders.

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<sup>16</sup> 88 FR 67443, 67444.

<sup>17</sup> *Id.*

<sup>18</sup> For example, for sanctions compliance purposes, banks are advised by Treasury’s Office of Foreign Asset Controls (OFAC) to conduct due diligence (which includes and requires the use of full identifying information about a legal entity’s beneficial owners) in order to avoid transacting with designated individuals or entities, as well as to rule out possible matches with non-designated entities. *See e.g.*, [Framework for Compliance Commitments](#)

<sup>19</sup> ABA defers to law enforcement regarding the potential utility of partial BOIR reporting to law enforcement, but notes that banks and other financial institutions lack the information gathering and investigative tools available to other such stakeholders.

<sup>20</sup> *See* 31 CFR § 1010.380(g)

ABA urges FinCEN to remove the drop-down option permitting non-CTA compliant filing by Reporting Companies. ABA requests OMB approve an information collection and BOIR Form that requires Reporting Companies to submit all information to FinCEN necessary to satisfy their Reporting Rule requirements at the time of filing. Removing the drop-down option is necessary so the proposed BOIR Form does not risk misleading and burdening Reporting Companies, and substantially reducing the value of the information collection to FinCEN, law enforcement, banks, and other key stakeholders.

#### **IV. FinCEN Should Allow Reporting Companies to Save Incomplete Work and Provide Receipts Upon Filing of a Complete BOIR Form**

ABA acknowledges the concerns that FinCEN cites in support of permitting incomplete and non-compliant Beneficial Ownership Information Reporting.<sup>21</sup> In identifying these concerns, ABA appreciates that FinCEN acknowledges the complexity of this new reporting requirement and the time it may take for Reporting Companies to determine which reporting obligations apply to them, as well as the information they may need to collect from a variety of individuals and sources to comply with the Reporting Rule.

In lieu of allowing incomplete and non-compliant filing—potentially misleading Reporting Companies their reporting obligations have been satisfied—ABA recommends FinCEN should: 1) allow Reporting Companies to save work on incomplete BOIR Forms; and 2) provide a receipt when fully complete BOIR Forms are filed, providing Reporting Companies with an important validation the form was submitted to FinCEN. This would reduce the likelihood that Reporting Companies inaccurately conclude they have satisfied the reporting requirement.

Allowing Reporting Companies to “save progress” on an incomplete BOIR Form would permit a Reporting Company to begin review of or work on the form, and then temporarily exit FinCEN’s online portal or API interface to seek required information or solicit help without losing the information already entered, especially as FinCEN estimates the average burden of reporting BOI for new registrants taking between an hour and a half to nearly 11 hours.<sup>22</sup> We further recommend FinCEN include Contact Center information (including the hotline number) on the online portal to allow Reporting Companies to seek assistance from FinCEN, which would also serve to provide FinCEN with real-time direct feedback about common difficulties that arise.

This approach could provide FinCEN with an opportunity to submit automated electronic reminders to Reporting Companies who have started, but not yet completed, the BOIR Form to remind them to return to complete and file the form. This could be accomplished without placing additional burden on FinCEN to affirmatively engage in individual letter, electronic, or telephonic outreach to the public regarding incomplete BOIR Forms. Among other drawbacks, banks are

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<sup>21</sup> FinCEN identifies benefits such as providing partial Beneficial Ownership Information that would be “of immediate use” to law enforcement agencies and “other authorized users;” insight for FinCEN into common difficulties that Reporting Companies will face when complying with a novel reporting requirement; and notice for FinCEN that an incomplete report has been submitted, permitting FinCEN to “facilitate appropriate related follow-up. See 88 FR 67443, 67444.

<sup>22</sup> See 88 FR 67443, 67445

concerned this follow-up could provide another avenue for fraudsters<sup>23</sup> to seek sensitive information from bank customers by impersonating FinCEN.<sup>24</sup>

## **V. ABA requests FinCEN modify the Individual FinCEN Identifier Application Form to Clarify Reporting Requirements and Harmonize it with the BOIR Form**

FinCEN also seeks comment on a proposed information collection and associated form for individuals to seek FinCEN Identifiers, a unique identifying number issued by FinCEN that certain individuals may use in lieu of unique identifying number from an "acceptable document" (e.g. a valid U.S. passport or driver's license). FinCEN Identifiers stand in for certain mandatory CTA information reporting on BOIR Forms, so Individual FinCEN Identifier Applications are important to the accuracy of the BOIR Form.

The CTA authorized FinCEN to create and issue FinCEN Identifiers to serve as a voluntary and optional unique identifying number that can satisfy certain CTA reporting requirements.<sup>25</sup> Reporting Companies who opt for the FinCEN Identifier are required to apply for it through the BOIR Form.<sup>26</sup> Separately, Beneficial Owners and/or Company Applicants who opt for a FinCEN Identifier must seek it through this Individual FinCEN Identifier Application.<sup>27</sup>

There are inconsistencies between the two forms that ABA requests FinCEN resolve prior to OMB approval to avoid confusion and possible inaccurate reporting that could undermine the accuracy of the information collection. The revised forms must make clear that residential addresses are required for Beneficial Owners, and which type of address, business or residential, is required for Company Applicants under the Reporting Rule.

FinCEN requires different address information be reported for Beneficial Owners and certain Company Applicants pursuant to the Reporting Rule.<sup>28</sup> The Individual FinCEN Identifier Application Form risks introducing inaccuracy into the information collection and confusing individuals who qualify as Company Applicants by appearing to conflate the separate Beneficial Owner and Company Applicant categories and asking for "both business and residential address,"

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<sup>23</sup> FinCEN is already aware of the possibility that fraudsters could exploit this process, per the alert on FinCEN's beneficial ownership information reporting page ("FinCEN Alert: FinCEN has been notified of recent fraudulent attempts to solicit information from individuals and entities who may be subject to reporting requirements under the Corporate Transparency Act. The fraudulent correspondence may be titled "Important Compliance Notice" and asks the recipient to click on a URL or to scan a QR code. Those e-mails or letters are fraudulent. FinCEN does not send unsolicited requests. Please do not respond to these fraudulent messages, or click on any links or scan any QR codes within them."); <https://www.fincen.gov/boi> (accessed Oct. 22, 2023)

<sup>24</sup> ABA has been working to educate the public about avoiding scammers who pretend to be from a bank as part of ABA's Banks Never Ask That campaign; <https://www.aba.com/advocacy/community-programs/banksneveraskthat>

<sup>25</sup> See 31 USC § 5336(a)(6); (b)(2)(A(iv)(II); (b)(3)

<sup>26</sup> 88 FR 67449, 67450

<sup>27</sup> *Id.*

<sup>28</sup> Reporting Companies must provide "the individual's *residential* street address" for Beneficial Owners. 31 CFR § 1010.380(b)(1)(ii)(C)(2) (emphasis added). Company Applicants must be individuals, and those individuals who form or register an entity in the course of their professional business should report a *business* street address. *Id.* at § 1010.380(b)(1)(ii)(C)(1) (emphasis added). Those who do not must report a residential address. *Id.* at § 1010.380(b)(1)(ii)(C)(2)

rather than specifying the circumstances when business addresses are required and when residential addresses must be reported.<sup>29</sup> We recommend the form contain separate and clear entries for “Individual Beneficial Owner,” “Individual Company Applicant” and “Individual who is both a Beneficial Owner and Company Applicant.”<sup>30</sup> The BOIR Form does not use this language—and is less confusing—but it still appears to provide a choice of address Reporting Companies may supply for Company Applicants,<sup>31</sup> while not clarifying which address is required by the Reporting Rule. To reduce confusion, these forms should include the same instructions and clearly specify which address is required. Because banks require accurate and complete information about legal entities to comply with BSA program requirements, and the FinCEN Identifier serves as a substitute for supplying required Beneficial Ownership Reporting in the BOIR Form, ABA believes it is important for both forms to seek the same information required by the Reporting Rule.

In addition, and to ensure that FinCEN Identifiers are useful to financial institutions among other key stakeholders, FinCEN should ensure the form will be developed in a fashion to allow queries of the information collection by FinCEN Identifier. In this future, this could permit banks to run a search to identify when an individual holding a FinCEN Identifier is beneficial owner of more than one Reporting Company—a function that would add value for banks.

## **VI. FinCEN Should Provide a Paper Filing Option for Both Forms for Reporting Companies Who Cannot File Electronically**

FinCEN proposes that all Beneficial Ownership Information Reporting be accomplished through electronic means.<sup>32</sup> While efficient, this restriction will not serve all bank customers, and the CTA does not mandate electronic filing. ABA requests FinCEN make both forms available in paper format.

Given that FinCEN estimates approximately 32,556,929 Reporting Companies will submit initial BOIR Forms in 2024,<sup>33</sup> requiring all Reporting Companies to submit BOIR Forms and Individual FinCEN Identifier Applications electronically will burden Reporting Companies who lack access to technological resources necessary to file electronically (e.g., members of certain religious communities; rural and remote populations, certain older individuals). Indeed, earlier this year, Treasury’s Internal Revenue Service (IRS) recognized the burden imposed by electronic tax filing

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<sup>29</sup> In the Individual FinCEN Identifier Form Comment Request Appendix, FinCEN proposes a form that states: Current address: (report both business address and residential address if the FinCEN ID will be used for both a Company Applicant and a Beneficial Owner); 88 FR 67449, 67451.

<sup>30</sup> In the latter category,

<sup>31</sup> In the BOIR Form Comment Request Appendix, FinCEN proposes the Company Applicant Information section of the form that states:

Current address (street address):

23. \*Address type (check the appropriate box for lines 23a or 23b)

a. Business address  
b. Residential Address

88 FR 67443, 67447.

<sup>32</sup> 88 FR 67443, 67443-44 (“BOIRs will be filed by completing a form (the BOIR Form) and submitting it through an online portal or submitting the information through an Application Programming Interface (API)’”

<sup>33</sup> 88 FR 67445

requirements on certain populations and provided relief from mandatory electronic tax filing requirements.<sup>34</sup>

In other words, unless paper filing is permitted, some Reporting Companies who cannot electronically file are eligible for relief from IRS electronic tax return filing requirements (pursuant to a law that increases electronic filing requirements) but will still be required by FinCEN's proposed information collection to file BOIR Forms electronically. Furthermore, some individuals from affected populations will be foreclosed from seeking a FinCEN Identifier. If FinCEN does not provide a paper filing form, affected Reporting Companies will potentially face civil and criminal penalties for non-compliance with Reporting Rule requirements.

ABA recommends that FinCEN provide a paper filing form option for Reporting Companies and individuals seeking a FinCEN Identifier, to include entities and individuals whom Treasury has already determined would be unduly burdened by electronic filing requirements.

## **VII. FinCEN Should Verify the Beneficial Ownership Information in Order For this Information Collection to Have Practical Utility**

ABA renews its call for FinCEN to commit to a process to verify the accuracy of the reported information. FinCEN's proposed information collection does not describe a process or include a commitment to review or verify the Beneficial Ownership Information submitted by Reporting Companies to FinCEN. There is no point to collecting Beneficial Ownership Information if banks, law enforcement, national security and intelligence agencies and other key stakeholders cannot rely on it to be highly useful, as required by the CTA.

The Information Quality Act requires the Office of Management and Budget to promulgate guidance to agencies ensuring the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies. OMB's Federal Data Strategy, as well as the agency specific guidelines published by Treasury and FinCEN, state that data should be appropriate, accurate, objective, accessible, useful, understandable, and timely. A collection of information riddled with inaccuracies does not meet the intent or objectives of the Information Quality Act or the CTA.

Absent a system of verification, this information collection undermines FinCEN's mission to safeguard the financial system and promote national security through the collection, analysis, and dissemination of financial intelligence, as well as execute the purposes of the CTA, both of which rely on accurate information.

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<sup>34</sup> See [Electronic-Filing Requirements for Specified Returns and Other Documents](#), 88 FR 11754 (Feb. 23, 2023) (final rule providing relief from mandatory electronic tax filing requirements for certain persons required to file partnership returns, corporate income tax returns, unrelated business income tax returns, withholding tax returns, certain information returns, registration statements, disclosure statements, notifications, actuarial reports, and certain excise tax returns)

### **VIII. Conclusion**

ABA supports FinCEN's ongoing work to implement the CTA and appreciates the opportunity to comment on the proposed information collections. If you have any questions or want to discuss our recommendations, please reach out to Virginia O'Neill at (202) 663-5073.

Sincerely,

A handwritten signature in black ink that reads "Virginia O'Neill". The signature is fluid and cursive, with "Virginia" on the first line and "O'Neill" on the second line.

Virginia O'Neill  
Executive Vice President  
Regulatory Compliance and Policy