



February 14, 2023

Policy Division  
Financial Crimes Enforcement Network  
Post Office Box 39  
Vienna, VA 22183

Regarding: Proposed Rule – Beneficial Ownership Information Access and Safeguards,  
and Use of FinCEN Identifiers for Entities – Docket Number FINCEN-2021-0005 and  
RIN 1506-AB49/AB59

Dear Sir or Madam:

On behalf of the nearly 300 Illinois community bank members that we are proud to represent, the Community Bankers Association of Illinois (“CBAI”) appreciates the opportunity to respond to the Financial Crimes Enforcement Network’s (“FinCEN” or “Agency”) proposed rule on Beneficial Ownership Information Access and Safeguards, and Use of FinCEN Identifiers for Entities (“Proposed Rule” or “Proposal”). The Proposal concerns access by authorized recipients to beneficial ownership information (“BOI”) that will be reported to FinCEN pursuant to various laws enacted through congressional legislation. The Proposal would implement strict protocols on security and confidentiality to protect sensitive personally identifiable information reported to FinCEN and will help law enforcement and national security agencies prevent and combat money laundering, terrorist financing, tax fraud and other illicit activities, as well as protect national security.

CBAI is dedicated to exclusively representing the interests of Illinois community banks and thrifts through effective advocacy, outstanding education, and high-quality products. CBAI’s members hold more than \$80 billion in assets, operate 860 locations statewide, and lend to consumers, small businesses, and agriculture. For more information, please visit [www.cbai.com](http://www.cbai.com).

CBAI's advocacy to relieve the community bank regulatory burden for the collection and reporting of beneficial ownership information dates back to comment letters in 2012 and 2016. In those letters, we urged FinCEN to tread lightly on community banks, and were critical of FinCEN's regulatory impact analysis which justified the estimated cost of compliance to implement their proposed rules. CBAI is gratified that Congress has finally shifted the responsibility of collecting BOI from community banks to where it rightfully belongs – with FinCEN.

In a comment letter dated May 5, 2021, CBAI urged that the responsibility to collect and report beneficial ownership information must be completely and unequivocally transferred from community banks to FinCEN. Community banks must have prompt and secure access to BOI information at no cost to assist them in their efforts to fulfill their many and significant responsibilities in knowing their customers ("KYC") and doing their part to fight against identity theft, financial fraud, money laundering and terrorist financing (i.e., AML and BSA responsibilities.) In addition, when community banks access BOI quickly and securely, to assist in their regulatory compliance, they must be specifically indemnified and held harmless from liability for accessing and using the information that is collected, stored, and disseminated by FinCEN.

CBAI is encouraged that the Proposed Rule is generally consistent with our advocacy efforts. This letter will highlight and reinforce necessary aspects of the rulemaking and offer several additional improvements which we believe need to be incorporated into the final rule.

#### Highlights, Reinforcements and Additional Suggestions

The legislation enacting the transfer of the BOI responsibility to FinCEN approves five categories of recipients of this information, including state and nationally chartered community banks. Access to this information will assist community banks in complying with their Customer Due Diligence ("CDD") requirements. **CBAI urges BOI information be made available to banks and at no cost. In addition, CBAI urges that BOI must be easily accessible by community banks and FinCEN must be prompt (near instantaneous) in its response with an "electronic transcript" so they can quickly respond to their small business customers who are opening accounts at their community bank.**

With FinCEN soon to be responsible for collecting, storing, and reporting BOI, **CBAI again urges that it be made clear in the final rule that there will be a complete and unequivocal transferred of this responsibility from community banks to FinCEN.** The certainty of the transfer of this responsibility will ensure there is no duplication of effort which would create an unnecessary regulatory burden on community banks.

The statutory language leaves unspecified the meaning of customer due diligence under applicable law and the mechanism by which the customer's consent should be registered prior to the dissemination of the information. **CBAI urges the final rule to include only the BOI that is being collected by FinCEN and available to be obtained by banks,** and not to more broadly include a broader range of activities beyond compliance with those specifically related to BOI. This narrow interpretation would eliminate any confusion as to what is and is not covered under the Proposal.

Obtaining BOI information from FinCEN should be considered a routine part of the banks' CDD compliance when opening an account. **CBAI disagrees with the need for a customer to specifically authorize the bank to receive this information from FinCEN.** However, CBAI appreciates FinCEN not requiring banks to submit proof of consent by the reporting companies at the time of the request, presumably to minimize regulatory burden. If this requirement must be retained in the final rule, **CBAI urges FinCEN to provide the necessary authorizing language that banks should be able to include in their account application/agreement – not as a stand-alone document, and the customer's signature on the application/account agreement should be legally sufficient proof of the customer's authorization for the bank to obtain BOI (initial and any subsequent disclosures) from FinCEN.**

The BOI information banks receive from FinCEN in the "electronic transcript" should be information that a bank can completely rely on it as accurate. Any inaccuracy in reporting by the business, corruption of information in storage, and untimely and inaccurate reporting by FinCEN should not be the fault of the bank that uses this information. **CBAI urges FinCEN to provide an absolute presumption of accuracy and a hold harmless for banks relying on this information in their efforts to comply with their regulatory requirements.**

Regarding the limitations of re-disclosure of BOI by banks, CBAI agrees that the Proposal should authorize the banks' officers, employees and contractors. **CBAI urges the Agency to also authorize bank directors for re-disclosure.** CBAI is concerned that FinCEN is adding the

qualifier “in the United States” to permit re-disclosure. Community banks use a variety of contractors of varying sizes and locations which may or may not include ones outside of the United States or with foreign ownership. It would be troublesome if a bank were to be criticized for violating this provision because it was not aware of a contractor’s location or where the information is being housed outside of the United States. **CBAI urges the Agency to provide clarity in the Proposal for community banks to address these re-disclosure issues.**

Statutory language authorizes FinCEN to prescribe standards that are determined to be necessary or appropriate to protect the confidentiality of BOI. The Agency is proposing the standard for compliance is Section 501 of the Gramm-Leach-Bliley Act (“GLBA”). This standard is long established and well known to community banks. **CBAI concurs with FinCEN’s rejection of alternate approaches and agrees with the GLBA standard for security and confidentiality requirements for BOI, with the caveat that FinCEN should not impose requirements that go beyond those contained in Section 501 at least for community banks.**

The reporting, storing and disclosure of BOI by FinCEN is an enormous and complicated project. Banks know well that conversions are unlikely to go smoothly. The effective date for the final rule, January 1, 2024, is rapidly approaching. **CBAI urges FinCEN and the banking regulators to work collaboratively and agree on what will happen in the event it is no longer the community banks’ responsibility to collect BOI, but FinCEN is unable to provide the information so that they can satisfy their CDD requirements. Addressing this more-than-likely situation should be accomplished without creating an additional regulatory burden for community banks.**

Thank you for the opportunity to respond to this proposal. If you have any questions or require any additional information, please contact me at (847) 909-8341 or [davids@cba.com](mailto:davids@cba.com) .

Sincerely,

/s/

David G. Schroeder  
Senior Vice President  
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