



February 14, 2023

The Honorable Himamauli Das
Acting Director
Financial Crimes Enforcement Network (FinCEN)
P.O. Box 39
Vienna, Virginia 22183

Via Federalregister.gov Public Comment Online Portal

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

Dear Acting Director Das:

On behalf of the more than 1.5 million members of the National Association of REALTORS® (NAR), we appreciate the opportunity to comment on the “Beneficial Ownership Information Access and Safeguards and Use of FinCEN Identifiers Notice of Proposed Rulemaking” (NPRM). NAR is committed to advancing national security goals and collaborating with the federal government and real estate industry leaders to combat money laundering, terrorist financing, and other illicit financial crimes involving real estate. NAR applauds Congress’ work and efforts in passing the *Corporate Transparency Act* (CTA), which was part of the *Anti-Money Laundering Act of 2020*, included in the 2021 *National Defense Authorization Act*. We also applaud the efforts of the Financial Crimes Enforcement Network (FinCEN) and the Department of Treasury to modernize the current anti-money laundering counterterrorism financing regime (AML/CFT) and to successfully implement the CTA.

NAR supports the collection of beneficial ownership data by FinCEN and the goals of the CTA and related legislation aimed at strengthening the country’s AML/CFT regime by preventing the formation of anonymous shell companies for illicit purposes. It is important that Congress and FinCEN continue to develop innovative and risk-based solutions to prevent illicit financial crimes from occurring and ensuring that the actions of bad actors are thwarted prior to the involvement of real estate transactions. NAR supported the “Beneficial Ownership Information Reporting Requirements” regulation that will take effect next year and implores FinCEN to continue to implement the subsequent CTA rules with small business owners in mind.

Eighty-seven percent of NAR members are independent contractors, many of whom are small business owners. It is imperative that FinCEN continue work to ensure that regulations are not too onerous for smaller entities and is cognizant of regulatory compliance costs given current economic challenges that many small business owners are currently facing. NAR encourages FinCEN to continue to advise and engage with business owners to understand the impact and effect of implementation of the Beneficial Ownership Information (BOI) rule, and other AML/CFT measures being proposed in the future.

FinCEN's collection of beneficial ownership information is a solution to stopping the formation of anonymous shell companies for illicit gains by enhancing transparency. NAR is fully supportive of pragmatic and strategic efforts by FinCEN, federal regulators, and law enforcement to prevent illicit financial crimes from occurring and deterring bad actors from using the real estate market to engage in illicit activities. The NPRM is a significant step toward that goal as FinCEN continues its work in developing the infrastructure and safeguards necessary for full implementation for the collection of beneficial ownership reporting beginning January 1, 2024. NAR understands that implementation of the CTA and its regulatory requirements is a major task for FinCEN and appreciates FinCEN's efforts to ensure adequate feedback from industry leaders and stakeholders on these important topics.

NAR supports the goals of these proposed regulations as outlined in the NPRM, which include ensuring that: (1) only authorized recipients have access to the beneficial ownership information; (2) authorized recipients use that access only for purposes permitted by the *Corporate Transparency Act*; and (3) authorized recipients only re-disclose BOI in ways that balance protection of the security and confidentiality of the BOI with furtherance of the CTA's objective of making beneficial ownership information available to a range of users for purposes specified in the CTA.

NAR supports access requirements that align with the CTA which would permit access to beneficial ownership data only to authorized users who are engaged in an authorized investigation, those who are required to access beneficial ownership information as part of their work; those who have received the appropriate training; and to those who are authorized by agreement with the Treasury Secretary to access beneficial ownership information. NAR also supports the CTA requirements requiring each requesting agency establish and maintain a secure system to store beneficial ownership information and establish the proper security and data privacy protocols. We also support compliance measures set out in the CTA requiring requesting agencies establish and maintain secure systems to store beneficial ownership information, while also establishing and maintaining proper privacy and data security measures including proper audits and maintenance measures. Requiring requesting entities to have secure protocols in place prior to accessing any beneficial ownership data is imperative.

NAR generally recommends that FinCEN ensure all requesters seeking beneficial ownership information provide a justification that must be submitted and vetted by FinCEN, prior to gaining access to the requested beneficial ownership data. NAR respectfully requests that FinCEN ensure proper safeguards and protocols to ensure the utmost protection of the beneficial ownership data submitted by business owners. Stringent access measures and protocols should be in place.

NAR supports the five categories of recipients under the CTA who would have access to the beneficial ownership information with certain protections and limitations. NAR believes that law enforcement and federal regulators are key stakeholders that should have access to the beneficial ownership data in a limited capacity in furtherance of their work, and as needed. Federal agencies accessing beneficial ownership information for law enforcement, intelligence, and national security purposes should have broad access with some limitations and should be able to provide adequate justifications within the

database for requesting access. NAR agrees that the federal access to the data be “activity based” and narrowly focused.

State, local, and tribal law enforcement agencies also should have access to beneficial ownership information only upon formal request by a “court of competent jurisdiction” via a state or local grand jury subpoena seeking the information as part of a criminal or civil investigation, and documentation of the formal request should be submitted directly to FinCEN for approval prior to access being granted. Foreign law enforcement agency requesters should engage directly with FinCEN to communicate all requests, and FinCEN should properly receive, review and evaluate each request and work with federal agency partners and counterparts to assess whether access should be granted. Also, all requests from foreign requesters should be in furtherance of law enforcement and national security purposes. Additionally, FinCEN should audit beneficial ownership information requests from foreign requesters.

NAR agrees with the CTA requirements that financial institutions should receive access to beneficial ownership information on a very limited basis and to assist in facilitating compliance with the Customer Due Diligence Rule. Financial institutions should have limited access to the beneficial ownership information also, because many already collect much of the same information that would be submitted to FinCEN as part of the beneficial ownership registry. Additionally, where possible reporting entities should be able to consent to access to their beneficial ownership information accessed by a financial institution and the scope to the information obtained should be limited.

For NAR, Congress and FinCEN’s work to protect our country are tantamount, however data privacy, data security, and confidentiality are extremely important to the millions of business owners who will be providing their personal information to FinCEN beginning next year. Ensuring limited access to this beneficial ownership data is essential to help with public confidence in this system and for compliance purposes. Reporting companies and owners want to ensure that their data is safe and secure, used only in limited circumstances, and is only accessible when absolutely necessary. NAR encourages FinCEN to think about how to prevent, mitigate, and manage beneficial ownership data in instances of any potential data breaches that could occur, including how affected parties will be notified and remedies that can be implemented with reasonable timelines. Additionally, NAR believes that FinCEN should have the highest protective protocols in place for the FinCEN database and access to the database should be tracked, so that FinCEN is aware at all times of who has access to the database and who is making requests.

It is imperative that FinCEN’s security measures be in place and that rules regarding access are clear to all stakeholders prior to January 1, 2024, when FinCEN begins accepting beneficial ownership information from reporting entities. While information sharing among stakeholders is helpful for law enforcement, federal agencies, financial institutions, and others, ensuring all parties that may have access have the proper training, support, and guidance from FinCEN is critical for security. FinCEN’s development and testing of the security protocols and systems as it relates to the beneficial ownership database should be managed and thoroughly vetted prior to next year. The imposition of civil and criminal penalties for any unauthorized use of beneficial ownership information

or for intentional disclosure of any beneficial ownership data would deter violations of FinCEN's security protocols and should be enforced.

NAR encourages FinCEN to develop an efficient and secure method for verifying beneficial ownership data submitted from reporting companies. The verification process that FinCEN develops should not be burdensome to business owners and should not be costly to businesses. Data verification measures are another aspect of the regulatory process that FinCEN must consider as it works to make the collection of beneficial ownership data workable for impacted entities and necessary stakeholders.

The NPRM also addresses the use of FinCEN identifiers. NAR supports the use of the unique identifying numbers that FinCEN can issue to individuals and reporting companies that have provided their beneficial ownership information. FinCEN identifiers are a useful tool to help business owners feel secure with their disclosures and should allow for greater ease of access for business owners when submitting reports to FinCEN, including the required updates. NAR supports FinCEN's proposed amendments to the "Beneficial Ownership Information Reporting Requirements" Final Rule as outlined in the NPRM.

NAR values the opportunity to comment on the proposed access rule and appreciates FinCEN's efforts to implement the CTA. NAR remains committed to working collaboratively with FinCEN, federal agencies, law enforcement, Congress, and other stakeholders to combat illicit financial crimes involving real estate and efforts to prevent bad actors from engaging in illicit activities within the real estate industry broadly. We welcome opportunities to work with you now and in the future as you continue to implement the CTA, and other regulations pertaining to the real estate sector.

If you have any questions, please contact me, or Nia Duggins, Senior Business Issues Policy Representative at 202-383-1085, or NDuggins@NAR.REALTOR.

Sincerely,



Kenny Parcell
2023 President, National Association of REALTORS®