

April 26, 2024

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

RE: **Agency Information Collection Activities; Proposed Renewal; Comment Request; Renewal Without Change of Reports of Beneficial Ownership Requirements for Legal Entity Customers, Docket Number FINCEN–2024–0008 and OMB Control Number 1506–0070, 89 Fed. Reg. 14148 (February 26, 2024)**

Dear Director Gacki:

The American Bankers Association (ABA)<sup>1</sup> appreciates the opportunity to comment on the Paperwork Reduction Act (PRA)<sup>2</sup> request for comment published by the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN). FinCEN seeks renewal, without change, of the existing information collection requirements relating to beneficial ownership requirements for legal entity customers<sup>3</sup> established by FinCEN's 2016 customer due diligence (CDD) rule,<sup>4</sup> as incorporated in Appendix A to the CDD rule (Certification Regarding Beneficial Owners of Legal Entity Customers).<sup>5</sup>

## I. Summary of the Comment

The PRA requires federal agencies to seek approval (or as here, reapproval) from the Office of Management and Budget (OMB) before collecting information from the public. In pursuit of OMB approval, an agency must demonstrate that it has accurately assessed the costs of each paperwork burden, balanced these costs and benefits, considered the need for and utility of each individual paperwork requirement, and minimized the collection burden of the information collection request.

ABA supports the goals of the PRA, and FinCEN's data solicitation, and offers feedback on FinCEN's initial estimates based on information and poll data collected from our members. Our comments, however, have a broader objective: to inform FinCEN's anticipated revision of the

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<sup>1</sup> The American Bankers Association is the voice of the nation's \$23.7 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2.1 million people, safeguard \$18.8 trillion in deposits and extend \$12.5 trillion in loans.

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

<sup>3</sup> Agency Information Collection Activities; Proposed Renewal; Comment Request; Renewal Without Change of Reports of Beneficial Ownership Requirements for Legal Entity Customers, Docket Number FINCEN–2024–0008 and OMB Control Number 1506–0070, 89 Fed. Reg. 14148 (February 26, 2024);

<https://www.federalregister.gov/documents/2024/02/26/2024-03965/agency-information-collection-activities-proposed-renewal-comment-request-renewal-without-change-of>.

<sup>4</sup> See generally 31 C.F.R. § 1010.230.

<sup>5</sup> *Id.* at Appendix A to § 1010.230.

CDD rule, which is required as part of the sweeping reforms of the Anti-Money Laundering Act of 2020 (AMLA).<sup>6</sup> Before FinCEN proposes revisions to the CDD rule, it must accurately understand how—and how often—banks are compelled to collect beneficial ownership information on legal entity customers; how FinCEN’s beneficial ownership reporting rule renders certain CDD information collection by banks unnecessarily duplicative; and what works about the CDD rule and what does not.

FinCEN’s burden estimates of 20 minutes to update and maintain CDD procedures,<sup>7</sup> and between 40-120 minutes (with an average of 80 minutes) to “identif[y], verif[y]...review and [keep] record[s],” of beneficial ownership information of legal entity customers<sup>8</sup> are both too low. Even if those estimates were accurate—and an April poll of our members of all sizes, nationwide, revealed they are not—FinCEN substantially underestimates the number of times a bank must engage in this process. Banks do not open 1.5 new legal entity accounts per business day,<sup>9</sup> as originally estimated by FinCEN in 2016;<sup>10</sup> this eight-year-old estimate is a massive undercount, for even the smallest community banks.

Moreover, FinCEN now directly receives information about the beneficial ownership of small business reporting companies from those entities, and FinCEN intends to provide access to that information to banks (in spring 2025) and other stakeholders as part of FinCEN’s phased approach to access,<sup>11</sup> so those aspects of the CDD rule that require banks to collect similar duplicative information should be reassessed.

Finally, as FinCEN contemplates revisions to the 2016 CDD rule, it is essential that FinCEN understand the aspects of the CDD rule that work as intended—to further BSA purposes—and those that do not, by requiring banks to depart from a risk-based approach to BSA compliance. As just one example, the CDD rule mandates collection requirements at virtually all account openings, regardless of legal entity risk profile or whether the legal entity is already well known to the bank.

## **II. FinCEN Substantially Overestimates the Availability of Information and Underestimates the PRA Burden of Legal Entity Beneficial Ownership Collection**

The purpose of the PRA is to “minimize the paperwork burden for individuals, small businesses...and other persons resulting from the collection of information by or for the Federal Government.”<sup>12</sup> Under the PRA, FinCEN must certify (and supply a supporting records of such certification) that each information collection “reduces to the extent practicable and appropriate

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<sup>6</sup> Pub. L. 116-283, 134 Stat. 4584, Section 6216 (Jan. 1, 2021).

<sup>7</sup> 89 Fed. Reg. 14148, 14149.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at fn.16.

<sup>10</sup> FinCEN Customer Due Diligence Requirements for Financial Institutions Final Rule, 81 Fed. Reg. 29398, 29448 (May 11, 2016) (“FinCEN estimated that small institutions would open at most 1.5 new accounts for legal entities per day, and probably fewer.”)

<sup>11</sup> FinCEN Beneficial Ownership FAQs O.1; [https://www.fincen.gov/boi-faqs#O\\_1](https://www.fincen.gov/boi-faqs#O_1).

<sup>12</sup> 44 U.S.C. § 3501(1).

the burden on persons who shall provide information to or for the agency, including with respect to small entities.”<sup>13</sup>

Banks meet their CDD rule obligations to collect beneficial ownership information from their legal entity customers, and they do it well —banks want to know who their customers are. In April, ABA conducted a poll, receiving responses from 143 banks nationwide, ranging from small community banks to large banks with a multi-national presence. This poll reveals FinCEN’s burden calculation substantially underestimates the burden associated with collecting beneficial ownership information for legal entity customers (at virtually all new account openings), including by small entities. In reality, the CDD rule obliges banks to engage in more tasks than FinCEN estimates, requires substantially more time than FinCEN estimates to perform these tasks, and demands that banks undertake these tasks more frequently than FinCEN estimates. FinCEN breaks the burden estimate into two categories: time required to update and maintain procedures and time required to engage in legal entity customer identification, verification, and review and recordkeeping of the beneficial ownership information, and assesses the PRA burden to be 20 minutes, and an average of 80 minutes, respectively.<sup>14</sup> 97% of our April poll respondents disagree with these assessments.

A more accurate way of calculating burden must consider the actual tasks a bank must perform in order to collect legal entity beneficial ownership information and consider the impact of other compliance requirements that must be performed as part of this information collection (e.g. sanctions screening). In addition, an appropriate share of the paperwork burden created by broader anti-money laundering (AML) program requirements must be apportioned to the CDD burden estimate (e.g. CDD compliance procedures must be tested, and personnel trained to execute CDD procedures).<sup>15</sup> Finally, once burden is accurately estimated based on the steps banks follow, this burden must be multiplied by the large number of legal entity business accounts banks open daily, which varies by bank size, but overall substantially exceeds FinCEN’s estimate of 1.5 times a day.

As an initial matter, FinCEN estimates that it takes 20 minutes, *annually*, for banks to “[u]pdate and maintain beneficial ownership identification procedures.”<sup>16</sup> Specifically, FinCEN states, “[t]he final rule recognized a burden of 56 hours to develop the initial procedures (40 hours for small entities). Once procedures are developed, an annual burden of 20 minutes is recognized for revisions to and maintenance of such procedures.”<sup>17</sup> However, the CDD beneficial ownership information collection procedures implemented by all banks to collect information from real customers are not a static document that only requires 20 minutes of annual examination.

According to our April poll, out of 141 respondents, 97% thought FinCEN’s estimate of 20 minutes to update and maintain beneficial ownership identification procedures was simply too low. This is understandable, since banks are required to establish, maintain, and update “written

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<sup>13</sup> 44 U.S.C. § 3506(c)(3)(C).

<sup>14</sup> 89 Fed. Reg. 14148, 14149.

<sup>15</sup> More specifically, banks are required, at a minimum, to develop, implement, and maintain a system of internal controls to assure ongoing compliance, independently test for compliance by bank personnel or an outside party, designate an individual or individuals responsible for coordinating and monitoring day-to-day compliance, train appropriate personnel, and develop, implement and maintain appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to know your customer, ongoing monitoring, and federal banking agency regulation compliance obligations. *See* 31 C.F.R. § 1020.210(a).

<sup>16</sup> 89 Fed. Reg. 14148, 14149 at fn. 14.

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

policies” that are necessary to achieve compliance with FinCEN’s BSA-based rules, along with the written procedures that banks must operationally implement, multiple times a day, every day, and both policies and procedures should be considered as part of the burden estimate.

By individually recognizing this step – updating and maintaining beneficial ownership identification procedures – and separating it from CDD rule policy updates and maintenance, let alone customer engagement, draws attention away from the most time-intensive parts of what banks must do to collect this information. It is also less meaningful to focus on the time spent on updating procedures separately from the work that implementing the procedures requires. The procedures might direct a first line bank employee to ask certain questions of the individual who seeks to open the new account on behalf of the legal entity. If the individual opening the new account fails to respond —lacks the relevant information, misunderstands the questions, forgets to follow up with necessary information, or makes an overt mistake on the form— or the bank determines that more investigation is needed on certain points, that time represents burden that is not reflected in this PRA estimate. The procedures describe how a bank engages with legal entity customers to obtain the necessary information to comply with the CDD rule. Separating the maintenance of the procedures from executing the procedural steps to carry out the bank’s policy inadvertently highlights one of the least burdensome steps of collecting this information.

Second, with respect to FinCEN’s estimate of 40-120 minutes (with an average of 80 minutes) to engage in “customer identification, verification, and review and recordkeeping of the beneficial ownership information,” our poll respondents were less unanimous, in no small part because FinCEN’s estimate does not include all the steps a bank must follow in order to comply. Out of 119 respondents, 53% disagreed with FinCEN’s estimated range.

To create a more accurate estimate of the legal entity beneficial ownership PRA burden required by the current CDD rule, we recommend considering the steps a bank takes when a legal entity customer opens a new account with a bank:

- analyzing whether the customer is a “legal entity” for purposes of the CDD rule (or whether an exception applies);
- assessing whether what the legal entity customer proposes to open is a “new account,” (or whether an exception applies);
- explaining the information collection and certification requirements to the customer (including why the bank must request potentially duplicative certifications for additional “new accounts”);
- requesting the information through the Appendix A certification form;
- waiting for the customer to supply the completed Appendix A certification;
- following up with the customer and other sources to ensure that the certification has been fully completed (if applicable);
- reviewing the completed Appendix A certification form;
- assessing whether verification is appropriate (if applicable); and
- creating and maintaining a record of the paperwork.<sup>18</sup>

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<sup>18</sup> Of course, FinCEN should also consider the following general factors when assessing the PRA burden associated with collecting information the beneficial ownership requirements for legal entity customers:

- Reviewing and understanding instructions

In addition, FinCEN should account for the time that compliance with other requirements may add. For example, the estimate should include time required to conduct sanctions screening and due diligence of the beneficial owners prior to proceeding, as well as creating and maintaining a risk profile of the legal entity customer.

Once those steps are complete, in order to complete an accurate burden assessment, FinCEN should consider how much time banks must spend on CDD compliance as a percentage of their overall AML program requirements. Complying with CDD rule obligations is a mandatory part of a bank's overall AML program requirements and FinCEN has regulatory expectations for what that compliance must involve (e.g. establishing and monitoring internal controls, conducting independent testing, training personnel, developing and implementing risk-based procedures for conducting ongoing customer due diligence, including maintaining technology systems necessary for collecting and storing information).<sup>19</sup> A portion of the time to complete those tasks must be spent on CDD compliance. Adding these three steps together would produce a more accurate accounting of the burden.

Finally, FinCEN must accurately estimate how many new legal entity accounts are opened daily — in other words the number of times a day the bank must undertake the required information collection. FinCEN estimated eight years ago that banks, including community banks, would open an average of 1.5 new legal entity business accounts a day.<sup>20</sup> 92% of our 141 poll respondents disagreed, with 94% of those respondents describing FinCEN's estimate of 1.5 account openings a day as "very low." Even the smallest community banks open tens of new accounts for legal entity customers a day, depending on the nature of their customers, and larger banks can open hundreds of such accounts a day.

### **III. FinCEN's Beneficial Ownership Reporting Rule Renders CDD Information Collection Unnecessarily Duplicative**

Under the PRA, FinCEN must certify (and supply a supporting record of such certification) that each information collection submitted "is not unnecessarily duplicative of information otherwise reasonably accessible to the agency."<sup>21</sup> FinCEN's 2022 beneficial ownership reporting rule<sup>22</sup> (Reporting rule) renders the CDD information collection of the beneficial owners of small businesses by banks—for the benefit of the government—unnecessarily duplicative of the

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- Compiling materials necessary for collection
  - Acquiring (or developing) technology and systems necessary to gather, process, store, and send information
  - Training personnel

An accurate assessment of the PRA burden associated with legal entity beneficial ownership information collection and reporting must incorporate these elements identified by the government. *See generally*, A Guide to the Paperwork Reduction Act – Burden Activities, <https://pra.digital.gov/burden/activities/>.

<sup>19</sup> *See generally*, 31 C.F.R. § 1020.210(a).

<sup>20</sup> 81 Fed. Reg. 29398, 29448.

<sup>21</sup> 44 U.S.C. § 3506(c)(3)(B).

<sup>22</sup> 31 C.F.R. § 1010.380.

information FinCEN itself receives from these small businesses directly, and must eventually share (in part)<sup>23</sup> with banks, as directed by the Corporate Transparency Act (CTA).<sup>24</sup>

Specifically, FinCEN's Reporting rule requires "reporting companies," defined in a similar, but not identical way to "legal entities" covered by the CDD rule, to report their "beneficial ownership" information directly to FinCEN.<sup>25</sup> Businesses created in 2024 have 90 days to comply with this reporting requirements, but most businesses will need to comply by January 1, 2025.<sup>26</sup> Therefore, virtually all information FinCEN requires banks to collect about beneficial ownership from their legal entity customers at new account opening is either now, or soon should be housed with FinCEN, in FinCEN's new beneficial ownership secure system.<sup>27</sup>

The CDD rule requires banks to make and maintain records<sup>28</sup> of the information used to identify the beneficial owner(s) of each legal entity customer at the time of new account opening<sup>29</sup> (subject to certain exclusions<sup>30</sup>) and to verify the identity of each identified beneficial owner, according to risk-based procedures, to the extent reasonable and practicable.<sup>31</sup> Banks are permitted to rely on the information customers report (including by using the Appendix A certification form) provided they have no knowledge of facts that would reasonably call into question the reliability of such information.<sup>32</sup> This is one of the four core requirements of the CDD rule. In FinCEN's words, the CDD rule:

"requires covered financial institutions to establish and maintain written policies and procedures that are reasonably designed to (1) identify and verify the identity of customers; (2) identify and verify the identity of the beneficial owners of companies opening accounts; (3) understand the nature and purpose of customer relationships to develop customer risk profiles; and (4) conduct ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information."<sup>33</sup>

Now that FinCEN has a regulation designed to render FinCEN the official keeper of the national, authoritative database of beneficial ownership information, rather than requiring banks to collect

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<sup>23</sup> FinCEN's December 2023 access rule, which proposes to allow banks to seek access to the reporting company-reported information, indicates that FinCEN intends to provide less information to banks than other authorized users of this database. Beneficial Ownership Information Access and Safeguards, 88 Fed. Reg. 88732, 88778 (Dec. 22, 2023) ("FinCEN expects there will be differing levels of access to the BO IT system, depending on the type of authorized BOI recipient.").

<sup>24</sup> 31 U.S.C. § 5336(c)(2)(B)(iii).

<sup>25</sup> See generally 31 C.F.R. § 1010.380. Note also that "beneficial ownership information" is defined differently in the reporting rule than in the CDD rule.

<sup>26</sup> *Id.* at § 1010.380(a).

<sup>27</sup> 88 Fed. Reg. 88732, 88733 ("Coincident with the protocols described in this final rule, FinCEN continues to work to develop a secure, nonpublic database in which to store BOI, using rigorous information security methods and controls typically used in the Federal government to protect nonclassified yet sensitive information systems at the highest security level.").

<sup>28</sup> 31 C.F.R. at § 1010.230(i).

<sup>29</sup> *Id.* at § 1010.230(b)(1).

<sup>30</sup> See *id.* at § 1010.230(e)(2); *id.* at § 1010.230(h).

<sup>31</sup> *Id.* at § 1010.230(b)(2).

<sup>32</sup> *Id.*

<sup>33</sup> FinCEN News Release, "FinCEN Reminds Financial Institutions that the CDD Rule Becomes Effective Today" (May 11, 2018); <https://www.fincen.gov/news/news-releases/fincen-reminds-financial-institutions-cdd-rule-becomes-effective-today>.



legal entity beneficial ownership information for U.S. government purposes, FinCEN should instead reduce burden on banks, and where requested, share such information with banks. Sharing beneficial ownership information—and reducing burden on banks—is both required by the PRA and consistent with the purposes of the CTA.<sup>34</sup>

#### IV. Revisions to the CDD Rule Must Be Consistent with a Risk-Based Approach to BSA Compliance

FinCEN should ensure that any revisions to the CDD rule reduce—rather than increase—burdens on banks, as required by the CTA, and permit banks to allocate resources consistent with the risk-based approach to BSA compliance that FinCEN otherwise requires. There are several improvements that would help deliver on this promise for banks.

Consistent with Congressional intent in the CTA, FinCEN should reduce any burdens on financial institutions and legal entity customers that are, in light of enactment of the CTA, unnecessary and duplicative,<sup>35</sup> by permitting banks greater flexibility to determine, on a risk basis, when and how to collect beneficial ownership information on their customers. This would permit banks to focus on knowing their legal entity customer and its beneficial owners, rather than being forced to collect repetitive information at each new account opening, regardless of how well they know that particular legal entity customer.<sup>36</sup>

Revisions to the CDD rule must take into account that there are significant differences between the CDD rule definition of beneficial ownership—a rule which banks have six years of experience operationalizing—which limits the number of beneficial owners to a maximum of five,<sup>37</sup> and the Reporting rule’s definition of beneficial ownership, which has no numerical limit.<sup>38</sup> It would be neither helpful to law enforcement, nor an efficient use of bank compliance resources, for banks to identify and verify an unlimited number of beneficial owners for their legal entity customers—especially if banks cannot rely on the accuracy of the information in FinCEN’s database. Furthermore, forcing banks to verify an unlimited number of beneficial owners irrespective of risk

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<sup>34</sup> 31 U.S.C. § 5336(b)(1)(F)(iv) (directing the Secretary of the Treasury to “collect information...in a form and manner that ensures the information is highly useful in—...(II) confirming beneficial ownership information provided to financial institutions to facilitate the compliance of the financial institutions with anti-money laundering, countering the financing of terrorism, and customer due diligence requirements under applicable law.”).

<sup>35</sup> See 31 U.S.C. § 5336(b)(4)(B)(1).

<sup>36</sup> As FinCEN considers establishing new regulatory expectations for banks, we caution FinCEN that especially given the legal and regulatory requirement that banks obtain and document their small business customers’ voluntary consent prior to seeking access to information held by FinCEN, banks must be permitted to make their own decisions regarding whether to seek access to this information and cannot be required, or expected, to do so. FinCEN must also verify the accuracy of the information submitted by reporting companies—and address questions such as whether FinCEN plans to screen the submitted beneficial owner names and identifiers against sanctions lists administered by Treasury’s Office of Foreign Assets Control.

<sup>37</sup> See e.g., [FFIEC BSA/AML Examination Manual](#) (“Therefore, all legal entity customers will have a total of between one and five beneficial owner(s) – one individual under the control prong and zero to four individuals under the ownership prong.”).

<sup>38</sup> See [Small Entity Compliance Guide: Beneficial Ownership Reporting Requirements](#) (“A beneficial owner is **any** individual who, directly or indirectly:

- Exercises **substantial control** over a reporting company; **OR**
- Owns or controls at least 25 percent of the **ownership interests** of a reporting company.”) (emphases in the original).

would force banks away from a risk-based approach to BSA compliance and divert compliance resources away from important priorities such as identifying suspicious activity.

With the new reporting rule requirements, law enforcement has direct access to the beneficial ownership information held by FinCEN and no longer needs to rely on banks as gatekeepers. Instead, banks should retain flexibility to obtain what banks, as part of a risk-based approach to BSA compliance, from their customers. Furthermore, any changes to the rule should be designed to ensure that responsible banks are not placed at a competitive disadvantage for doing so.

## **V. Conclusion**

The 60-day comment period of the PRA review process was “intended to facilitate a dialogue between an agency and the public, enabling the agency to better craft its information collection plan.”<sup>39</sup> To this end, we encourage FinCEN to reassess and revise PRA burden estimate upward, and engage in further discussions with ABA. We stand ready to help FinCEN work with banks to create a more accurate burden estimate and to help FinCEN use it to make important revisions to the CDD rule. Please contact Heather Trew at (202) 663-5151 or [Htrew@aba.com](mailto:Htrew@aba.com).

Sincerely,

s//Heather Trew

Heather Trew

Senior Vice President & Counsel

Bank Secrecy Act, Anti-Money Laundering & Sanctions

Regulatory Compliance and Policy