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and United States First Class Mail

May 23, 2024

The Honorable Janet L. Yellen  
Secretary of the Treasury  
1500 Pennsylvania Ave. NW  
Washington, DC 20220

Hon. Shalanda D. Young, Director  
Office of Management and Budget  
725 17th St. NW  
Washington, DC 20503

Dear Madam Secretary and Madam Director:

RE: Treasury/FinCEN Notice Titled "Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Financial Crimes Enforcement Network (FinCEN) Information Collection Requests," OMB Control No. 1506-0070, 89 *Fed. Reg.* 33467 (April 29, 2024)

In response to the notice cited above, the National Federation of Independent Business (NFIB)<sup>1</sup> objects to the FinCEN request to the Office of Management and Budget (OMB) to renew approval for the information collection request "Beneficial Ownership Requirements for Legal Entity Customers" (BORLEC), OMB Control No. 1506-0070, and NFIB petitions OMB not to grant the approval. The BORLEC request implements 31 CFR 1010.230, which implements 31 U.S.C. 5336 enacted by the Corporate Transparency Act,<sup>2</sup> recently held unconstitutional.

The U.S. District Court for the Northern District of Alabama entered a final judgment on March 1, 2024, declaring "the Corporate Transparency Act is unconstitutional because it exceeds the Constitution's limits on Congress' power."<sup>3</sup> Although the Government has appealed the final judgment,<sup>4</sup> the Government and its officers must honor that final judgment unless and until a higher court overturns it. Accordingly, there is currently no legal authority for FinCEN to make, nor for OMB to approve, the BORLEC request for approval.

Sincerely,

David S. Addington

Executive Vice President and General Counsel

<sup>1</sup> NFIB is an incorporated nonprofit association representing small and independent businesses. NFIB protects and advances the ability of Americans to own, operate, and grow their businesses and ensures that governments of the United States and the fifty states hear the voice of small business as they formulate public policies. The BORLEC information collection request would apply to small businesses, including NFIB members.

<sup>2</sup> Title LXIV of Public Law 116-283 (January 1, 2021).

<sup>3</sup> *NSBU v. Yellen*, No. 5:22-cv-1448-LCB (N.D. Alabama March 1, 2024) (Document 52, FINAL JUDGMENT).

<sup>4</sup> No. 24-10736 (11th Cir. appeal filed March 11, 2024).