International Bancshares Corporation

February 27, 2024

Via electronic submission:

Financial Crimes Enforcement Network
Policy Division
Docket No. FINCEN-2024-0002; OMB 1506-0077
P.O. Box 39
Vienna, VA 22183
https://regulations.gov

Re: Comments on Agency Information Collection Activities; Proposed Collection; Comment Request; Beneficial Ownership Information Requests: Docket No. FINCEN-2024-0002; OMB 1506-0077

Dear Sirs and Madams:

The following comments are submitted by International Bancshares Corporation ("IBC"), a publicly-traded, multi-bank financial holding company headquartered in Laredo, Texas. IBC maintains 166 facilities and 256 ATMs, serving 75 communities in Texas and Oklahoma through five separately chartered banks ("IBC Banks") ranging in size from approximately $470 million to $8.9 billion, with consolidated assets totaling approximately $15 billion. IBC is one of the largest independent commercial bank holding companies headquartered in Texas.

This letter responds to the latest notice and request for comment ("Notice") by the Financial Crimes Enforcement Network ("FinCEN") related to the implementation of the Beneficial Ownership Rule ("BOR") issued by FinCEN in December 2023. The Corporate Transparency Act ("CTA") authorizes FinCEN to obtain a reporting company's beneficial ownership information ("BOI") in a centralized database ("Database") and disclose BOI to authorized individuals and entities for certain permissible purposes, including to financial institutions to assist in meeting the institutions' obligations under the customer due diligence rule ("CDD Rule"). FinCEN has requested comment "on the burden for the information collection associated with such BOI requests, which corresponds to the burden associated with "submit[ting] written certification for each request that it meets certain requirements."" [Notice at 5996]

Due to FinCEN's trifurcation of its CTA rulemaking, this comment letter includes comments relevant to all aspects of FinCEN's proposed CTA rules, as well as comments specific to FinCEN's current request.

General Comments

1. IBC is highly concerned that law enforcement officials will have access to the BOI database without having an official subpoena. Much like suspicious activity and

P.O. DRAWER 1359, LAREDO, TEXAS 78042-1359 (956) 722-7611

currency transaction reports, as well as consumer credit reports, which all require permissible purposes to disclose, FinCEN has created a set of legally permissible purposes to disclose beneficial ownership information. These purposes do not always require law enforcement to have a formal subpoena to access the BOI database. Depository institutions, as well as law enforcement officials and any other party with a permissible purpose, should be required to certify that they have a permissible purpose to access and use the database information prior to getting access to such information, and law enforcement's right to access the database should be appropriately limited. Bank employees make such certifications every day when they request consumer credit reports for account and loan underwriting. Adding such a certification to this process would be a quick and easy way to meet the CTA's disclosure requirements.

2. FinCEN states, with no support, that "[f]or foreign requesters in particular, FinCEN assumes that such requests will be made at the national level." [Notice at 5996] While IBC hopes this is true, FinCEN has provided no support for its position that requests from foreign entities will be made to the federal government instead of individual entities and data reporters. IBC disagrees with FinCEN's position, and is concerned about the potential for foreign requesters making direct inquiries with financial institutions. If FinCEN does not address this scenario, banks will be forced (as always) to make hard decisions that could easily be cleared up with minimum federal guidance. Moreover, IBC is concerned that the BOR will require banks to share information with and from their foreign branches, which could greatly increase the odds that a bad actor (or good actor without a sufficient permissible purpose) obtains unauthorized access to such information. The more entities involved in a process, the more points of failure that exist.

3. Overall, IBC finds the BOR and implementation of the CTA to be unduly burdensome. The piecemeal rollout, the ever-shifting obligations and expectations, and nearly incoherent access rights completely defeat the purpose of a legal entity ownership registry that was originally intended to aid in preventing bad actor shell companies and money laundering. As discussed below, IBC believes that FinCEN is grossly underestimating the one-time and ongoing burden that banks will have to take on to meet all of FinCEN's expectations. IBC understands that many of its peer banks do not want any part of BOI database access now due to the burdensome process, and will only access the database if they are required to do so. The BOI database was originally seen as a way to help banks mitigate the burden of the CDD Rule. FinCEN's refusal to harmonize the two rules, as previously requested by IBC, has resulted in a BOI database that is functionally useless to banks, while at the same time increasing their regulatory burden.

4. IBC cannot overstate the potential risk from inconsistent information security requirements (or lack thereof) throughout the BOR and implicating all parties with BOI database access. The database is ripe for breach, and the potential consumer harm could be catastrophic. Beneficial owners will be providing personal documentation that includes SSNs, driver's license numbers and pictures, and

other sensitive consumer information. The database will be a crown jewel for nefarious hackers. The mere collection of this information raises privacy and security concerns, as individuals are rightfully wary of submitting their sensitive information, and many are not locally available and thus have to rely on technology and the internet to provide such information. Every additional step in the submission process adds another opportunity for bad actors to compromise sensitive consumer information.

5. IBC is troubled regarding the lack of guidance provided to reporting entities, and believes the lack of guidance and education regarding reporting obligations affects FinCEN's burden estimates. IBC believes that a fair number of reporting companies still are not aware of the BOI reporting requirement, and that puts an additional burden on banks to become legal and business counselors to their customers. There has not been a concerted effort from trusted sources to inform reporting companies of their new obligations. Instead, and as always, the burden has fallen to banks and financial institutions to educate their customers, which is time and resource consuming and distracts from the actual work, products, and services banks provide to their customers.

Specific Requests for Comment

The Notice invites specific comments regarding the following:

1. Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility.

    a. The accuracy of the agency's estimate of the burden of the collection of information. FinCEN's estimates include the following activities, states that the hourly burden in year 2 and onward for financial institutions is associated only with the requirements for Actions F, G, and H because FinCEN expects the other actions will result in costs for these entities in year 1 only.
        i. develop and implement administrative and physical safeguards (Action A);
        ii. develop and implement technical safeguards (Action C);
        iii. obtain and document customer consent (Action F);
        iv. submit certification for each request that it meets certain requirements (Action G);
        v. undergo training (Action H);
        vi. comply with certain geographic restrictions (Action L);
        vii. and notify FinCEN if they receive an information demand from a foreign government (Action M). [Notice at 5997]

    b. **IBC Comment.** Does FinCEN believe that administrative and physical safeguards are and will remain static? Nothing in the history of criminal and unauthorized activity supports this position. Bad actors are constantly

innovating their criminal methods, and finding new and more sophisticated ways to fraudulently and illegally obtain whatever they want. Since the internet and technology boom, these bad actors have been focused on the proverbial golden goose: personally identifiable non-public consumer information that can be used to drain bank accounts, launder money, obtain credit, goods, and services, and much more. Banks are at the forefront of addressing and preventing unauthorized access to sensitive consumer financial information, which requires constant diligence and innovation to ensure their customers are protected. Implementing appropriate administrative and physical safeguards, especially when FinCEN has not provided any guidance or tangible outline of what safeguards would be considered sufficient, will require frequent review, adaptation, and re-working. This will not be a "one-and-done" endeavor, as FinCEN seems to glibly believe.

In addition to administrative and physical safeguards, FinCEN's overall burden estimates simply do not consider the full onus being placed on banks subject to the BOR. In 2016, FinCEN promulgated the CDD Rule, which was the latest action in an increasing trend to make depository institutions the civilian police force responsible for identifying legal entity customers. In 2018, IBC provided oral and written testimony to Congress, and explained the ever-expanding regulatory burdens placed on depository institutions, and the attendant costs and ultimate harms of those burdens. IBC explained how increasing Bank Secrecy Act obligations have harmed not only depository institutions, but the law abiding customers of those institutions. To implement the CDD Rule's requirements, IBC spent over 2,912 hours in design and testing, and 7,859 hours in training 2,142 employees and officers. These expenditures were on top of the $5 million IBC spends annually to comply with existing BSA/AML regulations. Even prior to its implementation, it was easy for industry actors to predict the incredibly obvious shortcomings of and fallout from the CDD Rule, much in the same way the shortcomings and fallout of the current proposed rule is clear to depository institution stakeholders. While FinCEN has attempted to block a full view into the new beneficial ownership regime by splitting its rulemaking into three separate phases as opposed to addressing everything together as one cohesive system, banks have long memories and understand regulators' history of engaging in murder by a thousand cuts. The BOR is just the most recent in a long line of ostensibly positive regulatory action that will ultimately kneecap banks and increase costs for both banks and their customers.

2. Ways to enhance the quality, utility, and clarity of the information to be collected.
3. Ways to minimize the burden of the collection of information on respondents, including through the use of technology.

a. **IBC Comment**. The proposed rule significantly deviates from the requirements and definitions of the CDD Rule, the very rule the CTA was meant to help support by easing the CDD Rule's burden on banks. For example, the proposed rule would change how ownership interests are calculated to determine whether an individual is a beneficial owner and would allow more than one "control person" for each reporting company. The recent implementation of the current CDD Rule was a vast undertaking, and required small and mid-sized financial institutions to greatly jumpstart and/or change their standard operating procedures for business and commercial clients. FinCEN states that it chose not to follow the current CDD Rule because the CTA did not require it to adhere to the existing CDD Rule, the current CDD Rule fails to provide transparency for complex structures, and most small companies have simple structures which should ease their re-porting burdens significantly. Given the work that went into getting that regulatory regime up and running and its apparent success, FinCEN should be cautious in making drastic changes to the CDD Rule, especially in areas that are relatively clear and settled. The proposed changes to the control and ownership interest rules only insert ambiguity into the process. While IBC appreciates FinCEN's goal of closing reporting loopholes and ensuring that complex structures are not used to evade reporting obligations, IBC disagrees with FinCEN's methods. Making definitions more broad and less clear will only hurt small and mid-sized businesses and financial institutions that are making good faith efforts to comply with the rules. Deviating from settled and clear guidelines and definitions in a reporting regime that is in its infancy will only introduce uncertainty and mistakes into the BOR database.

   Moreover, if the proposed rule is enacted and the BOR database is implemented, IBC hopes that the burdensome CDD Rule requirements may be eased on financial institutions. FinCEN and the government writ-large is finally taking action to put the burden where it belongs: on legal entities and their beneficial owners. As was warned by the financial industry back when the current CDD Rule was being enacted and implemented, the reporting onus was placed on the wrong parties. Almost immediately, the Department of the Treasury, the Department of Justice, and Congress began working on the CTA in order to address huge holes and blind spots in corporate transparency that the CDD Rule did not address.

   While the CDD Rule has helped FinCEN and law enforcement obtain valuable information to support their efforts, the proposed rules and BOR database should provide a giant leap forward in the creation and collection of the information required. As such, financial institutions should be able to use and rely on the BOR database, and the CDD Rule should reflect that ability, thus easing the collection and reporting burden on financial institutions.

Finally, it is shocking, though sadly not surprising, that FinCEN has structured the BOR such that legal entity owners must affirmatively and independently provide information that the government already has access to through multiple agencies. This is not only cumbersome, but is simply a further waste of time and resources that adds no unique value. Legal entities are primarily inter/multi-state organizations, with owners having the option to live anywhere. Requiring the collection of highly sensitive personal information through primarily electronic means is simply setting up bad actors with a prize they cannot ignore. Meanwhile, FinCEN has all of the tax ID numbers and SSNs available from IRS filings. If FinCEN truly requires photographs of the owners, those are available through state DMVs, US Immigration, and the TSA. Concerningly, FinCEN may well be trapping legal entity reporters into having to choose between violating state biometric privacy laws and complying with the BOR. Conversely, FinCEN could work with other entities and potentially implement its information gathering scheme into annual income tax filings to avoid the risk of data misappropriation and duplication of efforts. The BOI reporting requirement is largely duplicative of other databases, and the risks inherent in a new, separate reporting regime are enormous.

4. Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

Thank you for the opportunity to share IBCs views on these matters.

INTERNATIONAL BANCSHARES CORPORATION

Dennis E. Nixon
President and CEO