PUERTO RICO INTERNATIONAL BANKS ASSOCIATION

March 29, 2024

Financial Crimes Enforcement Network
Policy Division
Docket No. FinCEN-2024-0002; OMB 1506-0077
P.O. Box 39
Vienna, VA 22183

VIA E-MAIL: http://www.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 Puerto Rico International Banks Association ("***PRIBA***") submits this comment letter in response to the notice and request for comment ("***Notice***") by the Financial Crimes Enforcement Network ("**FinCEN**") related to the implementation of the Beneficial Ownership Information ("***BOI***") Rule ("***BOI Rule***") issued by FinCEN in December 2023 and the BOI Access and Safeguards Rule ("***Access Rule***").

PRIBA is a trade association organized in 2016 with the vision of providing support to financial institutions that operate under Puerto Rico's International Banking Center Act (Act No. 52 of August 11, 1989, as amended)[1] and International Financial Center Regulatory Act (Act No. 273 of September 25, 2012, as amended) that join as members of PRIBA, with the purpose of promoting Puerto Rico as an offshore jurisdiction for international banking and financial businesses.

Our principal missions are (1) to integrate international banking entities ("***IBEs***") and international financial entities ("***IFEs***", and together with IBEs, "***Financial Institutions***") under one association to address their needs as to international financial and banking matters in Puerto Rico, and (2) represent IBEs and IFEs as a unified voice before government agencies and the local, federal and international financial community. We currently represent approximately twenty (20) IBEs and IFEs and our members include entities that provide support to the international financial industry in Puerto Rico.

PRIBA is strongly supportive of the requirements for beneficial ownership identification and verification, and to regulators' efforts to improve transparency in the business ownership structures

[1] Upon effectiveness of the International Financial Center Regulatory Act adopted in 2012, no new licenses would be issued under the International Banking Center Act. The foregoing notwithstanding, the licenses issued up to such date shall continue to exist and be subject to the International Banking Center Act.

by tightening the disclosure requirements through the implementation of the Corporate Transparency Act ("***CTA***"). We have consulted with our industry participants as to the Information Collection, OMB 1506-0077, related to the Access Rule issued by FinCEN and we hereby provide a summary of the comments received.

I. Comments

1. **Comments in Relation to the Burden for the Information Collection associated with submitting written certification for each request to access.**

   Our members expressed existing challenges under current regulatory requirements, specifically, during the onboarding process of potential clients. Financial institutions are required to obtain multiple information and documents from potential clients, including beneficial owners information under the existing Customer Due Diligence rule ("***CDD Rule***") applicable to financial institutions. IBE and IFE members in general commented that the onboarding requirements are burdensome, as expressed by their customers. Financial institutions' customers may now further decline to give access to the report in the BO IT System database since they already provide BOI to the financial institution (albeit differing prong requirements[2]). If financial institutions are now required to add an additional step to document clients' consent, we believe this will result in doubling efforts for financial entities and clients, making it more complex and inconvenient for the clients. In turn, if the client refuses to consent to the requested access, the question of whether this may be considered as potentially suspicious by the financial institution remains unanswered. If it is considered as potentially suspicious, suspicious activity reports will greatly increase and may not be commensurate with the risk-based mandates included in the Bank Secrecy Act ("***BSA***"), as amended.

   Based on the foregoing, PRIBA requests FinCEN to consider (a) requiring the written certification by the financial institution only once upon creating the initial account with FinCEN to access the BO IT System, and (b) whether the fact that a potential client requests a product or service from a financial institution may be deemed as the consent required under the CTA (similar to the fact that when a client opens an account at the financial institution, such opening is subject to the client providing information identifying the client and its owners pursuant to the BSA). If so permitted, the financial institution may include a statement, as part of the adequate notice required by the BSA to notify clients of its identification requirements, stating that the opening of an account is deemed as consent by the client to the financial institution to access its BOI report at the BO IT System.

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[2] The CDD Rule and the BOI Rule vary greatly in their definition of "beneficial owner." Ways in which the BOI Rule differ from the CDD Rule include:

- The definition of "beneficial owner" in the BOI Reporting Rule is significantly broader than the definition under the CDD Rule, since (a) it does not limit the substantial control prong to a single individual (like the CDD Rule does), and (b) adopts broader definitions of regarding "substantial control" and "ownership interest."
- The BOI Reporting Rule contains more exemptions from the definition of "reporting company" than the exclusions included in the CDD Rule from the definition of "legal entity customer" required to provide beneficial ownership information to covered financial institutions.
- Under the CDD Rule, financial institutions will be collecting BOI from entities that are not required to report such information to FinCEN under the BOI Rule.

2. **Comments as to Estimated Burden Associated with Submitting Written Certification for Each Request; Estimated Total Annual Reporting and Recordkeeping Burden Associated with the Requirement to Submit Written Certification**:

   a. Develop and implement administrative and physical safeguards (**Action A, Table 1**) – FinCEN estimates 240 in year one (= 30 days a year). This Action involves more than one employee of the financial institution. Even though we agree in the 30 days needed for this Action, the total hours should be x3 (720 hours).
   b. Develop and implement technical safeguards (**Action C, Table 1**) – FinCEN combined this stage with "A", however, this Action C requires an additional person, not necessarily the ones involved in Action "A". An additional 240 hours should be added to this Action.
   c. Obtain and document customer consent (**Action F, Table 1**)– FinCEN estimates 70 per year in year one. This Action should estimate 1 hour per customer of each financial institution. Estimate should remain in the following years until all CTA rules are released from FinCEN and properly implemented (after 5+ years that customers may be accustomed to this request, estimate can lower to 0.5 hours for each customer).
   d. Submit certification for each request that it meets certain requirements (**Action G, Table 1**) - same comments as for Action F (estimate should be 1 hour per customer for each financial institution). FinCEN needs to consider that for Actions F & G are not performed by the same employee.
   e. Undergo training (**Action H, Table 1**) – FinCEN estimates 8 hours in year one. This estimate does not consider that this training should be targeted per financial institutions' departments or lines of business. Separate trainings involve separate presentations materials targeted to the specific department or line of business, and training time allocations, resulting in an increase of at least x3 the estimate (24 hours per financial institution).
   f. Notify FinCEN of information demand from foreign government (**Action M, Table 1**) – we do not understand why the estimate is "0" if foreign government can request information to financial institutions directly as needed. Financial institutions need to invest hours in gathering the information and submitting it to FinCEN. Accordingly, we disagree with the estimate of "0", specially because there will be conflicting laws that will require not only costly legal interpretation, but probably also intervention by courts to interpret the same.

II. Closing Remarks

IFE and IBE members of PRIBA are proud to be BSA stakeholders and are committed to safeguard national security and assist law enforcement in their investigatory pursuits by, among other things, obtaining and maintaining beneficial ownership information on customers to (A) improve transparency for national security, intelligence, and law enforcement agencies and financial institutions concerning corporate structures and insight into the flow of illicit funds through those structures; (B) discourage the use of shell corporations as a tool to disguise and move illicit funds; (C) assist national security, intelligence, and law enforcement agencies with the pursuit of crimes; and (D) protect the national security of the United States.

The CTA was adopted within the Anti-Money Laundering Act of 2020 (Division F of Pub. L. 116-283) ("***AML Act of 2020***"). As part of the modernization of the BSA and other goals in adopting the AML

Act of 2020, legislators expressed that, in prescribing rules for anti-money laundering and anti-terrorism ("***AML/CFT***") program standards, the Secretary of Treasury shall consider, among other factors, and regulators shall take into account in supervising and examining, that financial institutions are spending private funds for public and private benefit. The CTA also established that in promulgating regulations under the CTA, the Secretary of Treasury shall, to the greatest extent practicable, collect BOI in a form and manner that ensures the information is highly useful in confirming BOI provided to financial institutions to facilitate their compliance with AML/CFT and CDD requirements under applicable law.[3]

Based on the foregoing, PRIBA advocates for FinCEN to conform CTA regulations and the CDD Rule to reduce or mitigate existing burdens on financial institutions, allowing financial institutions, to some extent, to rely on filings in the BO IT system database in lieu of independently collecting different beneficial ownership information from legal entity customers. We urge FinCEN to create a framework at the BOI registry level at FinCEN to serve as the only BOI regime (rather than having two different regimes and creating CTA rules to "fill-in" existing gaps) and allow all gatekeepers, including financial institutions, to rely on such registry.

In the name of all the members of PRIBA, we thank you for your attention and continued support.

[3] 31 USC §5336(b)(F)(iv)(II).