

April 1, 2024

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

RE: ICBA Comments in Response to FinCEN's Information Request on the Beneficial Ownership Access and Safeguards Final Rule [Docket No. FINCEN-2024- 0002; OMB 1506-0077]

Dear Sir or Madam:

The Independent Community Bankers of America ("ICBA")¹ appreciates the opportunity to respond to the Financial Crimes Enforcement Network's ("FinCEN's") information request on its estimated burden associated with the Beneficial Ownership Information Access Rule ("BOI Access Rule" or "Rule") that was finalized in December 2023.² The BOI Access Rule governs access by authorized recipients, including financial institutions ("FIs") to BOI reported to FinCEN pursuant to Section 6403 of the Corporate Transparency Act ("CTA"), enacted into law as part of National Defense Authorization Act for Fiscal Year 2021.³

The rule requires FIs that access BOI to satisfy certain security and confidentiality requirements, including establishing certain standards and procedures, and developing and implementing safeguards. As a prerequisite for access, the rule also requires FIs to provide a certification for each BOI request. This specific request seeks comment only on the estimated burden associated with "submit[ing] written certification for each request that it meets certain requirements."⁴

ICBA maintains its position that FIs should not be required to collect BOI. It is also our position that the burden estimates provided in this notice do not accurately reflect the duplicative collection of BOI that is now submitted directly to FinCEN.

While the notice seeks comments pertaining to certification requirement burdens, ICBA will first address the estimates associated with the requirement to obtain consent from a reporting company before an FI can access BOI from FinCEN's database.

¹ The Independent Community Bankers of America® has one mission: to create and promote an environment where community banks flourish. We power the potential of the nation's community banks through effective advocacy, education, and innovation. As local and trusted sources of credit, America's community banks leverage their relationship-based business model and innovative offerings to channel deposits into the neighborhoods they serve, creating jobs, fostering economic prosperity, and fueling their customers' financial goals and dreams. For more information, visit ICBA's website at www.icba.org.

² FinCEN, Beneficial Ownership Information Access and Safeguards, 88 FR 88732 (Dec. 22, 2023)

³ Public Law 116-283 (Jan. 1, 2021)

⁴ [2024-01828.pdf \(govinfo.gov\)](https://www.federalregister.gov/documents/2024/01/24/2024-01828.pdf)

The Final BOI Access Rule requires FIs to obtain documented consent⁵ from a reporting company to access their BOI from FinCEN's database; provide a written certification to FinCEN that: 1) it is requesting the information to facilitate its compliance with customer due diligence required under applicable law; 2) it has obtained its customer's consent; and 3) it has fulfilled all security standards and other applicable requirements of the rules;⁶ and maintain documentation of the consent for five years. FinCEN has afforded substantial discretion in the manner in which consent is obtained.⁷

FinCEN estimates that the process for obtaining and documenting customer consent in the first year will take 70 hours (less than 2 weeks). The estimate does not consider that FIs will have to develop, implement and test policies, procedures, and processes for obtaining and documenting consent; create or update forms such as loan documents, deposit account documents and disclosures, and other customer agreements to include a mechanism for capturing consent; and train appropriate personnel before executing its new process of obtaining and documenting consent. While ICBA acknowledges that Rule allows community banks flexibility to determine the best way to obtain the required documented consent, approximating 70 hours to undergo a thorough and comprehensive consent documentation process fails to factor the multiple steps required to do so.

The final BOI Access Rule requires FIs to certify each BOI request "in such form and manner as FinCEN shall prescribe."⁸ FinCEN estimates the time to submit certification for each request will take 94 hours for the first year. The reference, "in such a form and manner as FinCEN shall prescribe," is intended to allow FinCEN to take a flexible approach towards implementation of the certification requirement that takes into account a range of considerations, such as technological feasibility.⁹ The estimated amount of time pertains to "submitting." The estimate does not appear to include time for drafting the form; nor, developing policies and procedures for use of the form. Additionally, the absence of any prescribed or suggested guidance on "form and manner" make it difficult to accurately estimate the time needed for a community bank to make certifications. While certifying each time a request for BOI is made to FinCEN may be onerous, ICBA supports a simplified mechanism such as a check the box (or click, if electronically) exercise as referenced in the final Rule.¹⁰

ICBA appreciates this opportunity to respond to FinCEN's request for input. If you have any questions or would like additional information, please contact me at Rhonda.Thomas-Whitley@icba.org or (202) 821-4451.

Sincerely,

/s/

Rhonda Thomas-Whitley
Senior Vice President, Senior Regulatory Counsel

⁵ Beneficial Ownership Information Access and Safeguards Final Rule [2023-2797 3.pdf \(govinfo.gov\)](#) at 88732

⁶ Id. at 88773

⁷ [*2023-27973.pdf \(govinfo.gov\)](#) at 88773

⁸ Id. at 88773

⁹ Id.

¹⁰ Id.