American Bankers Association.

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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 the Customer Identification Program Regulatory Requirements for Certain Financial Institutions, Docket Number FINCEN-2023-0015; OMB Control Numbers 1506-0022, 1506-0026, 1506-0033, and 1506-0034; 89 Fed. Reg. 51940 (June 20, 2024)**

Dear Director Gacki:

The American Bankers Association (ABA)[1] appreciates the opportunity to comment on the Paperwork Reduction Act (PRA)[2] request 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 customer identification program rules for banks. [3]

I. Summary of the Comment

Banks with federal functional regulators —and BSA program requirements— are currently required by FinCEN to implement a written customer identification program.[4] This CIP rule requires banks to form a reasonable belief about the true identity of its customers, and implement risk-based procedures to collect, verify, and keep certain information about the customer.[5] It is essential to know how many new accounts banks open yearly in order to accurately estimate CIP rule burden. This number also affects the burden created by other BSA-based rules, such as the Customer Due Diligence (CDD) rule.[6]

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[1] 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.
[2] 44 U.S.C. § 3501 *et seq*.
[3] Agency Information Collection Activities; Proposed Renewal; Comment Request; Renewal Without Change of the Customer Identification Program Regulatory Requirements for Certain Financial Institutions, 89 Fed. Reg. 51940 (June 20, 2024); https://www.federalregister.gov/documents/2024/06/20/2024-13590/agency-information-collection-activities-proposed-renewal-comment-request-renewal-without-change-of. The CIP rule is promulgated under Bank Secrecy Act (BSA) laws.
[4] 31 C.F.R. § 1020.220.
[5] *Id.* at § 1020.220(a)(2).
[6] 31 C.F.R. § 1010.230; *see also* 31 C.F.R. § 1020.210(a)(2)(v).

In its PRA renewal notice, FinCEN relies on Bank On data to estimate that banks open approximately 4 million new accounts annually.[7] This is less than 3% of the total number of new accounts banks open every year. The Bank On initiative is an important financial inclusion initiative; ABA is committed to reducing the number of unbanked and underbanked people in the U.S. and encourages all banks to join the Bank On movement.[8] However, the Bank On report FinCEN cites only counts the annual opening of new basic, low-cost *deposit* accounts that meet specialized criteria, as reported by 35 financial institutions.[9]

The actual number of annual new account openings is exponentially larger. ABA estimates that U.S. banks open on average between 140-160 million new accounts each year. This number is large in part based on FinCEN's expansive definition of "account," which includes deposit accounts, other asset accounts, credit cards, loans, safety deposit boxes, certificates of deposit (CDs), cash management, custodial and trust services, among others.[10] Although banks do not publicly report the total number of new accounts they open annually, ABA's calculation is based on information provided by our members, Report of Condition and Income (call report) data on deposit accounts published quarterly by the Federal Deposit Insurance Corporation (FDIC),[11] and previously published ABA research.[12] Based on Federal Reserve and FDIC data, in 2019, there were over 244 million banked adults.[13] Many customers open multiple accounts– for example, CD "laddering," a common savings strategy, requires continually opening multiple accounts.[14]

In a different context, FinCEN recognized that banks open many kinds of new accounts all the time, both with new and established customers. For example, in 2018, in response to information FinCEN received regarding the large volume of new accounts openings generated by CD rollovers ("CD[s] might renew every week or month"); the renewal, modification, and extension of loans, credit, and commercial lines of credit; and the ongoing rental of safe deposit boxes —and the low

[7] 89 Fed. Reg. 51940, 51942.

[8] *See* ABA Bank On website; https://www.aba.com/banking-topics/consumer-banking/inclusive-banking/bank-on; *see also* Bank On website ("The CFE Fund works directly with national and regional financial institutions to encourage the widespread availability of safe, low cost transactional products"); https://joinbankon.org/about/..

[9] Bank On National Data Hub: Findings from 2022 (Nov. 8, 2023) ("Across the 35 institutions reporting 2022 data, the sample of Bank On accounts studied for each metric represents 36,258 ZIP codes throughout the United States and its territories."); https://www.stlouisfed.org/community-development/bank-on-national-data-hub/bank-on-report-2022.

[10] 31 C.F.R. § 1020.100(a)(1) ("Account means a formal banking relationship established to provide or engage in services, dealings, or other financial transactions including a deposit account, a transaction or asset account, a credit account, or other extension of credit. Account also includes a relationship established to provide a safety deposit box or other safekeeping services, or cash management, custodian, and trust services.")

[11] FDIC Bank Call Report Information website; https://www.fdic.gov/bank-financial-reports/current-quarter-call-report-forms-instructions-and-related-materials.

[12] *See e.g.,* ABA Comments on Federal Reserve Discussion Paper *Money and Payments: The U.S. Dollar in the Age of Digital Transformation* (May 20, 2022); https://www.aba.com/advocacy/policy-analysis/aba-comments-on-fed-discussion-paper-money-and-payments. As part of ABA's analysis of and comment on the Board of Governors of the Federal Reserve (Federal Reserve) central bank digital currency discussion paper, ABA's data sources included the Federal Reserve's 2019 Survey of Consumer Finances, the total U.S. population of 258.3 million adults in 2020, and FDIC data identifying 94.6% of U.S. households had a bank account in 2019, for a total of 244.4 million banked adults. *Id.* at 21.

[13] *Id.*

[14] *See e.g.*, *What is a CD ladder? Here is how this savings strategy works*, Fortune (June 14, 2024); https://fortune.com/recommends/banking/what-is-a-cd-ladder/.

illicit finance risk they collectively present— FinCEN issued exceptive relief from beneficial ownership information collection requirements for legal entity customers.[15]

FinCEN's CIP rule information collection requirement is effectively triggered whenever a customer opens a "new account."[16] Of course, FinCEN does not always require the collection of CIP data when existing customers of a financial institution open new accounts.[17] Banks value FinCEN's grant of exemptive relief for certain existing customers. However, for banks to use this "existing customer" exemption, a bank must document its "reasonable belief that it knows the true identity of the person."[18] Either way, each new account opening incurs a burden on the bank, regardless of how well the bank knows that particular customer.

FinCEN estimates CIP information collection for banks takes 2 minutes per new account.[19] We believe this substantially undercounts the time banks must spend complying with CIP rule requirements. However, even using FinCEN's estimate of 2 minutes, a more accurate —but still low— estimate of bank burden to comply with CIP rule requirements is between 4.7 to 5.3 million hours annually, or approximately 5 million hours. We respectfully request FinCEN revise its PRA burden estimate accordingly.

These 140-160 million new accounts opened annually clearly include a large number of low-risk accounts. Furthermore, FinCEN requires banks to know who their customers are, which already includes understanding their account portfolios. The CIP rule should require banks to identify and know their customers, not generate duplicative, account-based paperwork. It is wholly inconsistent with a risk-based approach to BSA compliance to require banks to repetitively collect and document redundant information on large numbers of low-risk accounts. Sensible reforms to the CIP rule would eliminate duplicative and unnecessary paperwork while preserving banks' ability to know their customers and free more compliance resources to monitor for high priority suspicious activity, as part of an overall risk-based approach.

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15 In FinCEN's Ruling FIN-2018-R003, Exceptive Relief from Beneficial Ownership Requirements for Legal Entity Customers of Rollovers, Renewals, Modifications, and Extensions of Certain Accounts (Sept. 7, 2018); https://www.fincen.gov/sites/default/files/administrative_ruling/2018-09-07/Permanent%20Exceptive%20Relief%20Extension%20of%20Compliance%20Date%20CDs_final%20508.pdf, FinCEN provided specific exceptive relief from legal entity beneficial ownership requirements for legal entity customers related to the rollover of certain CDs, loan renewals, modifications, or extensions that do not require underwriting review and approval, renewals, modifications or extension of commercial lines of credit that do not require underwriting review and approval, and renewals of safe deposit box rentals. In addition, each account may contain limited funds. Previously published research by ABA shows that a large fraction of bank accounts are low value accounts. *See* ABA Comments on Federal Reserve Discussion Paper *Money and Payments: The U.S. Dollar in the Age of Digital Transformation* at 21 (May 20, 2022); https://www.aba.com/advocacy/policy-analysis/aba-comments-on-fed-discussion-paper-money-and-payments.

16 31 C.F.R. § 1020.100(b)(1) ("Customer means: (i) A person that opens a new account; and (ii) An individual who opens a new account for: (A) An individual who lacks legal capacity, such as a minor; or (B) An entity that is not a legal person, such as a civic club.").

17 31 C.F.R. § 1020.100(b)(2)(iii) ("Customer does not include "[a] person that has an existing account with the bank, provided that the bank has a reasonable belief that it knows the true identity of the person.").

18 *Id.*

19 89 Fed. Reg. 51940, 51942 ("FinCEN also continues estimating the incremental annual PRA recordkeeping burden associated with obtaining and verifying a customer's identity (i.e., verification and recordkeeping requirements, and consulting government lists) ('implementation') at two minutes per new account opened.").

II. The CIP Rule's Repetitive Information Collection Requirements is Unnecessarily Duplicative

Under the PRA, the agency must certify the information collection "is not unnecessarily duplicative of information otherwise reasonably accessible to the agency."[20] In its current form, FinCEN's CIP rule[21] effectively mandates the repetitive collection of duplicative information by a bank. FinCEN's CIP information collection requirement is triggered by the opening of a new "account"[22] by a "customer."[23] FinCEN provided some relief from repetitive collection requirements by exempting a bank's "existing customers."[24] Banks value this exemption. However, that exemption is available "only if the bank has a reasonable belief that it knows the true identity of the person,"[25] a conclusion a bank must be able to document and demonstrate to examiners. Either way, whether a bank is collecting and verifying CIP information, or documenting the necessary conditions to use the "existing customer" exemption, each new account opening triggers new burden, and the unnecessary collection of duplicative information. A dramatic undercount of new accounts opened annually obscures the full scope of this unnecessary duplication.

In addition, the number of new accounts opened annually also affects other BSA program requirements, including the CDD rule, further obscuring the imposed burden.[26] To achieve FinCEN's intended goal, sensible revisions would focus on allowing banks to know their customers, regardless of how many new accounts their customers open.

III. Banks Open Between 140-160 Million New Accounts Each Year

FinCEN estimates that banks open 4,005,000 new accounts annually.[27] Although banks do not publish statistics on all new accounts opened annually, based on information provided by our members and public call report data, we conservatively estimate banks opened between 140-160 million new accounts in 2023.

FinCEN bases the 4 million new account estimate on published Bank On data from 2022,[28] as reported by 35 participating banks and credit unions[29]. In footnote f, FinCEN acknowledges this Bank On data "does not include a number of traditional bank accounts opened annually," assumes

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[20] 44 U.S.C. § 3506(c)(3)(B).
[21] 31 C.F.R. § 1020.220.
[22] 31 C.F.R. § 1020.100(a)(1) ("Account means a formal banking relationship established to provide or engage in services, dealings, or other financial transactions including a deposit account, a transaction or asset account, a credit account, or other extension of credit. Account also includes a relationship established to provide a safety deposit box or other safekeeping services, or cash management, custodian, and trust services.").
[23] 31 C.F.R. § 1020.100(b)(1).
[24] 31 C.F.R. § 1020.100(b)(2)(iii).
[25] *Id.*
[26] 31 C.F.R. § 1010.230; *see also* 31 C.F.R. § 1020.210(a)(2)(v).
[27] 89 Fed. Reg. 51940, 51942.
[28] *Bank On National Data Hub: Findings from 2022* (Nov. 8, 2023) ("Across the 35 institutions reporting 2022 data, the sample of Bank On accounts studied for each metric represents 36,258 ZIP codes throughout the United States and its territories."); https://www.stlouisfed.org/community-development/bank-on-national-data-hub/bank-on-report-2022;
[29] *Bank On National Data Hub: Participating Financial Institutions*; https://www.stlouisfed.org/community-development/bank-on-national-data-hub/participating-institutions.

that the number of such accounts "is strictly non-zero," and requests public comment to revise its estimate.[30]

ABA is committed to reducing the number of unbanked and underbanked people in the U.S. and encourages all banks to join the Bank On movement.[31] Bank On encourages financial institutions to offer basic, low-cost accounts that meet specialized criteria.[32] However, not every low-cost, basic bank account is eligible for formal Bank On status. As an initial matter, only checking accounts and prepaid accounts directly offered by financial institutions are eligible, and those accounts must meet certain additional strict National Account Standards.[33] ABA applauds the growth of new Bank On accounts to the 4 million reported in 2022, but this success does not accurately represent the total number of new accounts banks open annually.

To provide FinCEN with a more accurate number of annual new account openings, ABA obtained information from members, reviewed public sources of data, including publicly reported call report information and previously published ABA research.[34] In addition, our estimate accounts for changing economic factors, such as interest rate changes, and new product offerings by banks, which influence the rate of new account openings.

A comparison of annual numbers in Schedule RC-O call report data allows for the calculation of new deposit accounts held by financial institutions with reporting obligations to FDIC each year. For example, in 2022, banks reported a total of 662 million deposit accounts (by adding the accounts both over and under $250,000), and in 2023, banks reported a total of 701 million deposit accounts on Schedule RC-O. This means there were 39 million more deposit accounts reported in 2023 than 2022. However, the call report data reveal that banks also close a certain number of accounts each year; call report data show approximately 9 million accounts were closed between 2022 and 2023. To account for the closed accounts, banks must open more than 39 million accounts. Therefore, based on call report data, banks with FDIC reporting obligations opened over 48 million new deposit accounts in 2023. However, this estimate of new *deposit* accounts, 48 million, merely scratches the surface of the total new accounts banks open annually.

To estimate the total number of *all* new accounts opened, ABA considered information obtained from our members, the Federal Reserve's 2019 Survey of Consumer Finances, the total U.S. population of 258.3 million adults in 2020, and FDIC data identifying 94.6% of U.S. households had a bank account in 2019, for a total of 244.4 million banked adults, along with publicly reported

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[30] 89 Fed. Reg. 51940, 51942.

[31] *See* ABA Bank On website*;* https://www.aba.com/banking-topics/consumer-banking/inclusive-banking/bank-on; *see also* Bank On website ("The CFE Fund works directly with national and regional financial institutions to encourage the widespread availability of safe, low cost transactional products"); https://joinbankon.org/about/.

[32] Cities for Financial Empowerment Fund, Bank on National Account Standards (2023-2024); https://bankon.wpenginepowered.com/wp-content/uploads/2022/08/Bank-On-National-Account-Standards-2023-2024.pdf.

[33] *Id.*

[34] *See* ABA Comments on Federal Reserve Discussion Paper *Money and Payments: The U.S. Dollar in the Age of Digital Transformation* (May 20, 2022); https://www.aba.com/advocacy/policy-analysis/aba-comments-on-fed-discussion-paper-money-and-payments. As part of ABA's analysis of and comment on the Federal Reserve's central bank digital currency discussion paper, ABA's data sources included the Federal Reserve's 2019 Survey of Consumer Finances, the total U.S. population of 258.3 million adults in 2020, and FDIC data identifying 94.6% of U.S. households had a bank account in 2019, for a total of 244.4 million banked adults. *Id.* at 21.

information about the increases in specific product offerings by banks, such as CDs and other savings products.[35]

To understand some of the factors driving the large number of new bank accounts opened in the U.S., it is also helpful to consider the recent U.S. interest rate environment. From March 2022 through July 2023, the Federal Open Market Committee increased the target range for the Fed Funds rate by 525 basis points.[36] One direct consequence of this rapid increase in interest rates was a decision by bank customers in the U.S. to move their money from low or no interest savings and checking accounts to savings accounts and CDs paying higher rates. Between 2022 Q1 (before the rate hiking cycle began) and the 2023 Q3 (when rates leveled off), total savings account deposits outstanding decreased 23% while time deposit balances increased 115%.[37] This shift demonstrates that many customers opened new time deposit accounts over this period. Some customers opened new accounts at their existing banks, and other customers opened accounts at new banks. In a rapidly raising rate environment, it is also common for individuals to open multiple new accounts, including implementing CD ladder strategies (*e.g.,* one common ladder strategy involves customers spreading their funds across 1-year, 2-year, 3-year, 4-year and a 5-year CDs, respectively). A similar dynamic motivated business interested in investing their funds more efficiently, conserving their savings, and accessing liquidity from different credit sources.

Bank customers open new accounts as needs of households and businesses change (*e.g.,* as a result of the interest rate decisions made by the Federal Open Market Committee after the pandemic of 2020).[38] Our estimate of 140 to 160 million new accounts a year is a conservative one for a normal year – our expectation is that this number will be much higher when economic conditions are volatile. It is inconsistent with a risk-based approach to BSA compliance to require banks to repetitively collect and document redundant information on large numbers of low-risk accounts.

IV. Five Million Hours is a More Accurate CIP Rule Burden Estimate

FinCEN estimates that it takes banks 2 minutes to comply with CIP rule requirements when customers open new accounts.[39] ABA members state that 2 minutes substantially underestimates the time it takes banks to comply with CIP. As an initial matter, banks must collect four pieces of information from U.S. person customers: name, date of birth, physical address, and a "taxpayer identification number."[40] A bank's CIP program also must include risk-based procedures for verifying customer identity, within a reasonable time after the account is opened.[41] Banks must use documentary, non-documentary, or a combination of both methods to conduct this verification,[42]

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[35] *Id.*
[36] Board of Governors of the Federal Reserve System Senior Financial Officer Survey Results at 20 (March 2024); https://www.federalreserve.gov/data/sfos/files/senior-financial-officer-survey-202403.pdf.
[37] S*ee* FDIC Bank Call Report Information website; https://www.fdic.gov/bank-financial-reports/current-quarter-call-report-forms-instructions-and-related-materials.
[38] *See* the Federal Reserve's Federal Open Market Committee webpage; https://www.federalreserve.gov/monetarypolicy/fomc.htm.
[39] 89 Fed. Reg. 51940, 51942 ("FinCEN also continues estimating the incremental annual PRA recordkeeping burden associated with obtaining and verifying a customer's identity (i.e., verification and recordkeeping requirements, and consulting government lists) ('implementation') at two minutes per new account opened.").
[40] 31 C.F.R. § 1020.220(a)(2)(i).
[41] 31 C.F.R. § 1020.220(a)(2)(ii).
[42] *Id.*

and then create and maintain records of their work.[43] Banks must also screen customers against government lists.[44] These steps cannot be completed in 2 minutes.

However, the burden estimate must not end there. For accounts that are opened on behalf of entities, or accounts that have more than one individual owner, the time required to complete these steps expands exponentially. Banks may need to verify the legitimacy of complex business structures, or validate the identity of multiple individuals who may not be present at the time the account is opened. Furthermore, FinCEN's definition of "implementation," namely "verification and recordkeeping requirements, and consulting government lists," does not take into consideration the amount of time it takes customers to provide information to banks, in response to banks' questions, for banks to screen against multiple government lists (let alone clear potential false positives that affect innocent customers), or for banks to create CIP records, retain them, participate in audits and exams of CIP programs, let alone monitor and test bank CIP policies and procedures. Nevertheless, using a more accurate number of new accounts —between 140 to 160 million— means that even FinCEN's low 2-minute estimate results in a CIP rule burden between 4.7 million and 5.3 million hours annually. Banks must spend approximately 5 million hours annually simply to comply with CIP rule requirements, which is time that cannot be used to detect illicit and suspicious activity.

V. Conclusion

In light of the information regarding annual new account openings, we respectfully request FinCEN revise its CIP rule PRA burden estimate, and consider this information when assessing the PRA burden estimates for other BSA rules. If you have any questions, please contact Heather Trew at (202) 663-5151 or htrew@aba.com.

Sincerely,

<u>s//Heather Trew</u>
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Senior Vice President & Counsel
Bank Secrecy Act, Anti-Money Laundering & Sanctions
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[43] 31 C.F.R. § 1020.220(a)(3).
[44] 31 C.F.R. § 1020.220(a)(4).