



Corporate Transparency Act Rulemaking: Eliminate Redundancy to Create More Effective Reporting

The Independent Community Bankers of America, representing community banks across the nation with nearly 50,000 locations, appreciates the opportunity to provide this statement for the record for today’s hearing: “Oversight of the Financial Crimes Enforcement Network (FinCEN) and the Office of Terrorism and Financial Intelligence.” Community bankers strongly support the role of FinCEN in preventing the financial system from being used to fund criminal activities and money laundering of illicit proceeds.

FinCEN’s work is best accomplished through a set of balanced, effective, and coordinated measures. Recent years have seen two major developments in anti-money laundering (AML) regulation, the 2018 Customer Due Diligence (CDD) rules and the 2020 Corporate Transparency Act (CTA). While these are well-intended efforts with the potential to significantly curb money laundering, as we explain below, Chairman McHenry’s Protecting Small Business Information Act (H.R. 4035) is necessary to coordinate and strengthen these rulemakings. In particular, H.R. 4035 would ensure that the “CDD Congruence Rule,” which will harmonize the requirements of the CTA with those of existing money laundering rules, is finalized before the other CTA rules become effective.

The core feature of both the CDD rules and the CTA is the collection of beneficial ownership information (BOI). Criminals have exploited the anonymity that legal entity ownership has provided to engage in a variety of crimes such as money laundering, corruption, fraud, terrorist financing, and sanctions evasion. Making legal entities more transparent by requiring identifying information of natural-person owners will likely deter such abuses.

Community banks and all financial institutions have been required to conduct and document customer due diligence on all beneficial owners of certain legal entity customers when they open new accounts since the CDD rules became effective in 2018. ICBA’s position is that while BOI has obvious value, it should be collected and verified in the most rational and effective way – at the time a legal entity is formed. Financial institutions should have no role in the collection of BOI. For this reason, ICBA strongly opposed the CDD rules.

On January 1, 2021, the Corporate Transparency Act (CTA) was signed into law. The CTA requires FinCEN (i) to issue rules requiring reporting companies to submit certain information to FinCEN about their beneficial owners; and (ii) to maintain this information in a confidential, secure, and non-public database. Further, the CTA authorizes FinCEN to disclose the information to FIs to facilitate compliance with CDD requirements, provided the FI obtains consent from the reporting company. While ICBA advocated for access to BOI submitted to FinCEN, we objected to the prior-consent requirement and asked for its removal.

FinCEN rulemaking required by the CTA provides an opportunity to eliminate redundancy in reporting and create a more effective and useful registry for identifying the beneficial owners of entities for law enforcement. While the CTA did not repeal the requirement that FIs collect that information from their customers, the new law requires the Treasury to revise the CDD rule. (The revised CDD rule is known as the “congruence rule.”) This is where FinCEN can and should provide significant relief for community banks.

ICBA Supports H.R. 4035

Chairman McHenry's legislation contains one simple but critical mandate. It would require FinCEN to finalize all rulemakings required under the CTA before any rules take effect. By synchronizing the effective dates, H.R. 4035 will promote consistency among the rulemakings. Piecemeal issuance of rules and effective dates could have unintended consequences which create unnecessary burden for community banks and their customers and result in a less effective AML regime. H.R. 4035 will ensure that CTA rulemakings are coordinated so that banks and their customers know what is expected of them.

In particular, H.R. 4035 would require finalization of the congruence rule before other CTA rules are effective. The bipartisan House and Senate lawmakers who drafted the CTA mandated that the Secretary of the Treasury revise the final CDD rule to "reduce any burdens on FIs and legal entity customers that are, in light of the enactment of this division and the amendments made by this division, unnecessary or duplicative."

To make any CTA rule effective before the congruence rule is final and effective could only create unnecessary compliance burden and redundancy. While FinCEN has finalized other CTA rules, ICBA has seen no indication to date that FinCEN has begun to consider the congruence rule. We expect that the advancement of H.R. 4035 will spur FinCEN to make progress on the congruence rule.

Requiring both FinCEN and FIs to collect the same information on the same entities is duplicative, unnecessary, ineffective, and costly for both businesses and banks and provides no additional benefit for law enforcement. ICBA strongly urges FinCEN to withdraw the requirement that banks also collect beneficial ownership information (BOI) and rely instead on their risk-based monitoring procedures. We believe that this would be the best way to implement the CTA in accordance with the intent of Congress.

Progress on Rulemakings

FinCEN has to date issued four final rules implementing the CTA. The first specifies who must file a report of beneficial ownership, what information must be provided, and when a report is due. The second focuses on access to BOI and required safeguards. ICBA has urged FinCEN to allow community banks broad access to BOI, not limited to the purpose of identifying and verifying the beneficial ownership of their customers, in a manner that enhances their due diligence and overall compliance efforts. ICBA has consistently advocated for our members to have access to BOI in order to "conduct ongoing monitoring to identify and report suspicious transactions, and on a risk basis, to maintain and update customer information," in compliance with the CDD Rule. The third rule sets forth a proposed a form to be used in reporting BOI.

Throughout these rulemakings, ICBA has advocated for access to BOI to further and strengthen the customer due diligence process for community banks with information that is complete, accurate, and reliable. Community banks need complete information to comply with the CDD rule.

Closing

Thank you for convening today's hearing. There is much at stake in the implementation of the CTA, and H.R. 4035 will ensure that the rulemakings are coordinated for maximum effectiveness. We urge your attention to the adverse consequences for community banks and their customers outlined above. Above all, it is imperative that FinCEN revise the CDD rule without further delay to remove the redundant and burdensome requirement that community banks collect BOI from their customers. We look forward to working with this committee to craft beneficial ownership reporting that effectively and efficiently detects and deters the creation of shell companies for criminal purposes.