

FinCEN Beneficial Ownership 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: "Potential Consequences of FinCEN's Beneficial Ownership Rulemaking." Community bankers are committed to supporting balanced, effective measures that will prevent the financial system from being used to fund criminal activities and deter money launderers from hiding the proceeds of criminal activities. As described below, we believe that FinCEN's rulemaking should eliminate redundancy in reporting and create a more effective and useful registry for identifying the beneficial owners of entities for law enforcement.

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. ICBA urges that such information be collected in the most rational and effective way.

Community banks have been reporting on beneficial ownership since 2018 when the Customer Due Diligence (CDD) rule became effective. This rule requires financial institutions (FIs) to conduct and document customer due diligence on all beneficial owners of certain legal entity customers that open new accounts. ICBA strongly opposed the creation of the CDD rules. Our position has been and continues to be that if the government has an interest in collecting and maintaining records of beneficial owners of private legal entities, such information should be collected and verified at the time a legal entity is formed, rather than requiring financial institutions to collect it.

On January 1, 2021, the Corporate Transparency Act (CTA) was signed into law, amending the Bank Secrecy Act to impose new beneficial ownership reporting requirements. 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. The CTA also authorizes FinCEN to disclose the information to FIs to facilitate compliance with CDD requirements. This is the solution for which ICBA advocated throughout the development of the CDD Rule. 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. This is where FinCEN can and should provide significant relief for community banks.

ICBA Urges FinCEN to Withdraw and Revise CDD Rule

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." Requiring both FinCEN and FIs to collect the same information on the same entities is ineffective, duplicative, unnecessary, 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.

CTA Rulemaking to Date

FinCEN has to date issued three notices of proposed rulemaking (NPRMs) and one final rule implementing the CTA. The first, issued on December 8, 2021, sought public input on who must file a report of beneficial ownership, what information must be provided, and when a report is due. This rule was finalized on September 30, 2022.

On December 16, 2022, FinCEN issued the second NPRM under the CTA, this one focusing on access to BOI and required safeguards. ICBA’s comment letter may be found [here](#). ICBA urges 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 proposed rule would require FIs to develop and implement administrative, technical, and physical safeguards to protect BOI as a precondition to receiving access. Community banks are well prepared to secure BOI efficiently and effectively, and we support the proposed safe harbor that would provide that the security and information handling procedures required by Section 501 of the Gramm-Leach-Bliley Act for the securing of non-public customer personal information would satisfy this requirement. This safe harbor would prevent duplicative or inconsistent requirements for community banks.

Finally, with regard to the requirement that an FI obtain consent from a reporting company before accessing BOI from the FinCEN registry, we note that the CTA urges FinCEN to craft a rule that is least burdensome, not duplicative, and effective. FinCEN should craft a non-prescriptive rule that provides community banks the greatest level of flexibility in how they elicit, obtain, and document consent. An example of such flexibility would be to allow FIs to obtain consent at the time an account is opened or via customer notice or account agreement mechanisms.

The third NPRM, published on January 17, 2023, sets forth a proposed a form to be used in reporting BOI. ICBA’s comment letter may be found [here](#).

Access to BOI must further and strengthen the customer due diligence process for community banks with information that is complete, accurate, and reliable. Unfortunately, FinCEN’s proposed form would effectively allow a reporting company the opt-out of providing information required by the CTA by checking a box if they are not able to obtain information on beneficial owners, the reporting company, or company applicant. In 29 places on the form, a reporting company may forego the provision of required BOI, such as full legal names, dates of birth, business addresses, tax identification numbers, and types of identifying documentation.

The provision of complete and accurate information on legal entities – transparency – is the explicit purpose of the Corporate Transparency Act. Moreover, community banks need complete information to comply with the CDD rule. The proposed form would defeat these purposes. ICBA and a bipartisan group of members of Congress have recently urged FinCEN to remove all 29 references to “check if you are not able to obtain” required information from the reporting form, and we expect the agency to cooperate with that request and propose a revised form.

Closing

Thank you for convening today's hearing to examine the potential consequences of FinCEN's beneficial ownership rulemaking. We urge your attention to the adverse consequences for community banks 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.