



February 4, 2022

Him Das  
Acting Director  
Financial Crimes Enforcement Network  
US Department of the Treasury  
P.O. Box 39  
Vienna, VA 22183

Re: Beneficial Ownership Information Reporting Requirements Docket Number FinCEN-2021-0005 and RIN 1506-AB49

Dear Acting Director Das:

The Office of Advocacy of the U.S. Small Business Administration (Advocacy) submits this letter in response to the Financial Crimes Enforcement Network (FinCEN) notice of proposed rulemaking (NPRM) on *Beneficial Ownership Information Reporting Requirements*.<sup>1</sup> The proposed rule will implement section 6403 of the Corporate Transparency Act (CTA), enacted into law as part of the National Defense Authorization Act.<sup>2</sup> Advocacy is concerned about the economic impact of the NPRM on small entities. Advocacy encourages FinCEN to implement less costly alternatives.

### **Advocacy Background**

Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The Regulatory Flexibility Act (RFA),<sup>3</sup> as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),<sup>4</sup> gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic

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<sup>1</sup> 86 Federal Register 69920, December 8, 2021.

<sup>2</sup> The Corporate Transparency Act is Title LXIV of the National Defense Authorization Act for Fiscal Year 2021, Public Law 116-283.

<sup>3</sup> 5 U.S.C. § 601 et seq.

<sup>4</sup> Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. § 601 et seq.).

impact on a substantial number of small entities, federal agencies are required by the RFA to assess the impact of the proposed rule on small business and to consider less burdensome alternatives.

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.<sup>5</sup> The agency must include a response to these written comments in any explanation or discussion accompanying the final rule's publication in the Federal Register, unless the agency certifies that the public interest is not served by doing so.<sup>6</sup>

Advocacy's comments are consistent with Congressional intent underlying the RFA, that "[w]hen adopting regulations to protect the health, safety, and economic welfare of the nation, federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public."<sup>7</sup>

### **The Proposed Rule**

On December 8, 2021, FinCEN published a notice of proposed rulemaking on Beneficial Ownership Information Reporting Requirements in the *Federal Register*.<sup>8</sup> FinCEN is promulgating proposed regulations to require certain entities to file reports that identify two categories of individuals: the beneficial owners of the entity, and individuals who have filed an application with specified governmental authorities to form the entity or register it to do business. The proposed regulations would implement Section 6403 of the CTA, which was enacted into law as part of the National Defense Authorization Act. The NPRM prescribes: (1) who must file; (2) when they must file; and (3) what information must be provided. The NPRM also specifies circumstances when a person violates the reporting requirements. FinCEN asserts that the purpose of the rulemaking is to help prevent and combat money laundering, terrorist financing, tax fraud, and other illicit activity.<sup>9</sup>

### **The Proposed Rule Will Be Economically Burdensome for Small Businesses**

FinCEN prepared an initial regulatory flexibility analysis (IRFA) for the NPRM. In the IRFA, FinCEN acknowledges that the rule will have a significant economic impact on a substantial number of small entities. For the purpose of the IRFA, FinCEN assumed that all entities estimated to be reporting companies are small.<sup>10</sup> According to FinCEN, there are currently 25 million existing reporting companies and three million new reporting companies per year.<sup>11</sup> FinCEN estimates that there will be 32,800,422 burden hours in the first year and 9,468,510 burden hours each year thereafter. FinCEN estimates that the total costs for this rule will be \$1.26 billion in the first year and \$364 million thereafter.<sup>12</sup>

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<sup>5</sup> Small Business Jobs Act of 2010 (PL 111-240) § 1601.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> 86 FR 69920.

<sup>9</sup> *Id.*

<sup>10</sup> 86 FR at 69951.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 69953.

### **FinCEN Should Allow for Maximum Flexibility to Mitigate the Costs of the Rule**

As noted above, this is an expensive rule. However, Congress allowed for more flexibility than FinCEN is proposing. For example, the CTA states that “any reporting company that has been formed or registered before the effective date of the regulations prescribed under this subsection shall, in a timely manner, and not later than 2 years after the effective date of the regulations prescribed,”<sup>13</sup> thus creating a two-year implementation period. The proposed rule allows for only one year.<sup>14</sup>

Similarly, the CTA states that updated reporting for changes in beneficial ownership shall occur in a timely manner, and not later than one year after the date on which there is a change with respect to any information that is required to be submitted to FinCEN.<sup>15</sup> The proposed rule allows only 30 calendar days to file an updated report.<sup>16</sup>

Likewise, the CTA allows for a safe harbor in terms of corrections. It states that a person shall not be subject to a civil or criminal penalty if they voluntarily and promptly, and in no case later than 90 days after the date on which the person submitted the report, submit a report containing corrected information.<sup>17</sup> The proposed rule requires a person to file a corrected report within 14 days of the date the person knew, or should have known, that the information was inaccurate and within 90 calendar days of when the inaccurate report was filed,<sup>18</sup> thus adding an additional deadline requirement.

As noted in the comment letter submitted by the National Federation of Independent Businesses (NFIB), small businesses cannot afford attorneys, accountants, and clerks to decipher complex regulations. Instead, small businesses rely on do-it-yourself compliance while trying to stay afloat and keep up with regulations.<sup>19</sup> As such, small businesses may benefit from additional time to learn and comply with the beneficial ownership information reporting requirements. Advocacy encourages FinCEN to allow for the maximum flexibility allowed in the statute and extend the compliance requirements accordingly.

### **FinCEN Should Provide a Clear and Concise Compliance Guide**

Section 212 of SBREFA requires agencies to provide a compliance guide for each rule (or related series of rules) that requires a final regulatory flexibility analysis.<sup>20</sup> Agencies are required to publish the guides with publication of the final rule, post them to websites, distribute them to industry contacts, and report annually to Congress.<sup>21</sup> In the IRFA, FinCEN acknowledges small

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<sup>13</sup> 31 USC § 5336 (b)(1)(B).

<sup>14</sup> 86 FR at 69970.

<sup>15</sup> 31 USC §5336 (b)(1)(D).

<sup>16</sup> 86 FR at 69970.

<sup>17</sup> 31 USC § 5336(h)(3)(C)(i)(I)(bb).

<sup>18</sup> 86 FR at 69970.

<sup>19</sup> Letter from NFIB to FinCen, January 13, 2022, page 5.

<sup>20</sup> [NFIBcommentlettertoTreasuryFinCENnonbeneficialownershipreportingFINCEN-2021-0005January13of2022.pdf](#)

<sup>20</sup> Small Business Regulatory Enforcement Fairness Act, Pub. Law 104-121 § 212.

<sup>21</sup> The Small Business and Work Opportunity Act of 2007 added these additional requirements for agency compliance to SBREFA.

businesses may not have the funds to obtain an attorney or other type of professional to assist them in understanding the requirements of the rule.<sup>22</sup>

There are civil and criminal penalties associated with this rulemaking. The CTA provides that a person that violates the law shall be liable for a civil penalty of not more than \$500 for each day that the violation continues or has not been remedied, and may be fined not more than \$10,000, imprisoned for not more than 2 years, or both.<sup>23</sup>

This rule could cause confusion and anxiety as small businesses try to determine whether they need to comply and, if so, what they need to do to comply. Small businesses could expend time and other resources that they may not have while attempting to comply with the requirements of the rulemaking. Advocacy encourages FinCEN to provide a clear and concise compliance guide that provides information about the requirements of the rule.

### **Conclusion**

Over the past few years, small businesses have had several challenges. Many are struggling economically. The proposed rule will impose an economic burden. However, the statute allows for flexibilities. Advocacy encourages FinCEN to utilize maximum flexibility in promulgating this rulemaking, and to make the required compliance guides as helpful as possible.

Thank you for the opportunity to comment on this important proposal and for your consideration of Advocacy's comments. If you have any questions regarding these comments or if Advocacy can be of any assistance, please do not hesitate to contact me or Jennifer Smith at (202) 839-5600.

Sincerely,

/s/

Major L. Clark, III  
Deputy Chief Counsel  
Office of Advocacy  
U.S. Small Business Administration

/s/

Jennifer A. Smith  
Assistant Chief Counsel  
for Economic Regulation & Banking

Copy to:           Dominic Mancini

<sup>22</sup> 86 FR 69953.

<sup>23</sup> 31 USC § 5336 (h)(3).

Deputy Associate Administrator  
Office of Information and Regulatory Affairs  
Office of Management and Budget