



February 14, 2023

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

Re: Beneficial Ownership Information Access and Safeguards, and Use of FinCEN Identifiers for Entities, Docket Number FINCEN-2021-0005 and RIN 1506-AB49/AB59

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 Access and Safeguards, and Use of FinCEN Identifiers for Entities*.¹ The proposed rule will implement section 6403 of the Corporate Transparency Act (CTA), enacted into law as part of the National Defense Authorization Act.² Advocacy is concerned about the impact on small entities and a lack of clarity in the NPRM. Advocacy encourages FinCEN to clarify the rulemaking and prepare a small business compliance guide.

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),³ as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),⁴ gives small entities a

¹ 87 *Federal Register* 77402, December 16, 2022.

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

³ 5 U.S.C. § 601 et seq.

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

voice in the rulemaking process. For all rules that are expected to have a significant economic 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.⁵ 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.⁶

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."⁷

The Office of Advocacy performs outreach through roundtables, conference calls and other means to develop its position on important issues such as this one. Advocacy held a roundtable with small entities to discuss the potential impact of the NPRM and less burdensome alternatives. Advocacy's comments reflect the feedback that it received from the organizations about the potential impact of the proposal on their small members

The Proposed Rulemaking

On December 16, 2022, FinCEN posted a proposed rulemaking on the access by authorized recipients to beneficial ownership information (BOI). BOI must be reported to FinCEN pursuant to Section 6403 of the Corporate Transparency Act (CTA). The proposed regulation would implement the strict protocols on security and confidentiality required by the CTA to protect sensitive personally identifiable information reported to FinCEN.

The NPRM explains the circumstances in which specified recipients would have access to BOI and outlines data protection protocols and oversight mechanisms applicable to each recipient category. The disclosure of BOI to authorized recipients in accordance with appropriate protocols and oversight will help law enforcement and national security agencies prevent and combat money laundering, terrorist financing, tax fraud, and other illicit activity, as well as protect national security. FinCEN is also proposing regulations to specify when and how reporting companies can use FinCEN identifiers to report the BOI of entities.⁸

This rulemaking is the second of three rulemakings that FinCen is planning to publish. On December 8, 2021, FinCen published the first of three CTA rulemakings. Advocacy submitted a comment letter on that rulemaking on February 4, 2022.⁹

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

⁶ Id.

⁷ Id.

⁸ 87 FR 77402.

⁹ Id. at 77407.

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, affecting approximately all 14,051 small financial institutions.

FinCen asserted that all of these small financial institutions would have a significant economic impact in the first year of implementation.¹⁰ The estimated cost for small financial institutions to comply with the proposed rule would be between approximately \$12,155 and \$17,644 in year 1, and between approximately \$7,405 and \$9,094 annually thereafter.¹¹

FinCen Should Clarify the Rulemaking and Provide a Compliance Guide

Small entities are concerned about the lack of clarity of the proposal. For example, although the IRFA states that the requirements would not be mandatory, small entity groups have stated the rule itself is unclear as to whether or not the requirements of the rulemaking are mandatory. There are also concerns about the scope of the proposed rulemaking.

Lack of clarity could lead to small entities incurring unnecessary costs in trying to comply with the rulemaking. As noted in Advocacy's February 4, 2022 letter on beneficial ownership, 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.¹² 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.¹³ Advocacy encourages FinCen to clarify the provisions of the proposal and to provide a clear compliance guide for this rulemaking.

Conclusion

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

¹⁰ Id. at 77446.

¹¹ Id.

¹² Small Business Regulatory Enforcement Fairness Act, Pub. Law 104-121 § 212.

¹³ The Small Business and Work Opportunity Act of 2007 added these additional requirements for agency compliance to SBREFA.

/s/

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

Copy to:

Richard L Revesz, Administrator, OIRA

Joseph Waldow, Confidential Assistant to the Administrator, OIRA

Dom Mancini, Deputy Administrator, OIRA