

ICBA Regulatory Update: Beneficial Ownership Rule

Topic/Issue: Beneficial Ownership

Status:

On April 1, 2021, FinCEN issued an Advance Notice of Proposed Rulemaking (“ANPRM”) on questions related to the implementation of the beneficial ownership information (“BOI”) reporting provisions of the Corporate Transparency Act (“CTA”). The ANPRM was followed by Notice of Proposed Rulemaking (“NPRM”), issued on December 8, 2021, on reporting requirements. FinCEN issued its final rule on reporting requirements on September 30, 2022. On December 15, 2022, FinCEN released its NPRM on access and disclosure of BOI. In January 2023, FinCEN released a proposed a reporting form for collecting BOI. This proposal caught the attention of Congress because the proposed reporting form would allow reporting companies to skip information that they are not able to provide by designating it “unknown.” Consequently, a bipartisan group of lawmakers called on FinCEN to amend its proposed BOI form to ensure reporting companies cannot avoid transparency. FinCEN Acting Director Himamauli Das has said that the agency is mulling over how to make changes to the form.

In June, House Financial Services Committee Chairman Patrick McHenry led a letter with National Security Subcommittee Chairman Blaine Luetkemeyer, House Small Business Committee Chairman Roger Williams, and House Appropriations Financial Services and General Government Subcommittee Chairman Steve Womack to Acting Director Das and Treasury Secretary Janet Yellen demanding that FinCEN provide its plan for educating small businesses about their beneficial ownership reporting responsibilities. On July 18, 2023, the House Financial Services National Security Subcommittee held a hearing entitled: “Potential Consequences of FinCEN’s Beneficial Ownership Rulemaking.” During the hearing, Chairman Luetkemeyer and Republican members of the subcommittee raised doubt about the approaching implementation deadlines, took aim at the complexity of FINCEN’s rulemakings, and discussed their concerns with the limits on banks accessing the BOI database. Leading up to the hearing, ICBA submitted a written statement to Congress reiterating our call for FinCEN to withdraw beneficial ownership requirements for banks now that it is required to collect this information directly from reporting companies.

On September 18, 2023, FinCEN released a Small Entity Compliance Guide to help small businesses comply with its rule on reporting BOI. FinCEN issued a NPRM to extend the reporting deadline for companies created or registered in 2024 to file their initial BOI reports, on September 27th. In response to calls to amend the form for which BOI would be collected, on September 28th, FinCEN announced a 30-day notice pursuant to the Paperwork Reduction Act seeking public comment on how to revise the form. On Sept 29th, FinCEN issued updated guidance and resources pertaining to initial reports, FinCEN identifiers, and third-party service providers. It also posted a brochure and translations of its small entity compliance guide.

On November 29, 2023, FinCEN issued a final rule to extend the deadline for reporting companies to file their

initial BOI reports with FinCEN. Reporting companies created or registered in 2024 will have 90 calendar days from the date of receiving actual or public notice of their creation or registration becoming effective to file their initial reports.

On December 22, 2023, final rule related to access and disclosure of BOI reported to FinCEN (the Access Rule) was published. The Access Rule requires FIs to obtain documented consent from a reporting company to access their BOI from FinCEN's database; provide a written certification to FinCEN that: 1) it is requesting the information to facilitate its compliance with customer due diligence required under applicable law; 2) it has obtained its customer's consent; and 3) it has fulfilled all security standards and other applicable requirements of the rules;¹ and maintain documentation of the consent for five years.

On January 1, 2024, the reporting rule became effective. FinCEN announced on January 29, 2024, that it is seeking comments on the information to be collected from certain authorized recipients requesting access to BOI. Comments were due April 1, 2024.

ICBA Position:

Community banks should not be obligated to collect BOI that has also been directly submitted to FinCEN by a reporting company.

Key Talking Points:

- Since reporting companies are now required to submit BOI directly to FinCEN upon company formation, FIs should not also be required to collect the same BOI.
- ICBA strongly urges against any rulemaking that will require FIs to train, notify, or execute any requirements between reporting companies and FinCEN.
 - It is estimated that more than 32 million small businesses would need to register their BOI with FinCEN in 2024.