



441 G St. N.W.
Washington, DC 20548

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January 5, 2024

The Honorable Sherrod Brown
Chairman
The Honorable Tim Scott
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Patrick McHenry
Chairman
The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
House of Representatives

Subject: *Department of the Treasury, Financial Crimes Enforcement Network: Beneficial Ownership Information Access and Safeguards*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of the Treasury, Financial Crimes Enforcement Network (FinCEN) titled “Beneficial Ownership Information Access and Safeguards” (RIN: 1506-AB59). We received the rule on December 22, 2023. It was published in the *Federal Register* as a final rule on December 22, 2023. 88 Fed. Reg. 88732. The effective date is February 20, 2024.

According to FinCEN, it is promulgating this final rule regarding access by authorized recipients to beneficial ownership information (BOI) that will be reported to FinCEN pursuant to section 6403 of the Corporate Transparency Act (CTA), enacted into law as part of the Anti-Money Laundering Act of 2020 (AML Act), which is itself part of the National Defense Authorization Act for Fiscal Year 2021 (NDAA). See generally 31 U.S.C. § 5336 (CTA); Pub. L. No. 116-283, § 6403(a), 134 Stat. 3388, 4547 (Jan. 1, 2021) (NDAA and AML Act). FinCEN stated that the regulations implement the strict protocols required by CTA to protect sensitive personally identifiable information (PII) reported to FinCEN and establish the circumstances in which specified recipients have access to BOI, along with data protection protocols and oversight mechanisms applicable to each recipient category. FinCEN also stated that 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.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). The rule was published in the *Federal Register* and received by the Senate on December 22, 2023. 88 Fed. Reg. 88732; Email from Senior

Advisor, FinCEN, to Senior Staff Attorney, GAO, *Subject: FinCEN Final Rule and Congressional Review Act form for submission to GAO* (Dec. 28, 2023). The House received the rule on December 26, 2023. Email from Senior Advisor, FinCEN, to Senior Staff Attorney, GAO, *Subject: FinCEN Final Rule and Congressional Review Act form for submission to GAO* (Dec. 28, 2023). The rule has a stated effective date of February 20, 2024. Therefore, the final rule does not have the required 60-day delay in its effective date.

Enclosed is our assessment of FinCEN's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive, flowing style.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Andrea M. Gacki
Director, FinCEN
Financial Crimes Enforcement Network
Department of the Treasury

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF THE TREASURY,
FINANCIAL CRIMES ENFORCEMENT NETWORK
TITLED
“BENEFICIAL OWNERSHIP INFORMATION ACCESS AND SAFEGUARDS”
(RIN: 1506-AB59)

(i) Cost-benefit analysis

The Department of the Treasury, Financial Crimes Enforcement Network (FinCEN) prepared an analysis of the costs and benefits of this final rule. FinCEN stated that its analysis estimates costs to domestic agencies (including self-regulatory organizations (SRO)), foreign requesters, financial institutions, and FinCEN. FinCEN estimates the potential quantifiable impact of the rule will be between \$78.2 million in quantifiable net benefits and \$949.2 million in net costs in the first year of the rule, then from \$377.3 million in quantifiable net benefits to \$403.0 million in net costs on an ongoing annual basis.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

FinCEN prepared a Final Regulatory Flexibility Analysis. The analysis included (1) a statement of the reasons for and objectives of the rule; (2) a summary of the significant issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis, the agency’s assessment of such issues, and a statement of any changes made in the proposed rule as a result of such comments; (3) the response of the agency to a comment filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule and a detailed statement of any changes made to the proposed rule in the final rule as a result of the comment; (4) a description and estimate of the number of small entities to which the rule will apply; (5) a description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirements and the type of professional skills necessary for the preparation of the report or record; and (6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on the small entities was rejected.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

FinCEN stated that it believes that the Regulatory Impact Analysis for this final rule provides the analysis required Act.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO's major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: "the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act's exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act's requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act" in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

FinCEN did not discuss the Administrative Pay-As-You-Go Act of 2023 in this final rule.

(v) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On December 16, 2022, FinCEN published a notice of proposed rulemaking. 87 Fed. Reg. 77404. FinCEN stated that it received over 80 comments. FinCEN also stated that comment submissions came from a broad array of individuals and organizations, including Members of Congress, the financial industry and related trade associations, groups representing small business interests, corporate transparency advocacy groups, law enforcement representatives, regulatory associations, legal associations, and other interested groups and individuals. FinCEN stated further that it carefully reviewed and considered each comment submitted and that many specific proposals are discussed in the final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

FinCEN determined that this final rule contains information collection requirements under the Act. FinCEN stated that the new reporting and recordkeeping requirements have been approved by OMB (OMB Control Number 1506-0077). FinCEN estimates that the information collection requirements would impose a burden of 8,743,781 hours in the first year and 3,616,964 hours every year thereafter. FinCEN also estimated that the information collection requirements would impose \$868,200,270 in costs during the first year and \$339,309,502 million in costs every year thereafter.

Statutory authorization for the rule

FinCEN promulgated this final rule pursuant to sections 1829b and 1951–1959 of title 12; section 6072 of title 26; sections 5311 note, 5311–5314 and 5316–5336 of title 31, United States Code, and section 701 of Public Law 114-74.

Executive Order No. 12866 (Regulatory Planning and Review)

FinCEN determined that this final rule is economically significant under the Order and submitted it to OMB for review.

Executive Order No. 13132 (Federalism)

In its submission to us, the agency indicated that it did not address the Order in the final rule.