Via electronic submission

October 8, 2024

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20219

Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

James P. Sheesley, Assistant Executive Secretary
Attention: Comments/Legal OES (RIN 3064-AF34)
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Melane Conyers-Ausbrooks, Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314-3428

RE: Anti-Money Laundering and Countering the Financing of Terrorism Program Requirements: OCC - [Docket ID OCC-2024-0005]; Federal Reserve System – [Docket No. R-1835] RIN 7100-AG78; Federal Deposit Insurance Corporation – RIN 3064 AF34; National Credit Union Administration – RIN 3133-AF45

Dear Sir(s) or Madam(s):

The Independent Community Bankers of America ("ICBA")[1] appreciates the opportunity to respond to the proposed rule issued by the Office of the Comptroller of the Currency, the

[1] The Independent Community Bankers of America® has one mission: to create and promote an environment where community banks flourish. We power the potential of the nation's community banks through effective advocacy, education, and innovation. As local and trusted sources of credit, America's community banks leverage their relationship-based business model and innovative offerings to channel deposits into the neighborhoods they serve, creating jobs, fostering economic prosperity, and fueling their customers' financial goals and dreams. For more information, visit ICBA's website at icba.org.

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Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and the National Credit Union Administration (collectively, "the Joint Agencies," "Agencies," or "Agency"). The proposed rule that would amend Anti-Money Laundering ("AML") and Countering the Financing of Terrorism ("CFT") program requirements that each Agency has for its supervised banks to establish, implement, and maintain effective, risk-based, and reasonably designed programs.[2] The proposed rule also amends each Agency's AML/CFT requirements to align with changes proposed by FinCEN[3] pursuant to the Anti-Money Laundering Act of 2020 ("AML Act" or "Act").[4] According to the notice, the proposed rule is intended to ensure that the Agencies' Bank Secrecy Act ("BSA") compliance program rules remain consistent with FinCEN's rule to avoid confusion and additional burden on banks.[5]

Given the Joint Agencies' goal to align their requirements with FinCEN's, ICBA's overall response mirrors our response[6] to FinCEN, which is, the proposal is ambiguous and creates additional burdens on community banks without any demonstrable benefit to combatting money laundering or terror financing.

Background

The AML Act was enacted on January 1, 2021, as a legislative amendment to the BSA and required FinCEN to update regulations pertaining to banks' AML/CFT programs. In response to the Act's directive, FinCEN released a notice of proposed rulemaking ("NPRM")[7] which would require banks to: establish, implement, and maintain effective, risk-based, and reasonably designed AML/CFT programs; implement a mandatory risk assessment process; and require banks to review government-wide AML/CFT priorities ("Priorities") and incorporate them, as appropriate, into risk-based programs. FinCEN's NPRM also provide for certain technical changes to program requirements such as selecting a "qualified" AML/CFT Officer ("BSA Officer").[8]

The Joint Agencies issued this proposed rule to align with FinCEN's proposed changes. The proposed rule would also add customer due diligence requirements ("CDD") to reflect prior amendments to FinCEN's rule.[9]

Community banks follow well established rules and regulations to develop, monitor, and maintain effective and reasonably designed programs. Community bankers are committed to supporting balanced, effective measures to prevent the financial system from being used to fund criminal activities and prevent money launderers from hiding the proceeds of criminal

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[2] Joint Agencies Notice of Proposed Rulemaking Anti-Money Laundering and Countering the Financing of Terrorism Program Requirements 2024-16546.pdf (govinfo.gov) (July 19, 2024) P. 65242
[3] FinCEN Notice of proposed rulemaking 2024-14414.pdf (govinfo.gov) (July 3, 2024)
[4] Anti-Money Laundering Act Public Law 116-283 (Jan. 1, 2021)
[5] Joint Agencies Notice of Proposed Rulemaking Anti-Money Laundering and Countering the Financing of Terrorism Program Requirements 2024-16546.pdf (govinfo.gov) (July 19, 2024) P. 65245
[6] ICBA's Response to FinCEN's NPRM. (September 3, 2024) P.1
[7] *Notice of Proposed Rule to Strengthen and Modernize* Anti-Money Laundering and Countering the Financing of Terrorism Programs 2024-14414.pdf (govinfo.gov) (July 3, 2024) P. 55428
[8] *Id.*
[9] 81 FR 29398 (May 11, 2016)

activities. However, AML/CFT programs have increasingly charged community banks with complying with outdated, inefficient, and redundant requirements that require them to act as de facto law enforcement agencies, while reallocating vast resources internally to AML/CFT programs and away from those that are directly customer-facing.

Since the inception of anti-money laundering laws in 1970 and anti-terrorist financing laws in 2001, the burdens placed on financial institutions ("FIs") increasingly create an environment where FIs are tasked with identifying, investigating, policing, stopping, and reporting potential criminal activity. Each year, community banks invest more time, money, and resources to combat this threat, yet the current framework is little more than that of a robotic exercise of submitting forms, maintaining records, and responding to examiner requests. Bank staff spend hours simply documenting low-risk activity to demonstrate to exam teams that the mounting documentary burdens have been met.

The Joint Agencies have an excellent opportunity to streamline the current regime in a way that balances the needs of both banks and law enforcement. They are well-positioned to help banks provide more useful information while alleviating one of the most significant and costly sources of compliance burdens. Yet, like FinCEN's proposal, this proposed rule is poised to exacerbate issues which ICBA and community banks advocate against.

As written, the proposed rule adds to already burdensome requirements for banks without any indication of additional efficiencies or methods that will be useful to law enforcement. If finalized, the rule will increase regulatory burden and compliance spending; increase occurrences of subjective exams due to the lack of guidance; and keep in place the practice of robotic and mechanical compliance. Furthermore, banks will face increased enforcement risk that result from technical errors.

Request for Comments

Incorporation of AML/CFT Priorities

The AML Act requires FIs to review FinCEN's published Priorities and incorporate them into their AML/CFT programs, as appropriate. FinCEN plans to enforce this requirement by mandating banks consider the Priorities as part of their risk assessments process. The Priorities reflect areas of heightened concern that banks should assess and amend their AML/CFT programs if appropriate. Although not required by the AML Act, the Agencies are implementing this statutory requirement by proposing amendments that would require banks to review and consider the AML/CFT Priorities as part of their risk assessment process.

The list of Priorities includes: (1) corruption; (2) cybercrime, including relevant cybersecurity and virtual currency considerations; (3) foreign and domestic terrorist financing; (4) fraud; (5) transnational criminal organization activity; (6) drug trafficking organization activity; (7) human trafficking and human smuggling; and (8) proliferation financing. ICBA appreciates the purpose for issuing the Priorities. However, the current list is too broad and covers every AML threat that existed prior to the AML Act, thus begging the question as to what really is a priority?

Furthermore, the Priorities and FinCEN's NPRM both lack any insight as to how FIs should assess and prioritize the listed threats as they conduct their risk assessments.

As we asserted in our comment letter to FinCEN, the Priorities lack guidance in terms of threat examples, typologies, and transactional red flags which are factors needed to assess whether the threat exists within an institution.[10] The purpose of a risk assessment process is to uncover risks and to develop an action plan to manage such risks. Given the overly broad nature of the list, ICBA is concerned that some of our members will encounter significant challenges conducting a full assessment. In fact, members report that while some of the listed Priorities have well documented red flags that they can assess, others — such as transnational criminal organization activity and proliferation financing — lack specific transaction-based examples that would trigger further investigation or suspicion. Without additional guidance, assessing listed threats and developing an appropriate mitigation response is nearly impossible and by extension incorporating the Priorities into an AML/CFT program will be difficult.

If FIs are expected to undergo this process without adequate guidance, the Agencies should expect to see risk assessments and AML/CFT programs that include every Priority listed simply to avoid exam scrutiny or findings (setting up an exercise similar to defensive SAR filings). Furthermore, the defensive approach to including every Priority in a bank's AML/CFT program completely defeats the purpose of resource allocation. Similarly, without guidance, FinCEN could inadvertently exacerbate cases of inconsistent exams and unfair scrutiny for FIs that may conclude that some of the Priorities do not apply to their banks.

In our response to FinCEN's NPRM on AML/CFT programs, we urged FinCEN to amend the current list to include guidance consisting of examples, typologies, case studies, and both transactional and behavioral reg flags.[11] By extension, we urge the Agencies to postpone issuing rules surrounding the Priorities until FinCEN issues much needed guidance. Issuing guidance will assist FIs with assessing whether the risk exists within the institution; will help banks establish effective, risk-based, and reasonably designed AML/CFT programs; and help fulfill the purpose of resource allocation. It is imperative that FinCEN establishes a Priorities regime that meets the purpose for which the AML Act intended and does not expose community banks to regulatory punishment for lack of guidance.

Risk Assessment Process

Consistent with FinCEN's NPRM, the Agencies are proposing to require a risk assessment process as the means to incorporate the AML/CFT Priorities. Banks will be required to establish a risk assessment process that identifies, evaluates, and documents risks based on: (1) business activities including products, services, distribution channels, customers, intermediaries, and geographic locations; (2) AML/CFT Priorities; and (3) SAR and other report filings. Under the proposed rule, banks are required to update their risk assessment on a periodic basis, including, at a minimum, when there are material changes to the risk profile.

[10] ICBA's Response to FinCEN's NPRM. (September 3, 2024) P.3
[11] *Id.*

Under the proposed rule, banks would maintain flexibility over the manner in which the Priorities are integrated into their risk assessment processes and methods for assessing the Priorities. The Agencies anticipate that some banks may determine that their business models and risk profiles have limited exposure to some of the threats addressed in the Priorities, but instead reflect greater exposure to other risks. Additionally, some banks may determine that their AML/CFT programs already sufficiently take into account the Priorities.

ICBA appreciates the Joint Agencies willingness to allow banks to maintain flexibility over their processes and methods for assessing the Priorities. The proposed risk assessment process, however, will likely result in a more resource consuming exercise due to its expansion and complexity. An example of the additional drain this expansion will cause is in the requirement to assess intermediaries (or third-party vendors).[12] Banks are currently required to undergo a robust vendor management process designed to capture the potential risks associated with third-party providers. Requiring banks to expand their risk assessment process to include this overly broad concept is redundant, resource draining, and provides no additional value.

Community banks AML/CFT programs are already risk-based and reflect board and management's risk appetite and approach to mitigation, unique to each institution. Despite their established AML/CFT programs, which are designed to their respective risk, our members consistently inform us that far too many examiners still evaluate them based on the risk profiles of other banks, impose their own expectations, and ignore banks' unique risk profiles. In April 2020, the Federal Financial Institutions Examination Council ("FFIEC") released an update to the BSA/AML Examination Manual (the "Manual") clarifying that examinations must be risk-based.[13] The update was intended to remind examiners not to take a "one size fits all" approach and remind them to examine each FI's program based on its specific risks. The update was also intended to clarify what standards are regulatory requirements as opposed to supervisory expectations. Nevertheless, four years later, community banks continue to experience exams that are not in compliance with the Manual. As such, ICBA recommended[14] to FinCEN that they should codify the risk-based exam provisions established in the Manual, as a final rule. We also urged FinCEN to communicate exam expectations with the Agencies.[15] ICBA believes that once FinCEN and the Agencies align in their exam approach, a consistent risk-based exam regime will eventually take hold.

The proposed rule seeks input on whether to require FIs to update their risk assessment when there are material changes to their risk profile or based on a time frame. ICBA supports a

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[12] Id at 55438-55439. FinCEN acknowledges that the term intermediaries may be new. According to FinCEN, since banks have relationships with counterparties, such as third-party service providers, they may pose money laundering and terror financing ("ML/TF") risks. FinCEN considers intermediaries to include "broadly other types of financial relationships beyond customer relationships that allow financial activities by, at, or through a financial institution." An intermediary can include, but not be limited to, a FIs' brokers, agents, and suppliers that facilitate the introduction or processing of financial transactions, financial products and services, and customer-related financial activities. ICBA is against the additional requirement of assessing intermediaries since current vendor management requirements are sufficient. We do, however, support a bank's independent decision to incorporate intermediates into their risk assessment process should there be a reason to do so.
[13] FFIEC Manual: Risk-Focused BSA/AML Supervision, p. 3.
[14] ICBA's Response to FinCEN's NPRM. (September 3, 2024) P.5
[15] *Id.*

process based on a defined approach. For example, if the final rule includes a specified interval to update risk assessments, then we recommend a reasonable time frame of 18 – 24 months, which aligns with a typical exam schedule and a bank's ordinary course of auditing risk mitigation. Additionally, if the final rule requires an update based on a material change to the risk profile, then the Agencies must provide guidance on what is deemed "material."[16]

Defining the parameters for risk assessment updates is also crucial in considering the Priorities. FinCEN is required to update the Priorities at least once every four years. As of the time of this rulemaking, the list has not been updated since its release in 2021. The Priorities are to be reviewed and incorporated into AML programs if appropriate. If FinCEN releases its next set of Priorities shortly after a bank undergoes and concludes this new exhaustive risk assessment process, the bank will need a reasonable amount of time to undergo and conclude its update.

Effective, Risk-Based, and Reasonably Designed AML

Consistent with FinCEN, the Agencies' proposal requires banks to develop AML/CFT programs that are "effective, risk-based, and reasonably designed." The Agencies are adding the terms "effective" and "risk-based" to the existing program requirement. An effective, risk-based, and reasonably designed program includes a risk assessment process; internal policies, procedures, and controls; a qualified AML/CFT officer; ongoing employee training and periodic independent testing; and other components such as customer due diligence program requirements. This requirement mandates that banks "focus their resources and attention in a manner consistent with the FIs risk profile" and take into account "higher-risk and lower-risk customers and activities."[17]

Community banks already maintain "reasonably designed" AML/CFT programs based on risk. The "effectiveness" requirement provides the Agencies a great opportunity to ensure this term proves valuable to FIs. As a baseline, "effectiveness" should be defined. The definition should empower FIs to move away from practices that are not required by law/regulation, which are "check-the-box" in nature, and that respond to examiner demand but adds little value to an FI's overall AML/CFT objective. The definition should move banks towards a true principles-based, institution specific program. Freeing up resources away from low priority matters and reallocating them to higher risk priorities is the surest way to achieve effectiveness. The final rule should not only address resource reallocation but must also make clear that examiners are not to penalize a FI's decision to reallocate resources in response to their risk profile.

ICBA urges the Agencies to be mindful that effectiveness does not mean perfection. We urge

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[16] Typically, a material change to a risk profile can occur when new products or services are offered by bank. In some cases, a product could be deemed new by virtue of an update to the product or service. For example, a bank may offer a 3-month certificate of deposit ("CD") that has undergone a full risk assessment. If the bank decides to offer a 4-month CD which only updates the length of the CD by one month, does that constitute a material change? Or is initial risk assessment for the CD product (regardless of how many months) sufficient? Given this example, declining to define "material" will create a gray area subject to various interpretations, will cause additional inconsistent exam approaches, and will cause confusion.

[17] Joint Agencies Notice of Proposed Rulemaking Anti-Money Laundering and Countering the Financing of Terrorism Program Requirements 2024-16546.pdf (govinfo.gov) (July 19, 2024) P. 65242

the Agencies to avoid issuing findings for minor weaknesses, minor deficiencies, and for minor violations that are not indicative of a weak program.[18] As stated previously, community banks reported that, in their experience, examinations are not conducted based on risk as required by the Manual. Instead, they feel pressured to prioritize technical requirements over practical, common-sense precautions. Hence, programs are too frequently manipulated to comply with the expectations of the examiners and in contravention of the intended purpose of a risk-based AML/CFT program.

Qualified AML/CFT Officer

Consistent with FinCEN's proposed rule, the Agencies' proposal will require a bank to designate a "qualified" BSA Officer to be responsible for coordinating and monitoring day-to-day compliance with the BSA. A qualified BSA Officer would have to adequately perform the duties of the position, have sufficient knowledge and understanding of the bank, U.S. AML/CFT laws and regulations, and how those laws and regulations apply to the bank and its activities. A BSA Officer with additional job duties or conflicting responsibilities that impact their ability to effectively coordinate and monitor day-to-day AML/CFT compliance generally would not fulfill this requirement.

The designation of a qualified BSA Officer is not a new expectation. However, the notion that a BSA Officer with additional job duties would not be considered qualified is troubling and arbitrary. Just as AML/CFT programs are risk based, bank staffing in the AML/CFT program is also tailored to risk. By ignoring asset size, market, and delivery channels, the proposed rule's one-size-fits-all approach to staffing fails to take into consideration the unique profiles of community banks across the country. It is not uncommon for the BSA Officer at a community bank to also serve as a compliance officer, bank president, teller, loan officer, chief financial officer, or another role, depending on a bank's profile and footprint. Community banks, especially smaller banks, often rely on limited personnel to perform multiple functions within a bank.

The Agencies state that based on their "experience in examining BSA compliance programs, it is important for the compliance officer's qualifications (i.e., the requisite training, skills, expertise, and experience) to be commensurate with the bank's ML/TF and other illicit finance activity risks."[19] But, as written, the proposed rule will invalidate years of competency, training, expertise, and the operational experience of a BSA Officer working in other capacities. The proposal also ignores AML professional certifications such as those from accredited organizations; punish banks, especially small banks, that do not have the additional resources to hire an individual to solely focus on BSA; and will penalize banks over an arbitrary notion that a BSA Officer is not qualified simply because they have additional roles. ICBA opposes the idea that a BSA Officer is not qualified if they have additional duties and calls on FinCEN

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[18] FFIEC's BSA/AML Manual expressed this same sentiment when it clarified that AML/CFT programs are to be risk based[18]. See Developing Conclusions and Finalizing the Exam - 508 (ffiec.gov) p.1

[19] Joint Agencies Notice of Proposed Rulemaking Anti-Money Laundering and Countering the Financing of Terrorism Program Requirements 2024-16546.pdf (govinfo.gov) (July 19, 2024) P. 65249

and the Agencies to withdraw this provision.

Innovative Approaches

One of the AML Act's purposes is to "encourage technological innovation and the adoption of new technology by FIs to more effectively counter money laundering and the financing of terrorism."[20] The Act also calls for a "reduction in obstacles to innovation that may arise from existing regulations, guidance, and examination practices related to [BSA] compliance," which aligns with the federal banking agencies' *Joint Statement on Innovative Efforts to Combat Money Laundering and Terrorist Financing* ("Joint Statement").[21] The Joint Statement encouraged banks to consider and implement innovative approaches to meeting their AML/CFT compliance obligations, including by deploying emerging technologies to identify and address vulnerabilities and threats. The Joint Statement was intended to foster innovation without fear of criticism and includes exceptive relief, upon request, to the extent necessary to facilitate the development of new technologies and other innovations.

The Agencies' proposed rule encourages the consideration of innovative approaches to help banks comply with the BSA and seeks input on alternative methods for encouraging innovation in lieu of a regulatory provision. Although ICBA supports balanced and flexible regulations that *facilitate* bank exploration of new technologies, we do not support regulations that would *require* community banks to adopt new technologies. In lieu of a regulatory provision that requires innovation, ICBA believes that FinCEN and the Agencies could encourage innovation through greater use of exceptive relief, as contemplated in the Joint Statement.

Though initially announced four years ago, few community banks have taken advantage of the benefits proffered by the Joint Statement. In part, our members have expressed that their hesitancy stems from concern that regulators and examiners do not allow FIs to experiment and make errors when utilizing these technologies. Their use will result in exam criticisms and findings.

To encourage community banks to adopt technologies more effectively, ICBA has urged FinCEN to provide clear guidance on what it deems acceptable technological innovations that would achieve exceptive relief.[22] This could be accomplished through a No Action Letter ("NAL") program, which FinCEN first contemplated in its 2022 Advance Notice of Proposed Rulemaking ("ANPR"). A NAL is a type of regulatory enforcement document in which an agency agrees, in writing, that it will provide no-action relief and not take enforcement action against an entity for particular conduct documented in the entity's no-action request. In response to the ANPR, ICBA supported the creation of a NAL process which could be a significant tool in a community bank's BSA compliance program. This tool could aid community banks by providing clarity, assurance, and protection when seeking to comply with BSA

[20] AML Act, section 6002(2)– (4)
[21] Joint Statement on Innovative Efforts to Combat Money Laundering and Terrorist Financing (Dec. 3, 2018), available at https://www.fincen.gov/news/news-releases/ treasurys-fincen-and-federal-banking-agenciesissue-joint-statement-encouraging.
[22] ICBA's Response to FinCEN's NPRM. (September 3, 2024) P.8

regulatory requirements and expectations pertaining to new and existing products and services, new business lines, and high-risk customers and activities. The NAL could further be used as part of a community bank's internal risk assessment when developing and implementing appropriate internal controls for managing and mitigating BSA/AML risk exposure.

ICBA also recommends that FinCEN and the Agencies codify the Joint Statement on innovation without fear of criticism and include exceptive relief. But instead of providing exceptive relief upon request to the extent necessary to facilitate the development of new technology, ICBA recommends automatic relief for at least two years to allow the bank reasonable time to facilitate the development and test the use of the specific technology.

Board Approval and Oversight

The proposed rule requires a bank's board or an equivalent governing body ("Board") to oversee a bank's AML/CFT program. According to the proposal, Board approval of the program alone is not sufficient to meet program requirements, since the Board may approve programs without a reasonable understanding of a bank's risk profile or the measures necessary to identify, manage, and mitigate its risks on an ongoing basis. The proposed oversight requirement expects appropriate and effective oversight measures such as governance mechanisms, escalation, and reporting lines.

The proposed rule will substantially increase burdens on community bank Boards. While extensive, the current level of Board accountability is sufficient. The FFIEC Examination Manual states that the Board of Directors "has primary responsibility for ensuring that the bank has a comprehensive and effective BSA/AML compliance program and oversight framework that is reasonably designed to ensure compliance with BSA/AML regulation."[23] Under current regulations, Boards are responsible for approving a bank's BSA/AML compliance program and for overseeing the structure and management of the bank's BSA/AML compliance function. Boards are also responsible for ensuring a culture of BSA/AML compliance, establishing policies regarding the management of risks, and ensuring that policies are adhered to. Additionally, Boards review risk assessments and establish risk parameters, review, and approve policies and procedures, review and sign off on audits, approve and allocate AML/CFT funding and resources, receive and review reports on SAR filings, and undergo annual training.

Board members can be held civilly and criminally liable for oversight failures. The increase in duties, which add no additional tangible benefits to an AML/CFT program, will discourage individuals from participating on bank Boards. Board governance principles are not intended to encroach on the day-to-day management of a bank, which the proposed rule appears to do.

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[23] FFIEC BSA/AML Program Structures - BSA/AML Compliance Program Structures (Management and Oversight of the BSA/AML Compliance Program)

Congress explicitly instructed FinCEN to identify regulations and guidance that may be outdated, redundant, or otherwise do not promote a risk-based AML/CFT regime for FIs. However, this new requirement adds to the list of redundant requirements that do not enhance the current similar role of a Board. While the mandate from Congress was made to FinCEN, the Agencies are not precluded from taking heed. As such, ICBA strongly urges the Agencies against increasing the responsibilities of board members but instead supports a bank's risk-based decision to do so.

Customer Due Diligence

The proposed rule would add CDD as a required component of the Agencies' AML/CFT program rule. The CDD Rule requires banks to collect beneficial ownership information ("BOI") in order to identify and verify the natural persons (known as beneficial owners) who own, control, and profit from entities seeking to open an account. CDD is currently a required component in FinCEN's AML program rule and, therefore, banks are already required to comply with CDD under FinCEN's rules. The inclusion of CDD in the Agencies' proposed rules would mirror FinCEN's existing rule and reflect the Agencies' long-standing supervisory expectations.

On January 1, 2021, the Corporate Transparency Act was enacted and amended the BSA by: requiring entities to report their BOI directly to FinCEN; mandating that FinCEN create a registry to maintain BOI; requiring FinCEN to promulgate rules to implement these requirements ("BOI Rule"); and requiring FinCEN to revise its existing CDD requirements to reduce any burdens on FIs and legal entity customers that are unnecessary or duplicative.[24] The BOI Rule became effective January 1, 2024.

As of this year, FinCEN is now collecting BOI, but so are banks. From the onset of the CDD rule's development, ICBA's position has been and continues to be that if the government has an interest in collecting and maintaining records of beneficial ownerships of private legal entities, such information should be collected and verified at the time a legal entity is formed, rather than requiring FIs to collect this information. ICBA's position also calls for FIs to have access to that information to assist them in performing customer due diligence.

The BOI Rule allows FinCEN to disclose BOI to banks to facilitate compliance with CDD requirements, provided the bank obtains the consent of the reporting company. ICBA does not advocate for access, for access' sake but rather, access that furthers and strengthens the CDD process for community banks, with information that is complete, accurate, and reliable. ICBA has consistently advised FinCEN not to expect nor require banks to "chase down" this information on behalf of FinCEN. Since the Agencies are proposing to add CDD to their program requirements, ICBA strongly urges the same. Additionally, we strongly urge the Agencies not to penalize a bank for relying on BOI obtained from FinCEN and to codify a safe

[24] Corporate Transparency Act § 6401-6403

harbor to banks for their reliance on information retrieved, as is. FIs should be able to rely on the information submitted to FinCEN and not bear responsibility or be subject to any consequences for such reliance. We also call on the Agencies to expressly codify that banks will not be required to adhere to suspicious activity reporting requirements based on information obtained from FinCEN's database, outside of their risk-based decisioning process. No FI should bear any responsibility or be subject to any consequences for relying on FinCEN's congressionally mandated process.

Conclusion

ICBA supports an AML/CFT regime that alleviates one of the most significant and costly sources of community bank compliance burdens. The Agencies intend to align their program rules with FinCEN's rules to avoid "additional burden on banks."[25] However, like FinCEN's NPRM, this proposal increases the burdens on banks without any indication of additional efficiencies or methods that will be incredibly useful to law enforcement.

We appreciate the opportunity to respond to the Agencies and welcome further engagement. Please let me know if I can be of further assistance by offering suggestions that result in regulatory relief for banks without compromising the spirit of the regulation. If you have any questions, please do not hesitate to contact me at Rhonda.Thomas-Whitley@icba.org or (202) 659-8111.

Sincerely,

/s/

Rhonda Thomas-Whitley
Senior Vice President, Senior Regulatory Counsel

[25] Joint Agencies Notice of Proposed Rulemaking Anti-Money Laundering and Countering the Financing of Terrorism Program Requirements 2024-16546.pdf (govinfo.gov) (July 19, 2024) P. 65245