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September 18, 2023

The Honorable Patrick McHenry
U.S. House of Representatives
2129 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Maxine Waters
U.S. House of Representatives
4340 O'Neill House Office Building
Washington, D.C. 20515

Dear Chairman McHenry and Ranking Member Waters:

On behalf of NFIB, the nation's leading small business advocacy organization, I write with significant concerns regarding the planned markup on September 20, 2023. NFIB urges the House Financial Services Committee to consider legislation that will offer real regulatory relief and privacy protections for small businesses related to beneficial ownership information (BOI) reporting requirements. The current bills scheduled to be considered fail to address the issues small business owners are most concerned with under the Corporate Transparency Act (CTA).¹

According to Financial Crimes Enforcement Network's (FinCEN) own estimate, 32.6 million small business owners will have to begin registering the BOI of their owners and senior staff members on January 1, 2024, or face severe criminal and civil penalties for failure to provide completed and updated reports. In future years, 5 to 6 million additional small businesses must provide BOI in perpetuity. The unprecedented reporting requirement will begin in a few short months even though FinCEN has yet to finalize a rule to establish the database to house this information and regulate access protocols. It is unreasonable to require tens of millions of small business owners to provide personally identifiable information and a copy of a driver's license or passport to a database when these business owners still do not know how that BOI will be stored and who will have access to the BOI database.

At the very minimum, NFIB supports delaying the effective date of the BOI regulations until FinCEN has finalized all three of the regulations required by the CTA, which is why NFIB supports H.R. 4035, the *Protecting Small Business Information Act of 2023*. The new small business reporting requirement is being implemented by FinCEN through three rules. Only

¹ *The Corporate Transparency Act was buried in the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021*. §6401 – §6403, TITLE LXIV—ESTABLISHING BENEFICIAL OWNERSHIP INFORMATION REPORTING REQUIREMENTS, P.L. 116-283, January 1, 2023, <https://www.congress.gov/116/plaws/publ283/PLAW-116publ283.pdf>.

one of the three rules has been finalized. H.R. 4035 would delay the effective date of BOI reporting requirements for small business owners until FinCEN has finished promulgating all three rules required to implement the CTA.

Legislation Scheduled to be Considered at the Markup

The committee is considering multiple bills dealing with national security legislation but only making very limited changes to the BOI reporting requirements, despite holding a subcommittee hearing in July that pointed out sufficient challenges in implementation of the CTA.² NFIB is concerned that the legislation under consideration today does not go far enough toward providing real relief for small businesses.

- **H.R. 5472, the *FinCEN Oversight and Accountability Act*:** NFIB strongly supported an earlier version of this legislation that included provisions requiring a Senate confirmation for the FinCEN Director and an Inspector General at FinCEN directly responsible for safeguarding the civil liberties of small business owners. Absent these two provisions, this bill will not have the intended effect of holding FinCEN more accountable to Congress and small businesses. NFIB strongly supports legislation that would include the two provisions that were removed.
- **H.R. 5119, the *Protect Small Business and Prevent Illicit Financial Activity Act of 2023*:** NFIB strongly opposed FinCEN's regulatory decision to shorten the allowable timelines for filing initial BOI reports for existing and newly created businesses, updating BOI reports, and correcting BOI reports. According to sponsors, this legislation is intended to require FinCEN to allow for two years for existing businesses to file their initial BOI reports, as well as 90 days to update reports. NFIB is concerned that this legislation may be drafted in such a way that it is not definitively clear that FinCEN will be required to allow for the full two-year allowance for initial filings. As was the case during the drafting of the CTA, any legislative language that is not clear and specific will be interpreted by FinCEN in such a way to not strike an appropriate balance to ease compliance burdens on small business owners. This bill would also allow for 90 days to provide updated information, as opposed to the 30 days that FinCEN finalized in regulations. While more time for updates is desirable, especially since FinCEN is requiring more individuals to provide BOI than Congress intended, the CTA allowed up to one year for updated reports. NFIB does not oppose the legislation but supports restoring the maximum allowable timelines for initial and updated BOI reports and is concerned that this bill may not accomplish its desired intent.

Final Recommendations

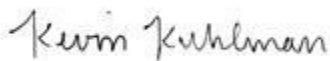
NFIB has opposed BOI reporting requirements because they are overly burdensome to small business owners and will not accomplish the stated law enforcement objectives. What began

² Potential Consequences of FinCEN's Beneficial Ownership Rulemaking, *House Financial Services Committee, July 18, 2023*, <https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=408901>.

as “basic”³ and “simple”⁴ four pieces of information has turned into a just released 56-page compliance guide⁵ and 51-question draft form.⁶ There is a growing understanding that the CTA implementation is going poorly, as demonstrated by the July subcommittee hearing. Large financial institutions, who helped shepherd CTA’s passage, are now raising concerns that the regulation may reduce small business owners’ access to credit. Members of Congress on both sides of the aisle are concerned that FinCEN ignored clear Congressional intent when promulgating rules. Small business owners remain largely unaware about the substantial regulation that is right around the corner.

Before subjecting over 30 million small business owners to a flawed regulatory regime that is not ready to receive and secure their BOI, Congress should pause implementation of the CTA until all three regulations are finalized and outreach efforts improve dramatically. There is very little awareness that these BOI requirements are imminent, as a recent NFIB survey shows that 90% of small business owners are not at all familiar with the requirements.⁷ NFIB stands willing to work with the committee to protect unsuspecting small business owners from burdensome and complicated reporting requirements.

Sincerely,



Kevin Kuhlman
Vice President, Federal Government Relations
NFIB

³ See testimony from former Executive Director of the FACT Coalition Gary Kalman, “There are four basic pieces of information which would be the name of the owner, the address, the date of birth, and identification number. There’s no financial or other information about the company that is being provided.” and testimony from Bank Policy Institute CEO Greg Baer, “First, the draft legislation requires a business owner to disclose only the most basic of information; name, address, date of birth, and some form of ID such as a driver’s license or passport number. That is all.” Transcript from Senate Banking, Housing, and Urban Affairs Committee hearing on Outside Perspective on the Collection of Beneficial Ownership Information, June 20, 2019.

⁴ See responses to questions at Senate Banking Committee from former FinCEN Director Kenneth Blanco, “Look, I think whatever regime, it should be simple, it should be concise. For example, if you mirror what the CDD does, it’s six questions, seven questions at best. It’s the information, it’s very basic information: date of birth, address, phone number, who are the beneficial owners. Very simple and we can make it work. I think that’s the best advice I can give you.” Transcript from Senate Banking, Housing, and Urban Affairs Committee hearing on Combating Illicit Financing by Anonymous Shell Companies through the Collection of Beneficial Ownership Information, May 21, 2019. And see comments from Senate Banking Committee Ranking Member Sherrod Brown: “And we’ll hear from NFIB, some of whose members have expressed concern about the paperwork burden of providing even simple ownership information; name, address, copy of a current passport or driver’s license.” and “as you know, we’re asking for name, address, date of birth, nationality, driver’s license or passport...” Transcript from Senate Banking, Housing, and Urban Affairs Committee hearing on Outside Perspective on the Collection of Beneficial Ownership Information, June 20, 2019.

⁵ *Small Entity Compliance Guide, Beneficial Ownership Information Reporting Requirements, Version 1.0*, Financial Crimes Enforcement Network, September 18, 2023,

https://www.fincen.gov/sites/default/files/shared/BOI_Small_Compliance_Guide_FINAL_Sept_508C.pdf.

⁶ *Agency Information Collection Activities; Proposed Collection; Comment Request; Beneficial Ownership Information Reports*, Financial Crimes Enforcement Network, Federal Register, January 17, 2023,

<https://www.federalregister.gov/documents/2023/01/17/2023-00703/agency-information-collection-activities-proposed-collection-comment-request-beneficial-ownership>.

⁷ Holly Wade and Madeleine Oldstone, *Banking Survey Part II*, NFIB Research Center, August 2023, <https://strgnfibcom.blob.core.windows.net/nfibcom/Banking-Survey-2023-Part-II.pdf>.