



Beneficial Ownership Regulations Filing

NVCA has played an active role in beneficial ownership legislation that threatened to impose a significant burden on venture investors and your portfolio companies. Today, NVCA submitted [comments](#) to the Treasury Department's Financial Crimes Enforcement Network (FinCEN) in response to proposed regulations for beneficial ownership reporting requirements (text [here](#) and fact sheet [here](#)).

Background

New beneficial ownership reporting requirements were signed into law as part of the annual defense reauthorization package at the end of 2020, the result of a multi-year effort by policymakers to target crime syndicates using anonymous shell companies to hide activities. NVCA was heavily engaged with policymakers throughout the legislative process to address unintended consequences on the venture and startup ecosystem. As a result of our engagement, the language provides an exemption to the reporting requirements for venture capital investment advisors (both RIAs and ERAs) and pooled investment vehicles operated or advised by RIAs or ERAs. However, we remain concerned over the impact the new requirements will have on small portfolio companies, particularly those in their earliest stage when a VC investment would potentially meet the 25% ownership stake threshold. NVCA's summary of the requirements in the legislation is available [here](#).

FinCEN Regulations

As this issue has moved to the regulatory drafting stage, NVCA has continued engagement through meeting with FinCEN staff, a [formal response](#) to the Advanced Noticed of Proposed Rulemaking in May, and today, a formal response to the NPRM draft regulations. Today's [comment letter](#) makes key recommendations that would minimize the regulatory impact on the industry.

1. **Proposal to alleviate regulatory impact on small, VC-backed portfolio companies:** The NPRM exempts businesses with over 20 employees and \$5M in sales from new reporting requirements. Because many VC-backed companies are pre-revenue early in their existence and will likely not exceed the \$5M sales threshold exemption for a number of years, NVCA proposed that FinCEN also include a \$5M in acquisition of shares as an alternative measure to alleviate reporting requirements for small portfolio companies with VC funding. We also

proposed that a requirement for the business to have a physical office in the U.S. can include a home office or shared office space. In a positive development, FinCEN clarified in its proposed rule that an employee working another job wouldn't preclude that employee from being counted towards the 20-employee exemption threshold. This was one of the points we raised in the ANPRM response.

- 2. Ensure uniform exemptions for all VC and private funds that file Form ADV:**
The NPRM provides exemptions for VC investors that file form ADV (both RIAs and ERAs) and pooled investment vehicles operated or advised by these advisers. NVCA believes that this exemption should also extend to other private fund advisers with less than \$150M under management that file form ADV and advisers with less than \$100M under management that register with a state securities authority rather than the SEC.

With the NPRM release and comment period closing today, we are one step closer to seeing final regulations and plans for implementation. NVCA will continue to remain vigilant to understand how these regulations could potentially impact you and your portfolio companies and will keep you updated with developments.

Please contact Charlotte Savercool (csavercool@nvca.org) if you have any questions. Thank you!

