

May 5, 2021

Mr. Michael Mosier  
Acting Director  
Financial Crimes Enforcement Network  
U.S. Department of the Treasury  
P.O. Box 39  
Vienna, VA 22183

Submitted via <http://www.regulations.gov>

RE: **Beneficial Ownership Information Reporting Requirements**  
Docket Number: FINCEN-2021-0005; RIN: 1506-AB49

Dear Acting Director Mosier,

We appreciate the opportunity to comment on the advanced notice of proposed rulemaking titled, "Beneficial Ownership Information Reporting Requirements," regarding the implementation of the Corporate Transparency Act. The Act modernizes U.S. anti-money laundering law by introducing transparency into otherwise anonymous corporate structures. It does so by requiring companies to report their true, "beneficial" owners to a secure directory housed at FinCEN.

**Each of the 32 undersigned groups brings a unique perspective on the devastation wrought by anonymous U.S. shell companies.** This coalition includes:

- Anti-corruption groups, who see crooked public officials hide bribes in anonymous companies and foster a culture of corruption that undermines democratic institutions and the rule of law;
- Organizations fighting human trafficking, who see victims living in horror while the traffickers hide their operations and illicit profits behind anonymous companies;
- Economic justice and international development organizations, who see corrupt leaders siphon off public funds from development programs, and pay for lavish lifestyles with money laundered through anonymous companies;
- Human rights groups, who see brutal regimes harass and imprison opposing voices with stolen money laundered through anonymous companies;
- Consumer protection groups representing individuals harmed by secret companies: taxpayers picking up the tab for tax cheats or companies that defraud the government,

buyers harmed by hazardous products, and vulnerable Americans abused or neglected in care facilities;

- Environmental groups, who know that anonymous shell companies are used by those engaged in illegal logging, mining, and other environmentally destructive activities to launder and move money out of impacted countries;
- Labor unions, who see workers' safety jeopardized by forced labor trafficking perpetuated by anonymous U.S. shell companies; and
- Consumer-facing businesses, who lose billions to fraudsters who market counterfeit and pirated goods through anonymous companies.

The Corporate Transparency Act offers FinCEN an historic opportunity to close a major vulnerability in the U.S. financial system and to implement the most significant reform of U.S. anti-money laundering law in decades. The Tax Justice Network ranks the United States as the second worst offender in terms of financial secrecy.<sup>1</sup> In the U.S., it requires less information to incorporate a U.S. company than it does to get a library card in all 50 states.<sup>2</sup> Dictators, kleptocrats, arms traffickers, counterfeiters, and tax cheats have all been caught exploiting U.S. secrecy to hide profits and to launder the ill-gotten gains of crime and corruption.<sup>3</sup>

Cognizant of these dangers, our organizations are interested in working with FinCEN to produce a strong, effective rule to carry out the CTA.

The CTA is the product of a more than 10-year, bipartisan effort to combat corruption, counter kleptocracy, and protect U.S. national security and economic interests. The carefully crafted provisions in the law – born out of painstaking, iterative negotiations – are a result of compromise, and warrant examination by FinCEN to ensure the proposed rule aligns with congressional intent.

To this end, we urge FinCEN to consider the following recommendations to inform the rulemaking.

- 1. Formulate a comprehensive definition of “beneficial owner” that aligns with international standards.**

The CTA will put an end to the evasive practice in corporate ownership disclosure that allowed incorporation agents to name, for example, a manager or another legal entity, as an owner, instead of the real, natural person that ultimately benefits from an entity. The new definition in the CTA gets to the heart of the true, beneficial owner by including both “ownership” and

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<sup>1</sup> Tax Justice Network, “Financial Secrecy Index,” February 19, 2020, <https://fsi.taxjustice.net/en/introduction/fsi-results>.

<sup>2</sup> Global Financial Integrity, “The Library Card Project: The Ease of Forming Anonymous Companies,” March 21, 2019, <https://gfintegrity.org/report/the-library-card-project/>.

<sup>3</sup> For more information, see these resources from the FACT Coalition: “[FACT Sheet: Anonymous Companies Fuel Illicit Commerce](#)”; “[FACT Sheet: Anonymous Companies and National Security](#)”; “[How Rogue Nations and Sanctioned Groups Use Shell Companies](#)”; “[The Great Rip Off: New Report Shows How Anonymous American Shell Companies Are Used to Swindle Americans](#)”

“control” prongs to its definition. This standard is in step with recommendations from the Financial Action Task Force (FATF). Importantly, the new U.S. definition points to who an owner may not be: e.g, a child or employee that does not otherwise qualify.

We encourage FinCEN to produce a strong, comprehensive definition of “beneficial owner” that leaves no room for abuse in either prong. We recommend that FinCEN look to standards in place in other jurisdictions, including the European Union, for guidance.

## 2. **Broadly define “reporting companies” to avoid inadvertently driving demand for other financial secrecy instruments.**

Illicit funds follow the path of least resistance, and the criminal and corrupt will always look for ways to circumvent transparency. Such was the experience in the United Kingdom, where incorporation of a relatively arcane corporate entity – the Scottish limited partnership – jumped between 2015-2017 in response to new UK beneficial ownership disclosure laws.<sup>4</sup> Their numbers dwindled shortly after the UK required them to report.<sup>5</sup> This experience would suggest that an inclusive approach to defining a reporting company at the outset may be preferable to a belated expansion.

### *Defining “Other Similar Entities”*

We encourage FinCEN to be broad in its determination of which entities are required to report their beneficial owners. The CTA requires reporting from LLCs, corporations, and “other similar entities” formed or registered to do business in the United States that file a document with a secretary of state or similar office. We urge FinCEN to consider adding relevant entities not expressly exempt from disclosure – for instance, non-charitable trusts – to dissuade demand for more opaque corporate entities.

### *Tailoring Exemptions*

Likewise, FinCEN should anticipate and aim to prevent abuse of the 23 exemptions expressly identified in the legislation. Congress included these exemptions with the justification that these entities already report ownership to the government – for instance, publicly traded corporations – or that their ownership would be simple for law enforcement to identify. Keeping exemptions narrow follows congressional intent,<sup>6</sup> and FinCEN should carefully write the exemptions to meet that expectation. Further, FinCEN should not expand exemptions beyond the initial list offered in law, until there has been ample time to analyze and understand the risks associated with the current exemptions.

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<sup>4</sup> “Global Witness, “Three Ways in Which the UK’s Register of the Real Owners of Companies is Already Proving its Worth,” July 24, 2018, <https://www.globalwitness.org/en/blog/three-ways-uks-register-real-owners-companies-already-proving-its-worth/>

<sup>5</sup> *Ibid.*

<sup>6</sup> In a floor statement, CTA co-author Senator Sherrod Brown noted that “...exemptions are intended to be narrowly interpreted to prevent their use by entities that otherwise fail to disclose their beneficial owners to the federal government.” Congressional Record, p. S7311, Dec. 9, 2020, <https://www.congress.gov/116/crec/2020/12/09/CREC-2020-12-09-pt1-PgS7296.pdf>.

### **3. Allow timely access to complete database records for authorized users.**

The CTA allows database access to five categories of authorized users: 1) state and local law enforcement agencies; 2) federal law enforcement agencies; 3) foreign law enforcement, via U.S. agency request; 4) financial institutions with U.S. anti-money laundering obligations; and 5) financial regulators. FinCEN should allow timely access for trained, authorized users using the right protocols to view complete records in the database.

Maximizing the database's utility to law enforcement and financial institutions with anti-money laundering obligations will have major implications at home and abroad in the efforts to combat corruption, promote human rights, fund public resources through improved tax collection, and foster honest competition in the U.S. business environment.

#### *Facilitating Law Enforcement Use*

The CTA includes a mandate that the database provide “highly useful” information to law enforcement.<sup>7</sup> Properly trained law enforcement – whether a local police officer, tax investigator, or a national security official – should be able to access companies’ full records in the database in a timely manner. Access protocols should be straightforward, avoiding any unnecessary barriers to access. FinCEN should likewise allow authorized use of the database for a wide range of enforcement purposes: open investigations, sanctions enforcement, pre-investigation inquiries, analysis, and other national security and intelligence matters. Access should be permissible not only for criminal, national security, and tax cases but also in civil and administrative cases.

Further, the law opens the door to collaboration with foreign law enforcement. U.S. agencies may access the database on behalf of foreign law enforcement officials if their government has an existing information sharing agreement with the U.S. or is considered a “trusted foreign country.” We urge FinCEN to take an inclusive approach to defining “trusted foreign countries” to increase opportunities for multilateral enforcement activities. FinCEN must simultaneously evaluate key national security and human rights risks and instate effective safeguards to protect rights when sharing personal information.

### **4. Develop a modern database that puts functionality and data quality at the fore.**

The fate of the database rests on its utility for authorized users. We recommend that FinCEN first look to the Open Ownership principles,<sup>8</sup> which identify modern standards in beneficial ownership database construction and are in use in more than 40 countries. Using compatible data infrastructure may be important, if in the future the U.S. moves toward bulk information sharing with allies.

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<sup>7</sup> 31 U.S.C. 5336(b)(1)(F)(iv).

<sup>8</sup> Open Ownership, “Principles for Effective Beneficial Ownership Disclosure,” <https://www.openownership.org/principles/>

Likewise, we encourage FinCEN to design an architecture with searchability in mind. Authorized users, employing the appropriate protocols, should be able pull data according to their purpose: whether that is looking at a company record and seeing all its owners, or viewing an owner record and seeing the corresponding companies in which they have a reported interest. This will help law enforcement and financial institutions map and understand complex corporate ownership structures.

Finally, FinCEN should incorporate mechanisms to verify the quality of the data before it goes into FinCEN's system. To improve the data's usefulness to law enforcement and financial institutions, FinCEN should incorporate real-time verification into the filing process. FinCEN could, for example, crosscheck the beneficial owner's name and driver's license or passport number against existing federal and third-party databases. Verifying information in real-time, as a check on human error, has the added benefit of reducing the cost and time businesses will need to dedicate to comply.

## **Conclusion**

We appreciate the opportunity to comment on the historic implementation of the CTA. For a more detailed submission, consider referencing the comment from the Financial Accountability and Corporate Transparency (FACT) Coalition.

For any questions, please contact Ian Gary at the FACT Coalition – [igary@thefactcoalition.org](mailto:igary@thefactcoalition.org).

Sincerely,

Accountability Counsel  
Africa Faith and Justice Network  
The American Federation of State, County and Municipal Employees (AFSCME)  
Anti-Corruption Data Collective  
Association of Concerned Africa Scholars (USA)  
Communications Workers of America (CWA)  
Consumer Action  
EarthRights International  
Foreign Policy for America  
Freedom House  
Friends of the Earth U.S.  
Global Financial Integrity  
Human Rights First  
Human Rights Watch  
Humanity United  
International Campaign for Responsible Technology  
Maryknoll Fathers and Brothers  
National Foreign Trade Council

Never Again Coalition  
ONE Campaign  
Oxfam America  
Peace Education Center  
Polaris  
Public Citizen  
Publish What you Pay-US  
Tax Justice Network  
Tax Justice Network USA  
The Sentry  
The B Team  
U.S. Council for International Business (USCIB)  
U.S. Public Interest Research Group (U.S. PIRG)  
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