



April 14, 2022

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

RE: Information Best Practices - Forthcoming Second Proposed Rulemaking Regarding 31 U.S.C. 5336

Dear Acting Director Das:

We write to urge FinCEN to issue the second proposed rulemaking under the Corporate Transparency Act (CTA) promptly and to include in that rulemaking best practices related to beneficial ownership data collection, storage, and interoperability.¹ Any delay in effectively implementing the CTA may frustrate the coordinated international effort to implement and enforce sanctions targeting certain Russians fueling the war in Ukraine, as well as clear Congressional intent, shared by the Biden Administration, to make combating corruption and illicit finance a priority.²

The CTA, enacted on a bipartisan basis in January of 2021, requires entities conducting activities in the United States to disclose their beneficial owners in a confidential directory to be established and administered by FinCEN.³ The FACT Coalition previously filed comments on best practices for establishing the directory in response to FinCEN's first proposed rulemaking, including addressing who should file disclosures, when they should file, what information they

¹ See 31 U.S.C. § 5336. All references to "FinCEN" in this letter are to the Financial Crimes Enforcement Network (FinCEN) of the United States (U.S.) Department of the Treasury (Treasury).

² See 31 U.S.C. § 5336(b)(5); White House, United States Strategy on Countering Corruption, 20-21 (Dec. 2021), <https://www.whitehouse.gov/wp-content/uploads/2021/12/United-States-Strategy-on-Countering-Corruption.pdf>; Jodi Vittori, "Biden Must Go Beyond Sanctions to Rid the U.S. Financial System of Dirty Money," Carnegie Endowment for International Peace (Mar. 8, 2022), <https://carnegieendowment.org/2022/03/08/biden-must-go-beyond-sanctions-to-rid-u.s.-financial-system-of-dirty-money-pub-86589> (describing the need for immediate implementation of the CTA to increase the effectiveness of sanctions targeting Russian oligarchs).

³ See 31 U.S.C. § 5336(b).

should provide, and how certain exemptions should be handled.⁴ FinCEN has announced that it plans to issue a second proposed rulemaking addressing access to the central directory and disclosure of beneficial information.⁵

The utility of the CTA is entirely predicated on the data practices that FinCEN will employ in implementing the law. Indeed, the CTA states clearly that regulations addressing beneficial ownership data collection should ensure best practices are employed so that the directory is highly useful for authorized users.⁶ By adopting beneficial ownership information best practices, FinCEN can fulfill the clear and transformational regulatory purpose of the CTA to improve U.S. anti-money laundering and terrorist financing safeguards through beneficial ownership transparency. Anything less will compromise the effectiveness of the law.

The first proposed rulemaking promulgated under the CTA correctly identified that a central directory is best suited to fulfill the purposes of the CTA. As the proposed rule did not, however, identify specific design considerations relating to data practices associated with collection, storage, and disclosure of beneficial information in connection with the central directory, we urge FinCEN to address the following in the forthcoming proposed rulemaking regarding access:

1. **Data Collection**: Regulations should establish well-designed beneficial ownership declaration and FinCEN Identifier forms which are clear, easy to understand, and capture the full range of beneficial ownership information in a standardized and structured fashion.⁷ In addition to collecting well-structured data, well-designed forms establish the basis of a verification system that can reduce accidental errors and detect

⁴ See Financial Crimes Enforcement Network (FinCEN), “Beneficial Ownership Information Reporting Requirements,” Federal Register, 86 FR 69920-74 (Docket Number: FINCEN-2021-0005, RIN: 1506-AB49), Dec. 8, 2021, <https://www.govinfo.gov/content/pkg/FR-2021-12-08/pdf/2021-26548.pdf> (hereinafter “First Proposed Rule”); Re: Beneficial Ownership Information Reporting Requirements, FACT Coalition (Feb. 7, 2022), available at https://thefactcoalition.org/wp-content/uploads/2022/02/FINCEN-2021-0005-0421_attachment_1.pdf [hereinafter “FACT Proposed Rule Comments”]; Re: Beneficial Ownership Reporting Requirements, FACT Coalition (May 5, 2021), available at <https://thefactcoalition.org/wp-content/uploads/2021/05/FACT-CTA-ANPRM-Comment-20210505-0329am-FINAL.pdf>.

⁵ First Proposed Rule at 86 FR 69921.

⁶ See 31 U.S.C. § 5336(b)(1)(F)(iv) (directing FinCEN to “(iv) collect information described in paragraph [31 U.S.C. § 5336(b)](2) in a form and manner that ensures the information is highly useful in—(I) facilitating important national security, intelligence, and law enforcement activities; and (II) confirming beneficial ownership information provided to financial institutions to facilitate the compliance of the financial institutions with anti-money laundering, countering the financing of terrorism, and customer due diligence requirements under applicable law.”)

⁷ Open Ownership has published guidance for regulators and forms designers as well as provided example form templates based on experience working with dozens of countries. See Beneficial ownership declaration forms: Guide for regulators and designers, Open Ownership (Mar. 21, 2022), <https://www.openownership.org/en/publications/beneficial-ownership-declaration-forms-guide-for-regulators-and-designers/>; Example paper forms for collecting beneficial ownership data, Open Ownership (Jul. 2, 2019), <https://www.openownership.org/en/publications/example-paper-forms-for-collecting-beneficial-ownership-data/>.

deliberate falsehoods. Failure to consistently implement well-designed forms, on the other hand, can generate multiple data-related problems that impede analysis and investigation. Relatedly, regulations should clarify that the directory will deploy real-time and automated verification mechanisms to ensure that certain submitted data, including names, birth dates, addresses, and identification numbers, are consistent with other government-held records.

2. Data Storage and Use in the Central Directory: Regulations should establish that the central directory will be designed to collect (or, as necessary to convert) and store data on a machine-readable basis designed with intergovernmental and industry use concerns top of mind. Well-structured, machine-readable beneficial ownership data can be more easily analyzed and combined with other datasets. This is key as authorized users of beneficial ownership may include financial institutions and other local, state, and foreign governments, as well as other federal departments and agencies, that may each have their own informational databases. The beneficial ownership data collected will be most useful when it can be combined, as intended, with other sources of information to gain useful insights. This system interoperability will also help to ensure that data is and remains readily verifiable.
3. Data Disclosure to Authorized Users: As previously recommended, regulations should establish that authorized users are intended to have prompt, direct, and full access to all directory information and be able to search the data in a variety of ways.⁸ Similar to concerns discussed above with respect to storage, regulations should also clearly contemplate information sharing and integration with information systems hosted by other jurisdictions and financial institutions. While the majority of company ownership structures are simple, it is often complex and transnational ownership structures that are involved in financial crimes. Consequently, the usefulness of the data in FinCEN's beneficial ownership register will depend on how easily it can be combined with data from other jurisdictions or financial institutions.

As FACT has previously commented, we urge FinCEN to review and, to the extent feasible, adopt the Beneficial Ownership Data Standard (BODS) developed by Open Ownership, a non-profit organization focused on beneficial ownership transparency.⁹ Doing so may save taxpayers substantial amounts of money, as well as improve the utility and interoperability of beneficial ownership data under the CTA. BODS was created with complexity in mind and with

⁸ For example, regulations should establish that all directory users, including financial institutions with client consent, will be able to see a reporting company's past and present beneficial owners and applicants, as well as the reporting company's own past and present identifying information, so that directory users can use that information to evaluate the money laundering and terrorist financing risks posed by the reporting company. See FACT Proposed Rule Comments, *supra* note 3 at 91.

⁹ See Open Ownership, Beneficial Ownership Data Standard (v0.2), <https://standard.openownership.org/en/0.2.0/>.

an understanding that an interjurisdictional and business-useful approach is needed for effective beneficial ownership data collection and use. BODS has already been endorsed by several national governments, including recently by the United Kingdom, and it allows authorities to capture and intelligently disclose the necessary information about the myriad ways individuals can exercise ownership and control of a wide range of legal entities.¹⁰

As the situation in Ukraine and related sanctions targeting Russian President Vladimir Putin and his cadre of kleptocratic oligarchs have demonstrated, transparency in the U.S. financial system is more urgent than ever.¹¹ Transparency starts with ending the abuse of anonymous shell companies in the U.S., which requires prompt and robust implementation of the CTA in a manner that reflects the Congressional requirement that final rules for implementing the statute be in place no later than January 1, 2022, a deadline that has already passed.

We respectfully suggest that if it has not already done so, FinCEN use the parameters and mandate articulated in the statutory language of the CTA, as well the comments and consensus already gleaned from the previous iterations of this rulemaking and this letter, to begin laying some of the technical foundations for implementation of the CTA now. Needed work includes beginning to design and build the BOSS system and reporting forms to produce an effective and highly useful registry, and coordinating with States, Tribes, other jurisdictions, and financial institutions throughout the rulemaking process to ensure that the final rules can take effect no later than January 1, 2023, or one year following final promulgation. To meet this timeline, it is imperative that a second proposed rule be issued as soon as possible, that the third proposed rule follow within weeks, and that final rules be in place by the follow-up meeting for the Summit for Democracy, in line with the President's stated priority to implement the CTA.

This letter does not address the access issues expected to be the subject of the second proposed rule; instead, they address technical data collection, storage, and interoperability issues that are essential to an effective registry, whether or not they are addressed during the rulemaking process. Now is the time to acknowledge and begin to tackle those complex technical issues so that the registry can actually begin operations during the Biden presidency.

¹⁰ UK Central & Digital Data Office, "Collect, use and exchange beneficial ownership information," Gov.UK (Mar. 16, 2022), <https://www.gov.uk/government/publications/open-standards-for-government/collect-use-and-exchange-beneficial-ownership-information>.

¹¹ See, e.g., Casey Michel, How the West Undermines Its Own Sanctions, The Atlantic (March 9, 2022), <https://www.theatlantic.com/ideas/archive/2022/03/russia-oligarchs-evade-sanctions-anonymous/626968>.

The FACT Coalition is a non-partisan alliance of more than 100 state, national, and international organizations promoting policies to build a fair and transparent global tax system that limits abusive tax avoidance and to curb the harmful impacts of corrupt financial practices.¹²

We thank you, again, for the opportunity to participate in the rulemaking process to implement the CTA and for taking our comments into consideration. If implemented effectively, the CTA represents a historic opportunity to curtail the misuse of anonymous entities for illicit purposes.

Should you have any questions, please feel free to contact Erica Hanichak at ehanichak@thefactcoalition.org.

Sincerely,

Ian Gary

Executive Director

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Ryan Gurule

Policy Director

¹² A full list of FACT members is available at: Financial Accountability and Corporate Transparency (FACT) Coalition, "Coalition Members," 2022, <https://thefactcoalition.org/about-us/coalition-members-and-supporters/>.