May 5, 2021

AnnaLou Tirol
Deputy Director
Financial Crimes Enforcement Network
U.S. Department of the Treasury
P.O. Box 39
Vienna, VA 22183


Subject: Comment in response to Proposed Rulemaking: Beneficial Ownership Information Reporting Requirements, Docket Number FINCEN-2021-0005; RIN 1506-AB49

Dear Deputy Director Tirol:

The Project On Government Oversight (POGO) submits the following comment in response to the request by the Financial Crimes Enforcement Network (FinCEN) for comment on an advance notice of proposed rulemaking, published in the Federal Register on Monday, April 5, 2021.¹ The final rule that results will implement the beneficial ownership reporting requirements mandated by the Corporate Transparency Act. We appreciate the opportunity to weigh in on this important rulemaking.

POGO is a nonpartisan independent watchdog that investigates and exposes waste, corruption, abuse of power, and when the government fails to serve the public or silences those who report wrongdoing. We champion reforms to achieve a more effective, ethical, and accountable federal government that safeguards constitutional principles.

Good government reform must include the collection of accurate information on the individuals who really own, and benefit financially from, companies—known as beneficial ownership information. Investigations into waste, fraud, and abuse in government spending have routinely found companies with anonymous or opaque ownership structures to be dangerous facilitators of corruption and misconduct. The language in the Corporate Transparency Act makes monumental progress in increasing transparency in corporate structures in the United States.

**Beneficial Ownership Database**

The Corporate Transparency Act requires companies formed in the U.S., with some exceptions, to disclose information about their beneficial owners to law enforcement and financial institutions such as banks. The law’s definition of beneficial ownership is strong. The Treasury

Department’s Financial Crimes Enforcement Network, or FinCEN, will collect and house companies’ beneficial ownership information in a secure nonpublic database.\(^2\) The agency is uniquely qualified to oversee beneficial ownership information, as its stated mission is to “safeguard the financial system from illicit use and combat money laundering and promote national security through the collection, analysis, and dissemination of financial intelligence and strategic use of financial authorities.”\(^3\)

When creating the database and the rules governing its use, FinCEN should adhere closely to legislative intent. Congress carefully crafted the Corporate Transparency Act in a way that would be useful to law enforcement and financial institutions in the effort to combat illicit financial transactions and to protect national security. For the database to be a valuable resource, FinCEN must ensure law enforcement entities have timely access to information in the database and must use unique, non-proprietary identifiers for each company to make it easier to track illicit transactions.

**Timely Access to Information**

While the law has ensured that the business information in FinCEN’s database will not be publicly available, local, state, federal, and in some cases international law enforcement entities will be able to access it to support ongoing investigations. Allies overseas should be able to access the information through appropriate protocols such as mutual legal assistance treaties and other agreements. In order for the database to be as useful as intended, the rule should ensure that all law enforcement entities have timely access to the database.

The rule should define law enforcement activities as broadly as possible to include criminal, civil, and administrative enforcement duties. Doing so will make it easier for law enforcement entities to quickly access information that may be helpful to ongoing investigations. On the other side of the coin, creating a narrow definition risks preventing law enforcement entities from accessing information in the database, which could harm those investigations.

In addition, the rule should make clear who has the authority to approve and deny requests for database information. This will improve efficiency and protect the integrity of the database by reducing the risk of unauthorized approval. The rule should also make clear what positions at law enforcement entities have the authority to request information.

Another issue the rule should address is the likelihood that law enforcement entities will need information about multiple individuals in a case. FinCEN should adopt certification procedures for law enforcement investigations and, once that investigation is approved for access to information, the certification should remain valid for the duration of the investigation. A process that would require an entity to obtain certification for each information request in an investigation would severely increase the time it takes law enforcement to get the information they need. The system should also permit the entity to submit their certification materials at the


same time they submit the information request, which will reduce transaction time. In addition, once a law enforcement entity is approved to access the database for a particular investigation, FinCEN should allow that organization to submit one request for multiple people related to the investigation if needed, rather than requiring them to submit separate requests for each person of interest. This fast-tracked approach will reduce administrative burden and facilitate the timely sharing of information that is necessary to help protect national security, intelligence gathering, and law enforcement.

Finally, foreign law enforcement entities should be able to access certain information when appropriate. The illicit flow of money is a global problem that has serious implications for U.S. national security. Anonymous companies facilitate a wide variety of illicit activities that directly harm U.S. foreign policy interests, finance terrorism, and enable sanctions evasion. In situations where there are existing mutual legal assistance treaties and other law enforcement cooperation agreements between a country and the United States, law enforcement entities in those countries should be able to quickly access needed information. FinCEN should also work with federal agencies at various attaché offices abroad so they are familiar with the database in case it could help in their investigations. Opaque corporate ownership is an international problem, and swift international cooperation will be key to making the United States and the world safer.

Unique Identifiers

The Corporate Transparency Act requires that FinCEN issue a “FinCEN identifier” to an individual or entity that has submitted the required beneficial ownership information.4 When deciding what identifier to use, FinCEN should ensure it is a non-proprietary system, such as the global Legal Entity Identifier (LEI) system. The LEI is a 20-character, alpha-numeric code that enables clear and unique identification of legal entities participating in financial transactions.5 Given resource constraints, FinCEN could even consider contracting with the Global Legal Entity Identifier Foundation to provide the unique identifiers. The foundation assigns a number to any type of legal entity requesting one. Regardless of whether FinCEN chooses to create its own identifier system or to use an existing one, the unique entity identifier should be non-proprietary and should link all domestic and foreign relationships, including parents, subsidiaries, joint ventures, partnering arrangements, and mentor programs.

In order for the FinCEN database to be as useful as possible in combating illicit money flows, it needs to be complete and accurate. For that to happen, companies need to be able to enter required information with ease, and in a way that prevents errors or incorrect information from being introduced into the system. To that end, the new identifier system must have instant verification mechanisms built in to ensure the use of a company’s correct identifier. Such mechanisms need to be triggered immediately so that entities submitting information cannot submit out-of-date identifiers or be issued new and unnecessary identifiers. This is a process that’s widely used in the private sector, such as when a credit card company declines a consumer’s transaction if the billing information the customer enters doesn’t match what the

company has on file. Similarly, if someone enrolled in the Transportation Security Administration’s PreCheck program tries to book a flight but enters a different Known Traveler Number than what the agency has on file, the flight cannot be booked. Imagine if you found out days or weeks later that your online order was declined or your flight wasn’t booked because you entered the wrong information, rather than being informed immediately? It would be beyond frustrating and not just a minor inconvenience. For businesses this extra time it takes to go through the whole process again is time lost—which is money lost.

As companies try to comply with the law and register their beneficial owners, it is imperative that the process be as minimally burdensome as possible. This is especially important for small businesses. Creating instant verification mechanisms will help these companies register correctly the first time, rather than being forced to come back and do it all over again because of a typo or other registration error. If the process is easy for businesses, especially small businesses, they will be much more likely to comply.

**Conclusion**

Companies with hidden anonymous ownership structures are a serious global problem, and in many instances those entities are involved in international corruption that doesn’t stop at the U.S. border. These anonymous shell companies facilitate a wide variety of illicit activities that directly harm U.S. foreign policy interests and national security. The Corporate Transparency Act mandated a beneficial ownership database that will enable law enforcement and bank officials to learn more about the true owners of companies. This information will help the officials root out corruption, fraud, and illicit financial transactions, and ensure that taxpayer dollars are going to law-abiding contractors and grantees rather than to companies engaging in fraud or posing national security risks. FinCEN’s database will be key to the success of this effort.

Thank you for your consideration of this comment. Should you have any questions, please contact me at tstretton@pogo.org.

Sincerely,

Tim Stretton
Policy Analyst