February 4, 2022

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


Subject: Proposed Rulemaking: Beneficial Ownership Information Reporting Requirements, Docket Number FINCEN-20210-0005, RIN 1506-AB49

Dear Acting Director Das:

This comment responds to the Financial Crimes Enforcement Network’s (FinCEN) notice of proposed rulemaking on beneficial ownership information reporting requirements, published in the Federal Register on December 8, 2021,¹ to implement the Corporate Transparency Act (CTA). We appreciate the opportunity to weigh in on this important rulemaking.

The Project On Government Oversight (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 certain information regarding the ownership of anonymous shell companies — known as beneficial ownership information — including the identity of companies’ true, natural owners. Right now, to the detriment of the American taxpayer, it is all too easy for corrupt actors who own and profit from companies to hide their true identities behind layers of anonymous ownership structures for the purpose of facilitating illicit financial transactions.

With some exceptions, the Corporate Transparency Act requires companies that are formed in or registered to do business in the U.S. to disclose and keep up to date such beneficial ownership information to the federal government in an “accurate, complete, and highly useful” manner.² According to the Corporate Transparency Act, this beneficial ownership information shall then

be housed in a secure database and made available to national security, intelligence, and law enforcement agencies; foreign law enforcement via request with a U.S. agency; and certain financial institutions, such as banks, that have customer due diligence obligations for the purposes of combatting financial corruption, misconduct, and a wide variety of illicit activities that harm U.S. national security.³

POGO applauds this draft rule and sees it as important progress toward modernizing the U.S. anti-money laundering framework, as well as a key opportunity to protect the U.S. financial system from abuse by criminal and corrupt actors.

Consistent with POGO’s May 5, 2021, recommendations submitted in response to FinCEN’s Advanced Notice of Proposed Rulemaking, the Department of the Treasury crafted this rule in a way that adheres closely to the statutory language in the Corporate Transparency Act, implements key aspects of the statute, and offers meaningful transparency into the real, natural owners behind a range of legal entities operating in the U.S.⁴

In order to make this beneficial ownership database as “accurate, complete, and highly useful” as possible, POGO recommends retaining this rule’s faithful definition of a reporting company, its strong definition of a beneficial owner (absent the language surrounding senior officers, clarified below), its timely reporting requirements, and its efforts to minimize cost of compliance for covered entities. POGO also recommends clarifying the exemption for subsidiaries of reporting companies (known as exemption 22), requiring mandatory Legal Entity Identifier (LEI) numbers, and imposing additional verification mechanisms on the database.

**Faithful Definition of a “Reporting Company”**

With respect to the definition of a “reporting company,” the Corporate Transparency Act requires corporations, limited liability companies, and “other similar entities” to disclose beneficial ownership information to the federal government. In FinCEN’s proposed rule, the Treasury Department defines the term “other similar entities” as any entity that was either created under the laws of the state or Indian tribe, or that registered to do business in the state or tribal jurisdiction, by filing a document with a secretary of state or similar office.⁵ The draft rule states that its definition would “likely include limited liability partnerships, limited liability limited partnerships, business trusts … and most limited partnerships, in addition to corporations and limited liability companies (LLCs),” as they also typically file with a state secretary or other similar office.⁶

This process-oriented definition of a reporting company provides flexibility that accounts for the filing practices unique to each state. For example, as noted by Transparency International’s U.S. office, if a particular state determines that a trust not otherwise exempted by the Corporate

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⁵ Beneficial Ownership Information Reporting Requirements (proposed December 8, 2021) [see note 1].

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Transparency Act must be formed through filing documents with its secretary of state, that trust will be covered under the definition of a reporting company and be required to report its beneficial ownership information to the secure directory.\(^7\)

The definition of a reporting company in FinCEN’s draft rule will help meet the Corporate Transparency Act’s mandate that information provided to the directory be “highly useful,”\(^8\) as it will help law enforcement identify the true natural owner behind a variety of U.S. legal entities, which are often interchanged in complex ownership structures. While risks still exist, the process-oriented approach reduces certain risks of driving demand for other, more opaque methods of obscuring beneficial ownership information.\(^9\) FinCEN should work with states to ensure new vulnerabilities are not created in the wake of the Corporate Transparency Act’s implementation.

**Strong Definition of “Beneficial Owner”**

As POGO has previously noted, the Corporate Transparency Act’s definition of a “beneficial owner” is strong.\(^10\) According to the law, a beneficial owner of an entity, subject to certain exceptions, is an individual who either owns no less than 25% of the ownership interests of the entity or who exercises “substantial control over the entity.”\(^11\) The term “substantial control” was not further defined in the Corporate Transparency Act. Leading up to its call for comments for the May 2021 Advanced Notice of Proposed Rulemaking, the Treasury Department even considered whether or not to interpret the term “substantial control” to mean that no entity could have more than one beneficial owner who is listed as exercising “substantial control” of an entity, which would have severely limited the utility of the database.\(^12\)

In contrast, FinCEN’s draft rule requires the naming of one or multiple owners that meet the proposed definition of a beneficial owner and identifies several types of individuals who shall be considered to exercise substantial control. This list is non-exhaustive, and includes but is not limited to: individuals who serve as a senior officer of the reporting company, individuals who have authority over the appointment or removal authority within the entity, and “any other form of substantial control over the reporting company.”\(^13\)

One place where FinCEN can improve upon its proposed list is its usage of the term “senior officer.” Senior officers are often simply higher-ranking employees in a company who do not

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\(^10\) Project On Government Oversight, Comment Letter on Proposed Rule [see note 4].


\(^12\) Transparency International, “Four Initial Takeaways from the Draft CTA Rule” [see note 7].

\(^13\) Transparency International, “Four Initial Takeaways from the Draft CTA Rule” [see note 7]; Beneficial Ownership Information Reporting Requirements (proposed December 8, 2021) [see note 1].
exercise any authority over the operations of the entity. As such, senior officers should be more carefully defined such that the term only describes those senior officers who hold substantive control over a company. Separately, this catch-all language related to “any other form of substantial control” is important, because it would capture a wide spectrum of illicit actors, including those who exert control through illicit methods, such as instances of bribery or threats.

With the minor exception of the language concerning senior officers, FinCEN’s draft rule should retain the proposed definition of substantive control. This would ensure that all relevant information is appropriately collected and housed in the beneficial ownership database and made accessible to law enforcement and appropriate financial institutions.

**Timely Reporting Requirements**

The Corporate Transparency Act requires the Treasury Department to define two central terms with respect to when reporting entities must submit beneficial ownership information to the federal government. First, the law states that a covered entity must report its beneficial ownership information “at the time of formation or registration,” but does not further specify what timeframe this must entail. Second, the law stipulates that if an entity must update its beneficial ownership information, it must do so in a timely manner that does not exceed a year after the date on which the change occurs, but it does not further specify what a “timely manner” means.  

In FinCEN’s proposed rule, the Treasury Department interpreted the terms “at the time of” and “in a timely manner” to mean within 14 days and within 30 days, respectively. As stated by Transparency International’s U.S. office, this is in line with beneficial ownership directories in France and Luxembourg. Aligning this registry with international standards could potentially make it easier to work with allies in cross-border efforts to combat money laundering and corruption. Furthermore, this rule specifies that if an exempted entity loses its exempted status, it has 30 days to report its beneficial ownership information to the proper authorities. These timeframes for reporting are extremely reasonable, and balance what can be practicably expected of an entity with rational expectations surrounding the utility of the beneficial ownership database.

**Low Cost of Compliance**

In compliance with the statute, the draft rule minimizes the costs to businesses by keeping the cost of compliance for reporting companies low. According to Deputy Secretary Wally Adeyemo, the Treasury Department estimates that the cost of compliance, on average, will be less than $50 per company.

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14 National Defense Authorization Act for Fiscal Year 2021, § 6401(7)(A) [see note 3].
15 Transparency International, “Four Initial Takeaways from the Draft CTA Rule” [see note 7].
16 Transparency International, “Four Initial Takeaways from the Draft CTA Rule” [see note 7].
After implementing its own directory, the government of the U.K. surveyed covered companies and found that companies with fewer than 50 employees reported ongoing costs of just over $5 on average.\textsuperscript{18} It is reasonable to expect similar outcomes in the U.S., where small firms (“mom and pop” style enterprises, for example) have simple ownership structures that are easy to identify and update at the time of any changes. On the other hand, small firms with enough resources to set up more costly, complex ownership structures would almost certainly have the resources necessary to identify and name to FinCEN their true, natural owner. In light of the data from the U.K.’s own directory, FinCEN’s draft rule should reassess the cost-benefit analysis to account for the minimal anticipated costs to keep current with disclosures after the initial implementation of the Corporate Transparency Act rule.

**Clarifying the Exemption for Subsidiaries of Reporting Companies (Exemption 22)**

The Corporate Transparency Act exempts nearly two dozen different types of entities from the definition of a reporting company, including but not limited to: securities issuers, domestic governmental authorities, banks, domestic credit unions, depository institution holding companies, and money transmitting businesses. Aside from a select number of proposed clarifications, FinCEN’s proposed rule declines to add exemptions, and instead adopts the statutory language granting these 23 exemptions verbatim from the Corporate Transparency Act, which is in line with POGO’s preference to adhere as closely as possible to legislative intent.

One area for improvement in the proposed rule is exemption 22, which states that companies are exempt from reporting their beneficial ownership information if “the[ir] ownership interests are controlled or wholly owned, directly or indirectly” by one or more exempt entities.\textsuperscript{19}

As written in the rule, exemption 22 presents a major oversight loophole for these subsidiary companies. By exempting subsidiaries that are simply “controlled,” as opposed to “wholly controlled,” by exempted entities, the rule would incentivize bad actors to seek out exempted companies to serve as a majority owner or partner in a joint venture in order to evade detection. This approach would also expand the universe of entities exempted from submitting their beneficial ownership information. Taken together, this exemption would fail to capture potentially illicit actors and allow them to continue concealing their identity behind anonymous shell companies.

The Treasury Department should revise the rule by narrowing the proposed exemption 22 language of “controlled or wholly owned” to “\textit{wholly} controlled or wholly owned,” which would explicitly articulate that only entities whose entire ownership interests are owned or controlled by an exempt entity may be exempted from disclosing beneficial ownership information.

**Improving Efficiency Through Mandatory Legal Entity Identifiers**


\textsuperscript{19} Beneficial Ownership Information Reporting Requirements (proposed December 8, 2021) [see note 1].
FinCEN’s rule should require covered entities to submit mandatory Legal Entity Identifier (LEI) numbers. LEI is a 20-character alpha-numeric code that is intended to enable law enforcement and financial institutions to clearly see “who is who” and “who owns whom.” 20 LEIs are commonly used in the U.S. and are being adopted as a global standard in business transactions. According to FinCEN’s proposed rule, over 244,000 entities in the U.S. already use LEIs to identify and distinguish themselves from other entities.21

LEI numbers would not only provide an additional way to verify the information submitted to the registry, but would also simplify information collection, storage, and access across international lines, since LEIs can be assigned internationally. Also, the LEI system is nonproprietary, and therefore is not limited by restrictions placed on it by its parent company, and is subject to transparency requirements such as the Freedom of Information Act. This would mitigate concerns expressed by nonprofit organization OMB Watch that proprietary systems are not subject to such transparency, and could pose oversight challenges for auditors or groups seeking to independently determine the accuracy or comprehensiveness of the information collected.22 Additionally, LEIs must be renewed annually, which adds another layer of security.

With respect to registering entities with the beneficial ownership database, obtaining a unique identifier should be simple, comprehensive, and as minimally burdensome as possible, especially for small businesses.

Separately, according to the Corporate Transparency Act, FinCEN may issue a unique identifier upon request, referred to as a FinCEN identifier, to an individual or entity that submits the required beneficial ownership information.23 We propose that the rule should make it mandatory for FinCEN to issue a FinCEN identifier — so long as direct and indirect beneficial ownership information behind an identifier be made available to authorized users of the database — as this would allow law enforcement to track and verify the beneficial owners of covered entities more easily.

**Improving Data Quality via Verification**

FinCEN’s draft rule rightly requires entities to submit a scanned image of an identifying document, such as a passport or driver’s license, of an entity’s beneficial owner(s). The decision to require a digital copy of the document will help ensure that information in the database is “accurate, complete, and highly useful” for law enforcement and authorized users. The image can be used to corroborate the identity of the owner, verify the reported data, and could help mitigate inaccurate or fraudulent submissions of data to the directory.

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23 National Defense Authorization Act for Fiscal Year 2021, § 6401(7)(A) [see note 3].
To help ensure the accuracy and completeness of the data as it is entered into the database, FinCEN should undertake additional verification measures. Much like in the private sector, such as when a credit card company declines a consumer’s transaction because it does not match the company’s internal files, entities registering for a FinCEN number should be notified immediately if they input incorrect information. This could save small businesses the effort of having to resubmit forms due to a typo weeks or even months after they initially register. Such verification mechanisms would be a commonsense practice that would encourage swift and comprehensive compliance with beneficial ownership information requirements, saving reporting companies time and money. These measures also ensure the accuracy and completeness of the data as it is submitted to the database, increasing the likelihood that this data is highly useful to law enforcement officers and other authorized users.

Conclusion

The Corporate Transparency Act was a significant victory for the financial transparency community. It requires FinCEN to establish a beneficial ownership database that will enable law enforcement and bank officials to identify the true owner of companies operating in the U.S., protect the integrity of the U.S. financial system, and expose shell companies engaging in illicit financial activities that undermine U.S. national security and foreign policy interests. The database will cut through the layers of anonymity often built into financial transactions, and protect U.S. taxpayer dollars by helping investigators identify and prevent fraud in U.S. public contracting.

In order to make this database as “accurate, complete, and highly useful” as possible, FinCEN should retain this rule’s faithful definition of a reporting company, retain this rule’s strong definition of a beneficial owner (absent the language surrounding senior officers), retain this rule’s timely reporting requirements, and retain this rule’s efforts to minimize cost of compliance for covered entities. FinCEN should also clarify the exemption for subsidiaries of reporting companies (exemption 22), require mandatory LEI numbers, and impose additional verification mechanisms in order to strengthen this rule and improve the accuracy and usefulness of reported information.

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

Sincerely,

Joanna Derman
Policy Analyst