



CENTER FOR CAPITAL MARKETS  
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Michael Mosier  
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2070 Chain Bridge Road  
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**Re: Beneficial Ownership Information Reporting Requirements – FinCEN-2021-0005; RIN 1506-AB49; 86 FR 17557**

The U.S. Chamber of Commerce is pleased to provide comments on the Advanced Notice of Proposed Rulemaking (“ANPR”) issued by the Financial Crimes Enforcement Network (“FinCEN”) on “Beneficial Ownership Reporting Requirements.”

The ANPR is to solicit public comments on the questions pertinent to the implementation of the Corporate Transparency Act (CTA), enacted into law as part of the National Defense Authorization Act for Fiscal Year 2021 (NDAA), seeks initial public input on procedures and standards for reporting companies to submit information to FinCEN about their beneficial owners (the individual natural persons who ultimately own or control the reporting companies) as required by the CTA. The ANPR also seeks comment on FinCEN’s implementation of the related provisions of the CTA that govern its maintenance and disclosure of beneficial ownership information subject to appropriate protocols.

The Chamber appreciates FinCEN issuing an advanced notice of proposed rulemaking (ANPR) before proceeding to a notice of proposed rulemaking (NPR). The rulemaking raises various complicated legal, operational, and compliance questions that are highly relevant to reporting companies. The single largest challenge of the rulemaking is the new reporting regime that will be imposed on millions of businesses in America, most of which are unaware of FinCEN’s existence, and most of which are focused on serving their customers instead of completing additional paperwork requested by the federal government.

We hope FinCEN will continue to aggressively probe solutions that will meet CTA’s requirements while minimizing the burden on small business owners. It is essential that the notice of proposed rulemaking (NPR) not be rushed, so that stakeholders, including the millions

of businesses subjected to the rule's reporting requirements, have adequate time to comment in advance of the statutory deadline imposed on FinCEN to issue a final rule.<sup>1</sup>

We have no doubt that NPR, when issued, will be voluminous if the ANPR's request for comment on 48 separate questions is any indication. Therefore, we expect FinCEN to provide at least 60 days, ideally longer, for stakeholders to provide input on the NPR when issued.

The Chamber agrees with the public policy objectives of the Corporate Transparency Act, and expects that FinCEN will conduct a rulemaking that does not presume businesses are engaged in unlawful activity or will be dishonest when disclosing beneficial ownership information. The rulemaking should inspire confidence among businesses that they are operating in accordance with the law and providing useful information to law enforcement.

The original sponsor of the legislation, Rep. Carolyn Maloney (D-NY), explained, "This bill, which I've been working on for 12 years, will crack down on anonymous shell companies, which have long been the vehicle of choice for money launderers, terrorists, and criminals. The bill will finally allow law enforcement to follow the money in their investigations, and will prevent terrorists, kleptocrats, and other bad actors from using the U.S. financial system to hide their dirty money."<sup>2</sup>

Law-abiding, honest businesses should not be unnecessarily punished by FinCEN for the illegal activity engaged in by unscrupulous businesses. Instead, the U.S. economy should benefit, including through the attraction of investment, for its commitment to prevent money-laundering and associated illegal activity.

The Chamber expects that FinCEN will take every possible opportunity to limit the compliance burden imposed on businesses, especially for small businesses, that may result from this rulemaking. As noted in the ANPR, the CTA requires that FinCEN, "Minimize burdens on reporting companies associated with the collection of the required information, in light of the private compliance costs placed on legitimate businesses, including by identifying any steps taken to mitigate the costs relating to compliance with the collection of information..."<sup>3</sup>

We believe the best way for FinCEN to accomplish CTA's objectives while minimizing burden on small businesses is to partner with the Internal Revenue Service (IRS) and rely on taxpayer-submitted information to satisfy the CTA reporting requirements. A FinCEN partnership with the IRS will capitalize on the familiarity small businesses have with our nation's tax and reporting agency and will ensure consistency in annual reporting requirements. Additionally, a partnership between FinCEN and the IRS will benefit information sharing by banks and financial institutions that is also required by CTA. Small businesses are already familiar with Form 8821 which allows third-party access to taxpayer filings for the purposes of providing financial services and authenticating identity, credit worthiness, and other information necessary for financial transactions.

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<sup>2</sup> <https://maloney.house.gov/media-center/press-releases/maloney-celebrates-inclusion-of-corporate-transparency-act-in-fy2021>

<sup>3</sup> Fed Reg at 17561

Notwithstanding the overall suggestion that FinCEN establish a partnership with IRS to simplify and streamline information reporting, the ANPR includes request for comment on dozens of important questions. The Chamber offers comment, below, on some of the questions we believe are strategically important for promulgating a rule that minimizes the burden on small business while also fulfilling the important law enforcement objectives of the CTA.

### **Question 16**

In general, FinCEN should not underestimate the significant burden that will be caused by simply trying to understand beneficial ownership requirements. Disclosure of beneficial ownership is an entirely new federal requirement, from an agency that most businesses are unfamiliar with.

Beneficial ownership is not always easy to identify or explain, even for the beneficial owner(s) of a company. There are a myriad of novel business arrangements wherein it may not be immediately obvious who the beneficial owner(s) is. This may require businesses to incur legal costs.

FinCEN will need to provide compliance resources to businesses. For example, FinCEN should be prepared to provide examples of beneficial ownership for the most common types of business arrangements. FinCEN should also provide advice for determining beneficial ownership less common types of business arrangements.

### **Question 17**

It is important that FinCEN recognize that most businesses, especially the smallest businesses, have little if any awareness of FinCEN or its law enforcement responsibilities. This should not be interpreted as diminishing the importance of FinCEN or law enforcement but should instead be the baseline for understanding the significant challenge of the educational challenge that confronts FinCEN. The primary interaction that most small businesses have with the federal government is via the Internal Revenue Service (IRS), which is oftentimes beset with its own challenges.

As stated in our introductory comments, FinCEN should partner with IRS and explain to taxpayers that information will be shared for CTA purposes.

#### ***Part A***

It would be unreasonable to assume that businesses are aware of new requirements to disclosure beneficial ownership information. The “notice” burden is the responsibility of the federal government. Businesses should not be penalized if the federal government fails to provide reasonable notice.

FinCEN should have a very flexible compliance expectation during the early stages of implementation. It may take years for existing businesses to understand their compliance

responsibilities. And, of course, new businesses are being started every day that will need to be made aware of the CTA.

As stated in our introductory comments, we suggest that FinCEN should partner with IRS and such a partnership would allow IRS to inform taxpayers that certain information will be shared with FinCEN for the purposes of CTA compliance.

### ***Part B***

As stated in our introductory comments, we suggest that FinCEN partner with IRS and such a partnership would allow communication to taxpayers that certain information will be shared with FinCEN for the purposes of CTA compliance. IRS regularly communicates with taxpayers and CTA compliance information can be part of those communications.

### ***Part C***

There should be two types of notices provided to small businesses. The first type of notice should inform businesses that they are in compliance with beneficial ownership requirements (for example, if FinCEN has used a third-party database). The second type of notice should inform businesses that they may need to provide beneficial ownership information to FinCEN.

FinCEN should inform businesses about why the data is being collected, an assurance about data privacy, and the statutory *limitations* for the use of the data. This explanation should be designed to inspire confidence in furnishers of beneficial information will not be subject to any additional costs (e.g. breach) by sharing information with FinCEN that may assist law enforcement.

FinCEN should create a user-friendly tool that permits businesses to view and correct the beneficial ownership data on file. These instructions (e.g. link to website, process for access) should be provided in the notice.

## **Question 19**

As stated in our introductory comments, we suggest that FinCEN partner with IRS and such a partnership would allow taxpayers to annually update their information for the purposes of CTA compliance.

## **Question 20**

Reporting companies should be periodically reminded of their responsibility for the continuing accurate of previously submitted beneficial ownership information but should not be required to affirmatively confirm it on a periodic basis. There should be a presumption that reporting companies are updating information if/when beneficial ownership changes.

Reporting companies should be provided a reasonable period to update beneficial ownership information. It would be unreasonable for FinCEN to expect this to happen immediately.

FinCEN should proactively provide notice to furnishers of information when it has reason to believe beneficial ownership may have changed. In other words, FinCEN should help businesses remain in compliance, especially when there is no reason to believe the business is engaging in illegal activity or acting in bad faith. This circumstance may arise when FinCEN comes across a discrepancy in the information that it has access to via a public or private third-party database.

### **Question 22**

It is our expectation that FinCEN would not pursue remedial action against any business that is operating in good faith to meet reporting requirements under the Corporate Transparency Act. Furthermore, as noted by multiple questions in the ANPR, information submitted may have at the time been accurate, but beneficial ownership could have changed. The purpose of disclosing beneficial ownership is to assist law enforcement.

There should be a presumption of a safe harbor. Exclusions to the safe harbor should be reserved for businesses that are found to have engaged in illegal activity. If FinCEN suspects that beneficial ownership information has been reported inaccurately, then they should contact the business and provide it the opportunity to correct the information.

### **Question 23**

FinCEN should assume that reporting companies are making a good faith submission about the accuracy that they provide.

Submitting copies of an identification document would be especially burdensome and it is not immediately obvious this is necessary to fulfill the statutory objectives of the CTA. It would be more practical for law enforcement to access an identification document, via existing databases, when necessary to confirm the identity of a beneficial owner. These identification documents do not need to be permanently stored in a database operated by FinCEN.

### **Question 41**

The Chamber believes that small businesses are not likely to appreciate FinCEN as a legitimate regulatory enforcement agency unless it is easily and consistently associated with an existing authority such as IRS. As stated in our introductory comments, we suggest that FinCEN partner with IRS and such a partnership would allow IRS to inform taxpayers that certain information will be shared with FinCEN for the purposes of CTA compliance.

### **Question 47**

FinCEN should make every possible effort to collect beneficial ownership information via existing federal, state, local, and tribal processes and procedures. There is no reason for businesses to furnish beneficial ownership information to multiple governmental agencies.

FinCEN should be focused on reducing the costs on furnishers of beneficial ownership information. State/local/tribal governments have law enforcement responsibilities, the burdens of which should not be displaced to furnishers of this information. State/local/tribal government law enforcement authorities will ultimately benefit from useful information being provided to FinCEN, as will the communities they protect, and it is therefore logical they devote the necessary resources.

FinCEN use of existing Federal, state, local, and tribal processes and procedures would help to less the costs to small businesses. However, FinCEN, through its coordination with other government bodies, should be careful to avoid duplicative reporting requirements, especially those that do not fulfill requirements under the CTA. Small businesses should only have to report to one governmental agency, ideally this would not require them to report information to any agency to which they are not currently reporting or require the reporting of new information.

Sincerely,

A handwritten signature in black ink that reads "William R. Hulse". The signature is written in a cursive style with a prominent initial "W".

Bill Hulse  
Vice President  
Center for Capital Markets Competitiveness