

January 18, 2023

Financial Crimes Enforcement Network  
P.O. Box 39  
Vienna, VA 22183

*Submitted electronically to <https://www.regulations.gov>*

Re: Notice and request for comments on the proposed beneficial ownership reporting form;  
Docket Number FINCEN-2023-0002; OMB Control Number 1506-0076.

Dear Acting Director Das:

I appreciate the opportunity to comment on the proposed beneficial ownership reporting form.

In one way or another, my entire career, which spans five decades, has been dedicated to combating financial crimes.<sup>1</sup> I am now semi-retired, and choose to spend my days helping the next generation of AML/CFT professionals develop the necessary tools, techniques, practices, and courage to make our anti-money laundering AML/CFT regime effective, efficient, and fair. I want to leave this regime better than I found it five decades ago. And it is better than it was and will be better going forward. But not if the beneficial ownership reporting form is adopted as proposed.

#### [Summary of Comments](#)

I am limiting my comments and recommendations to two main things. First, the estimated burdens the form will have on American small businesses – both those that are a reporting company and those that need to determine whether they are a reporting company – are not realistic.<sup>2</sup> As my comment attempts to detail, those estimated burdens are flawed in two main ways that grossly underestimate – by perhaps tens of billions of dollars - the burdens to be borne by American small businesses. This is important, as the CTA requires FinCEN to report to

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<sup>1</sup> I have been actively involved in AML/CFT since the late 1990s. Before becoming the BSA Officer at a large Boston bank in 1998, I had been a Special Constable with the Royal Canadian Mounted Police, a barrister in Canada, a lawyer and prosecutor in Massachusetts, and the author of one of the first comprehensive textbooks on money laundering ("Transnational Criminal Organizations, Cybercrime, and Money Laundering", CRC Press 1998). In the twenty years I served as a BSA Officer, I represented two money center banks as a three-term member of the BSA Advisory Group (BSAAG). I was also a founding board member of ACAMS and the ACFCS. Currently, I am the principal and founder of RegTech Consulting LLC, a private consulting firm focused on providing strategic advice on all aspects of financial crimes risk management.

<sup>2</sup> FinCEN has specifically asked for comments on "the accuracy of the agency's estimate of the burden of the collection of information".

Congress on how effective these BOI reporting procedures and standards are at minimizing reporting burdens.<sup>3</sup>

My second comment focuses on what Congress *requires* under the Corporate Transparency Act – that a reporting company “shall” provide the name, date of birth, address, and an identifying number for all of its beneficial owners and company applicants. The proposed BOI form makes this *required* information *optional* by allowing a reporting company to shrug its corporate shoulders and choose not to provide the required information. Bona fide, legitimate businesses will do their best to provide the information: the proposed form gives professional money launderers and their attorneys and company formation agents the perfect out to mask the true owners of their malign laundering businesses. The “not able to obtain” options should be removed; if not, FinCEN needs to provide answers to the obvious questions that will arise: “What does FinCEN mean by “unable to obtain’?” “Do we need to explain what steps we took to obtain the information?”; “What happens if we can’t get any information from one of our beneficial owners?”; “What happens if a company applicant refuses to provide some information?”; “What happens if we can’t identify the company applicant?”; “Does the safe harbor apply?”; “What is a financial institution to do when the beneficial ownership information obtained from FinCEN is incomplete or missing?”. It is a long and tortuous list of questions that FinCEN has prompted by its unilateral efforts to make optional what Congress has made mandatory.

#### Background for the Proposed BOI Reporting Form

I won’t repeat the background provided in the Beneficial Ownership Information Reporting Requirements final rule published on September 30, 2022 (“final BOI reporting rule”). Nor will I repeat the background set out in the BOI reporting form notice published in the Federal Register on January 17, 2023. However, I will include enough background from the final BOI reporting rule, the notice, the Corporate Transparency Act (CTA), and the current CDD rule to lay the factual groundwork for my comments, observations, and recommendations.

For almost five years, certain legal entities have been required by the so-called CDD rule<sup>4</sup> to provide their financial institutions with the names and personally identifying information of the entity’s beneficial owners: as many as four persons with ownership of the entity, and one person with control. And as the regulation and its companion CDD Form provide, “this form requires you to provide the name, address, date of birth, and Social Security Number” of the beneficial

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<sup>3</sup> The new section 5336(b)(6) requires that “not later than 1 year after the effective date described in paragraph (5), and annually thereafter for 2 years, the Secretary of the Treasury shall submit to Congress a report describing the procedures and standards prescribed to carry out paragraph (2), which shall include an assessment of (A) the effectiveness of those procedures and standards in minimizing reporting burdens (including through the elimination of duplicative requirements) and strengthening the accuracy of reports submitted under paragraph (2); and (B) any alternative procedures and standards pre-scribed to carry out paragraph (2).”

<sup>4</sup> 31 CFR s. 1010.230.

owner(s). Neither the rule nor the Form included the phrase “unless you are not able to obtain the information”.

Finding that regime insufficient, Congress passed the Corporate Transparency Act (CTA) to compel a different, but generally overlapping, set of legal entities (called “reporting companies”) to provide more expansive, but generally overlapping, information: reporting companies *shall* provide the names and personally identifying information of a company applicant or applicants, and the names and personally identifying information of the entity’s beneficial owners (as many as four persons with ownership of the entity, and all the persons that exercise substantial control over the reporting company). The BOI report *shall* also contain information about the entity itself. The reporting company *shall* certify that the report is true, correct, and complete.

Reporting companies *shall* also update the information in these reports as needed, and *shall* correct any previous incorrectly reported information, all within specific timeframes.

So under the existing CDD rule, and the Corporate Transparency Act, the collection and reporting of beneficial ownership information is required. Neither call for, or allow, a “best efforts” or “we did our best” outlet for lazy, recalcitrant, or malign actors. These are requirements.

### Comment 1 – The Reporting Burdens

As I’ve written before, FinCEN needs to revise its process for estimating the costs and burdens imposed on the private sector.<sup>5</sup>

In drafting and passing the Corporate Transparency Act, Congress recognized that it was putting burdens on American small businesses.<sup>6</sup> How many small businesses are reporting companies, and how many of those will need to file initial, corrected, and updated reports? How many beneficial owners will need to provide their PII, and how often? And how burdensome is this reporting?

The final BOI reporting rule regulatory impact analysis (RIA) answered (somewhat) those questions, and the January 17, 2023 notice nicely summarized the RIA. Many assumptions were made in the RIA, and FinCEN has since assumed that it will have the BOI database up and running, and able to be populated with the BOI reports, by January 1, 2024.

### Initial Reports

FinCEN assumes that all 32,556,929 reporting companies that exist prior to the effective date of January 1, 2024, will submit their initial BOI reports in Year 1 (2024). FinCEN has also estimated

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<sup>5</sup> See, for example, <https://regtechconsulting.net/aml-regulations-and-enforcement-actions/fincens-estimate-of-the-costs-and-burden-of-filing-sars-is-evolving-but-needs-private-sector-input/>

<sup>6</sup> The CTA has at least four references to burdens on reporting companies.

that in Year 2 (2025) and beyond, there will be 4,998,468 new reporting companies each year that will file initial reports.

This latter assumption is, by FinCEN's own admission, flawed.

In the final BOI reporting rule, FinCEN attempted to calculate the number of reporting companies there would be when the BOI database "went live" in January 2024. It used various estimates of US companies from 2018 through 2020, noted that the number had increased roughly 13.1 percent per year, and extrapolated out to 2024 and arrived at the 32.6 million number. FinCEN also determined that there would be 4,998,468 new reporting companies created in 2024: they would have 30 days to submit their BOI reporting forms. But, although FinCEN noted that the number of new companies was growing by over 13 percent a year, it decided that "annually thereafter [2025], FinCEN assumes no change in the number of new entities".<sup>7</sup>

This assumption will have a material effect on the expected costs to American small businesses that will be submitting the BOI reporting forms. Using a more conservative growth rate of 10 percent a year, within five years there won't be 4,998,468 new reporting companies filing reports, there will be 7,318,257 new reporting companies filing reports. That is a 46 percent difference. Put another way, by 2029 the CTA will impose reporting burdens on more than 7.3 million small businesses, not 5 million as FinCEN assumes.

Leaving aside the number of small businesses that will be impacted, FinCEN correctly observed that the time and costs of complying will be different for small, simple companies than for larger, more complex companies.<sup>8</sup> In order to estimate the total burden hours and costs associated with the reporting requirement, FinCEN created a three-tier distribution of reporting companies based on the complexity of their corporate structure: simple, intermediate, and complex. Again, these were assumptions.

**Simple Structure** - FinCEN assumed this to be one beneficial owner who is also the company applicant, and that 59% of reporting companies will have this structure. FinCEN estimates the average burden of the initial BOI reporting as 90 minutes.<sup>9</sup> FinCEN also estimates the average burden of any updated BOI reporting as 40 minutes.<sup>10</sup>

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<sup>7</sup> See footnote 283 at 87 FR 59498 at page 59565.

<sup>8</sup> This does not account for the impact that even a small, incremental burden could have on the smallest businesses. A \$100 added expense to a small business owner trying to pay their bills and feed their family can impose real hardship.

<sup>9</sup> This total time is allocated to three tasks: to read the form and understand the requirement, identify and collect information about beneficial owners and company applicants, and fill out and file the report, including attaching an image of an acceptable identification document for each beneficial owner and company applicant.

<sup>10</sup> Without explanation, FinCEN allocates the total time for updating BOI reports into only two tasks: to identify and collect information, and fill out and file the report, including attaching an image of an acceptable identification

**Intermediate Structure** – FinCEN assumed this to be four beneficial owners and one company applicant, and that 36.1 percent of reporting companies will have this structure. FinCEN estimates the average burden of the initial BOI reporting as 370 minutes. FinCEN also estimates the average burden of any updated BOI reporting as 105 minutes.

**Complex Structure** – FinCEN assumed this to be eight beneficial owners and two company applicants, and that 4.9 percent of reporting companies will have this structure. FinCEN estimates the average burden of the initial BOI reporting as 650 minutes. FinCEN also estimates the average burden of any updated BOI reporting as 170 minutes.

| Reporting Company Structure | Percentage of Reporting Companies | Number of Beneficial Owners | Number of Company Applicants | Time to Complete Initial BOI Report (minutes) | Time to Complete Updated BOI Report (minutes) |
|-----------------------------|-----------------------------------|-----------------------------|------------------------------|---|---|
| Simple                      | 59.0%                             | 1*                          | 0*                           | 90  | 40  |
| Intermediate                | 36.1%                             | 4                           | 1                            | 370   | 105   |
| Complex                     | 4.9%                              | 8                           | 2                            | 650   | 170   |

\*FinCEN assumed that the owner would also be the applicant for the approximately 19 million small or simple reporting companies

In Year 2 (2025) and beyond, FinCEN estimates that the filing of initial BOI reports will result in 18,204,421 burden hours annually for new reporting companies.<sup>11</sup> This is what that assumption looks like:

2025 - 4,998,468 entities = 18,204,421 burden hours  
2026 - 4,998,468 entities = 18,204,421 burden hours  
2027 - 4,998,468 entities = 18,204,421 burden hours  
2028 - 4,998,468 entities = 18,204,421 burden hours  
2029 - 4,998,468 entities = 18,204,421 burden hours

Common sense tells us that this doesn't look right. Even FinCEN has acknowledged (but ignored), in both the proposed and final rule, that the number of new entities is increasing every year. FinCEN referenced a 13.1 percent growth rate in the proposed rule. I applied a 10 percent growth rate. That growth rate results in some very different burden hours:

2025 – 4,998,468 entities = 18,204,421 burden hours  
2026 – 5,498,315 entities = 20,024,863 burden hours  
2027 – 6,048,146 entities = 22,027,349 burden hours  
2028 – 6,652,961 entities = 24,230,084 burden hours

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document for each beneficial owner and company applicant. Apparently FinCEN does not believe that reporting companies will need to read the form and understand the requirement.

<sup>11</sup>  $((0.59 \times 4,998,468) \times (90/60)) + ((0.361 \times 4,998,468) \times (370/60)) + ((0.049 \times 4,998,468) \times (650/60)) = 18,204,421$ .

2029 – 7,318,257 entities = 26,653,093 burden hours

By 2029, the reporting burden will fall on 7.3 million American small businesses, not 5 million businesses as FinCEN has reported. This is a material difference that will impact FinCEN’s ability to provide accurate reports to Congress on the effectiveness of the BOI reporting regime (which I discuss in my recommendation, below).

### Updated Reports

FinCEN estimates that 6,578,732 updated BOI reports will be filed in Year 1 (2024), and 14,456,452 such reports will be filed annually in Year 2 (2025) and beyond. Simple reporting companies will take 40 minutes to complete and file these reports; Intermediate reporting companies will take 105 minutes; and Complex reporting companies will take 170 minutes.<sup>12</sup>

As can be seen in footnotes 11 and 12, FinCEN has used the same ratios for updating reports as it used for the original reports – 59% of the update reports will come from simple reporting companies, 36.1% from intermediate reporting companies, and 4.9% from complex reporting companies.

The reason for updating a BOI report is that there has been a change in any information on the reporting company, any information on any of its beneficial owners, or any information on its company applicant(s). Obviously, the more beneficial owners and applicants, the more likely there will be a change in information. Complex companies have eight times as many beneficial owners as simple companies: with eight times as many beneficial owners as simple companies, it is unlikely that complex companies will submit only 4.9% of updated reports while simple companies will submit 59% of updated reports.

If that is unlikely, what is likely?

Like FinCEN, I have made some assumptions to come up with what I believe is more likely to occur.

According to FinCEN’s categorization, one simple reporting company, one intermediate reporting company, and one complex company will have as many as 13 beneficial owners.<sup>13</sup> Between these three reporting companies, the likelihood that the simple reporting company’s beneficial owner’s information changes is one out of thirteen; the likelihood that any of an intermediate company’s four beneficial owners’ information changes is four out of thirteen; and the likelihood that any of a complex reporting company’s eight beneficial owners’ information changes is eight out of thirteen. With this simple math, it is more likely that 8% of the updates will come from simple companies, 31% from intermediate companies, and 61% from complex companies.

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<sup>12</sup>  $((0.59 \times 6,578,732) \times (40/60)) + ((0.361 \times 6,578,732) \times (105/60)) + ((0.049 \times 6,578,732) \times (170/60)) = 7,657,096$

<sup>13</sup> A simple company will have one beneficial owner/applicant; an intermediate company will have as many as 4 beneficial owners and a single applicant; and a complex company will have as many as 8 beneficial owners and 2 company applicants.

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 Comments of James Richards, Principal of RegTech Consulting LLC

These new ratios make a huge difference in the total expected burdens and costs to American small businesses. FinCEN has estimated that it will cost a simple company \$37.84 to update its BOI report, and it will cost a complex company \$560.81 to update its BOI report.<sup>14</sup>

A comparison of FinCEN's cost estimates for simple and complex reporting companies' updated BOI reports for the first year of reporting, with my cost estimates, is set out in the table below:

| Updated BOI Reports in Year 1 (2024) - 6,578,732 Total    |                           |           |                            |               |                             |           |                            |                 |  |
|---|---------------------------|-----------|----------------------------|---------------|-----------------------------|-----------|----------------------------|-----------------|--|
| Method of Calculating Total Costs for Updated BOI Reports | Small Reporting Companies |           |                            |               | Complex Reporting Companies |           |                            |                 | Total Cost for Small and Complex Reporting Companies |
|   | Percentage                | Number    | Cost per Reporting Company | Total Cost    | Percentage                  | Number    | Cost per Reporting Company | Total Cost      |  |
| FinCEN Calculation  | 59.0%                     | 3,881,452 | \$37.84                    | \$146,874,139 | 4.9%                        | 322,358   | \$560.81                   | \$180,781,516   | \$327,655,655  |
| Richards Calculation                                      | 8.0%                      | 526,299   | \$37.84                    | \$19,915,138  | 61.0%                       | 4,013,027 | \$560.81                   | \$2,250,545,403 | \$2,270,460,540                                      |

As seen in this table, FinCEN estimates that it will cost simple and complex reporting companies about \$328 million to update BOI reports. Using my methodology - where complex companies are more likely than simple companies to have to update their BOI – it will cost these companies almost *\$2.3 billion* to update BOI forms, or more than *\$1.9 billion* than FinCEN estimates.<sup>15</sup>

Put another way, my cost estimate is almost 7 times that of FinCEN's. For the first year. If my approach is taken for subsequent years, the cost differences are even more pronounced because of FinCEN's failure to account for the growth in the number of new companies. The difference is likely in the tens of billions of dollars over the first five years of BOI reporting under the Corporate Transparency Act. This is on top of FinCEN's \$22.7 billion estimate for 2024 and \$5.6 billion per year thereafter. Again, this is material.

#### Recommendation

I encourage FinCEN to revisit its assumptions on the costs and burdens the CTA will impose on American small businesses. Section 5336(b)(6) compels FinCEN to submit to Congress a report that “shall include an assessment of the effectiveness of [the BOI reporting] procedures and standards in minimizing reporting burdens (including through the elimination of duplicative requirements) and strengthening the accuracy of [BOI] reports ...”. Determining whether the new BOI reporting form minimizes reporting burdens requires an accurate determination of those burdens. Currently, in my view, those burdens are grossly underestimated.

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<sup>14</sup> I didn't see a breakdown in costs for intermediate companies.

<sup>15</sup> FinCEN didn't provide details on the costs for intermediate companies. Under FinCEN's estimate, 36.1% of the updated BOI reports would come from intermediate companies. Under my estimate, 31% of the updated BOI reports would come from intermediate companies. The total cost difference does not alter the point I'm trying to make: that FinCEN has grossly underestimated the cost burden of updating BOI reports.

## Comment 2 – The Mandatory Reporting Fields Are No Longer Mandatory

There is nothing in the Act, and nothing in the final BOI reporting rule that would permit a reporting company to *not* include any of the required information – on itself, on its company applicant, or on its beneficial owner(s). But throughout the proposed form, FinCEN allows reporting companies to check a box “if you are not able to obtain this information”. And “this information” is pretty much everything on company applicants and beneficial owners.

The phrase “not able to obtain” appears for the first time in the proposed reporting form.<sup>16</sup> The phrase is not in the CTA, it is not in the ANPRM, and it is not in the NPRM for BOI Reporting.<sup>17</sup>

Notably, the phrase “not able to obtain” is in the *Final* BOI Reporting rule, but not in the context of whether a reporting company can fail to include any beneficial ownership or applicant information. In the Supplementary Information at page 59592 FinCEN wrote:

“In the event that unusual situations arise in which a foreign reporting company is not able to obtain a foreign tax identification number, FinCEN will consider appropriate guidance or relief depending on the circumstances.”

The result is clear. Both Congress and, up until the proposed form was published, FinCEN have *required* that reporting companies provide their beneficial ownership information. In the Advance Notice of Proposed Rulemaking (86FR @ 17560), under the heading “Requirements of the CTA”, FinCEN wrote:

“In general, the CTA requires a reporting company - in accordance with rules to be issued by FinCEN – to submit to FinCEN information that identifies the beneficial owner(s) and applicant(s) of the reporting company. Specifically, reporting companies **must** report, for each identified beneficial owner and applicant, the following information: (i) Full legal name; (ii) date of birth; (iii) current residential or business street address; and (iv) a unique identifying number from an acceptable identification document or the individual’s FinCEN identifier.” (emphasis added)

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<sup>16</sup> The phrase “not able to obtain” is not in the Supplementary Information or Request for Comments sections of the January 17<sup>th</sup> notice: it first appears in the proposed form itself.

<sup>17</sup> The Appendix provides, in relevant part: “Part II. Company Applicant Information (report up to two Company Applicants, lines 18-33 are repeated for each Company Applicant). Line 17. Unable to identify all Company Applicants (check if you are unable to obtain any required information about one or more Company Applicants) ... Full legal name: 19. \* Individual’s last name z. Unknown (check the box if you are not able to obtain this information about the Company Applicant) ...” .

Part III of the proposed form provides, in relevant part: “Beneficial Owner Information (multiple Beneficial Owners may be reported, lines 35- 51 are repeated for each Beneficial Owner). Line 34. Unable to identify all Beneficial Owners (check if you are unable to obtain any required information on one or more Beneficial Owners) ... **Full legal name:** 38. \* Individual’s last name (or Exempt entity’s legal name if line 37 box is checked) z. Unknown (check the box if you are not able to obtain this information about the Beneficial Owner)

The CTA uses the term “shall” rather than “must” when setting out what is required of reporting companies and uses it repeatedly. The words “shall” and “must” are plain. And clear. They indicate a requirement, not an option.<sup>18</sup>

What requirement is that? Reporting companies **must** report, for each identified beneficial owner and applicant, the following information: (i) Full legal name; (ii) date of birth; (iii) current residential or business street address; and (iv) a unique identifying number from an acceptable identification document or the individual’s FinCEN identifier.

FinCEN repeated the “must” language from the ANPRM in the NPRM published on December 8, 2021. Under the heading “Information To Be Reported on Beneficial Owners and Company Applicants”, FinCEN wrote “Proposed 31 CFR 1010.380(b)(1)(ii) sets forth the specific items of information that a reporting company must report about each individual beneficial owner and each individual company applicant.”

In the final rule, FinCEN consistently used “shall” when describing what reporting companies must provide. There simply was no leeway in the final BOI reporting rule that would allow for BOI to not be provided because a reporting company was not able to obtain it. The first time that we see an option for a reporting company to not report required BOI is in the proposed form itself. The word “unable” and the phrase “not able” appear for the first time in Part II of the form, Company Applicant Information. This Part has 17 lines of information: 13 are mandatory (marked with the \* symbol); and 14 include an option to “check if you are unable to obtain any required information.”

Part III of the form, Beneficial Owner Information, has 18 lines of information: 12 are mandatory (marked with the \* symbol); and 11 include an option to “check if you are unable to obtain any required information.”<sup>19</sup>

There is no introduction of, nor explanation for, the concept of a reporting company submitting an incomplete BOI report because it was unable or not able to obtain the required information.

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<sup>18</sup> The word “shall” is used more commonly in regulations, and “must” in regulatory guidance. The goes back to the Plain Writing Act of 2010. See, for example, EO 13563 (January 21, 2011) which provides, in part, that “our regulatory system must ... ensure that regulations are accessible, consistent, written in plain language, and easy to understand.” The OMB’s plain language guidelines provide, in part, to “use ‘must’ to indicate requirements: the word ‘must’ is the clearest way to convey to your audience that they have to do something.” <https://www.plainlanguage.gov/guidelines/conversational/use-must-to-indicate-requirements/>. The Treasury Department is committed to using plain language in its documents <https://home.treasury.gov/subfooter/site-policies-and-notices/plain-writing>.

<sup>19</sup> The Appendix - Beneficial Ownership Information (BOI) Report Summary of Data Fields – begins with: “Note: Lines that must be filled in for a report to be accepted are identified with the \* symbol next to the line number. Italicized text provides a description and/or explanation of lines and response options for purposes of this PRA notice.”

The vast majority of the 32 million reporting companies will be both willing and able to obtain the required information on their applicant and beneficial owner(s). FinCEN estimates that 59% of these reporting companies will have a single beneficial owner who is also the company applicant, 36% will have as many as four beneficial owners and one company applicant, and 5% will have as many as eight beneficial owners and two company applicants. Assuming that most Americans are law-abiding, virtually all of the 59%, most of the 36%, and many of the 5% will be able to identify and provide all the required information for their owners and applicant(s). They may not like providing their personally identifying information; they may have questions or doubts about providing this information; but they will do so.

There will be a small number of reporting companies that will be willing but unable to provide all the required information and images of identifying documents for all their beneficial owners – perhaps a intractable uncle who invested in a family start-up twenty years ago is refusing to “turn over” his driver’s license. More likely, though, will be reporting companies that cannot locate or identify their company applicant (let alone obtain their personal information and image of an identifying document). The smallest group will be malign actors who are using a reporting company to conceal their criminal activity: allowing them to simply check a box (17 boxes) that they were not able to obtain beneficial ownership information facilitates their criminal activity.

### Recommendations

The Corporate Transparency Act does not provide for situations where reporting companies are unable to identify or locate their company applicant(s). But those situations will occur. Congress, not FinCEN, should address those situations with an amendment to the Act. A simple solution for situations where a reporting company is unable to identify its applicant(s) is to require the reporting company to provide a copy of its formation or registration documents.

If FinCEN opts to continue with its proposed “best efforts” approach to reporting company applicant information, Line 17 of the proposed form needs to be changed. Line 17 provides: “17. Unable to identify all Company Applicants (check if you are unable to obtain any required information about one or more Company Applicants)”.

This is confusing. There are two possible situations: the reporting company cannot locate or identify its company applicant(s), or the reporting company can locate and identify its company applicant(s) but cannot obtain all of the required information and/or an image of the applicant’s identifying document(s). FinCEN should clarify its intent and provide for both situations. If the reporting company selects “unable to identify all Company Applicants” then the form should direct the company to include an image of its formation/registration document.

As to beneficial owners, the Corporate Transparency Act does not provide for situations where a reporting company is unable to identify all of its beneficial owners or is unable to obtain all of the necessary beneficial information and supporting documents. But those situations will occur. Congress, not FinCEN, should address those situations with an amendment to the Act.

If FinCEN opts to continue with its proposed “best efforts” approach to reporting beneficial owner information, Line 34 of the proposed form needs to be changed. Line 34 provides: “34. Unable to identify all Beneficial Owners (check if you are unable to obtain any required information about one or more Beneficial Owners)”.

Just as Line 17 relating to company applicants is confusing, this line is equally confusing. However, unlike a situation where a reporting company cannot identify or locate a company applicant, there should be no situations where a reporting company cannot identify and locate its beneficial owners. The only situations a reporting company may encounter is, as set out above, the “intractable uncle”. In that case, FinCEN should require the reporting company to provide enough identifying information for federal authorities to take the appropriate action against the intractable uncle.

## Conclusion

In fairness, it appears that in the drafting and negotiating of the language in the CTA, and in the publication and comments on proposed rules, no one seems to have asked “what happens if we can’t get any information from one of our beneficial owners?” or “what happens if we can’t identify the company applicant?” or “can a reporting company submit a BOI form knowing that the information is incomplete?”

And with this proposed form, FinCEN has not only brought these questions into play, but it has (perhaps inadvertently) introduced many other questions:

- “What does FinCEN mean by ‘if you are not able to obtain this information’?”
- “How hard must a reporting company try to get its Applicant’s, or any of its beneficial owner’s name, DOB, address, identifying number, a copy of their identifying document?”
- “Can a reporting company simply not bother?”
- “If challenged, can a reporting company simply say ‘hey, we tried, and couldn’t get it’?”

Two years after the passage of the Corporate Transparency Act, FinCEN has introduced a concept - that providing beneficial ownership information can be done on a “best efforts” basis or not at all - which was not contemplated by Congress or even by itself through the many prior proposed and final rules implementing the CTA. Now is not the time to do so.

I trust that you will revise the BOI reporting form and remove any references to “check if you are not able to obtain” the mandatory, required company applicant or beneficial ownership information. This is not ideal, as there will be situations where otherwise law-abiding, responsible business owners are simply unable to obtain any, or all, of the information and documents on their company applicant(s), and situations where they are simply unable to obtain all information and/or all documents for one or more of their beneficial owners. But the solution is not found in the registration forms, nor in the implementing regulations: the solution is in the hands of Congress to revise the Corporate Transparency Act. As it stands today, FinCEN must follow what Congress has required of it, and ensure that reported company applicant and

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beneficial ownership information is complete, timely, and accurate so that it is highly useful in facilitating important national security, intelligence, and law enforcement activities. As Congress requires.

Thank you for your consideration

s/

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