

Comments on the report that will be used to collect beneficial ownership information, as required by the Beneficial Ownership Information Reporting Requirements final rule that was published on September 30, 2022.

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24 January 2023

Thank you for this opportunity to provide feedback.

Please feel free to contact me if I can provide any clarification or assistance.

All Sections

A. Remove all questions/response options that allow required information to not be provided.

I have two main concerns and one design concern with the proposed approach.

- 1) The proposed form can be completed without providing any information about any individuals associated with the reporting company, completely defeating the purpose of this effort, and rendering the FinCEN BOI system useless; garbage in, garbage out.

If a new domestic reporting company takes advantage of all the proposed options to indicate the information is unknown, the complete record for a reporting company would look like this:

#	Question	Response (example)	Specifically required in 31CFR1010.380?
Part I. Reporting Company Information			
5.	Reporting company legal name	ABC Company	Yes, (b)(1)(i)(A)
6.	Alternate name	ABC Co.	Yes, (b)(1)(i)(B)
7.	Tax identification type	EIN	Yes, (b)(1)(i)(F)
8.	Tax identification number	123456789	
10.a.	Country/Jurisdiction of formation	U.S.	Yes, (b)(1)(i)(D)
10.b.	State of formation	Florida	
11.	Address	1 Main Street	Yes, (b)(1)(i)(C)
12.	City	Miami	
13.	U.S. or U.S. Territory	U.S.	
14.	State	Florida	
15.	ZIP code	33132	
Part II. Company Applicant Information			
19.	Individual’s last name	Unknown	Yes, (b)(1)(ii)(A)
20.	First name	Unknown	
23.	Date of birth	Unknown	Yes, (b)(1)(ii)(B)
24.	Address type	Unknown	Yes, (b)(1)(ii)(C)
25.	Address	Unknown	
26.	City	Unknown	
27.	Country/Jurisdiction	Unknown	
28.	State	Unknown	
29.	ZIP code	Unknown	
30.	Identification document type	Unknown	Yes, (b)(1)(ii)(D)
31.	Identifying document number	Unknown	
32.	Identifying document issuing jurisdiction	Unknown	Yes, (b)(1)(ii)(E)
33.	Identifying document image	Unknown	
Part III. Beneficial Owner Information			
38.	Individual’s last name	Unknown	Yes, (b)(1)(ii)(A)
39.	First name	Unknown	
42.	Date of birth	Unknown	Yes, (b)(1)(ii)(B)
43.	Address	Unknown	Yes, (b)(1)(ii)(C)
44.	City	Unknown	
45.	Country/Jurisdiction	Unknown	
46.	State	Unknown	
47.	ZIP code	Unknown	
48.	Identification document type	Unknown	

49.	Identifying document number	Unknown	
50.	Identifying document issuing jurisdiction	Unknown	
51.	Identifying document image	Unknown	Yes, (b)(1)(ii)(E)

- 2) In my review, I do not see that the legislation or the rule allow for reporting without complete required information. Per 1010.380(g) <highlight added>

(g) Reporting violations. **It shall be unlawful for any person** to willfully provide, or attempt to provide, false or fraudulent beneficial ownership information, including a false or fraudulent identifying photograph or document, to FinCEN in accordance with this section, or **to willfully fail to report complete or updated beneficial ownership information to FinCEN in accordance with this section.**

FinCEN asking for the required element and the filing individual providing an answer to the question that does not include providing the required element is not sufficient, and FinCEN should not be complicit through the design of the application. If FinCEN decides to proceed with these options in the form, an explanation as to why FinCEN believes this approach is permissible is needed.

- 3) As proposed in the form, the designations of what is required and what is not required is not logical. As one example, here is an excerpt from Part. II. Company Applicant Information:

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*)

20. * First name

z. Unknown (*check the box if you are not able to obtain this information about the Company Applicant*)

21. Middle name (*required if the Company Applicant has a middle name*)

22. Suffix (*required if the Company Applicant's name has a suffix*)

The way this is designed, you must provide the individual's first and last name. but only if those are known and you can answer "Unknown" to successfully complete this *required question; however, per the italicized description and/or explanation text, the Middle name and the Suffix **must** be provided if the individual has those, without any consideration for if the individual's name is even known. This doesn't make sense to me, and I don't think it is what was intended.

Recommend removing the following whole questions, along with any of the possible answers indicating that the information is unknown, designated with a "z.":

Whole questions to remove:

- **Part II Company Applicant Information**

17. Unable to identify all Company Applicants (*check if you are unable to obtain any required information about one or more Company Applicants*)

- **Part III Beneficial Owner Information**

34. Unable to identify all Beneficial Owners (*check if you are unable to obtain any required information on one or more Beneficial Owners*)

Questions from which the option z. answer should be removed:

Part II - questions 19, 20, 23-31, 32a-c, 33

Part III - questions 38, 39, 42-49, 50a-c, 51

Filing Information section

B. #1

Current proposed:

1. * Type of filing *(check only one box for lines 1a-1d)*

a. Initial report

b. Correct prior report

(if this box is checked, then you must fill out lines 1e-1h (Reporting Company information associated with most recent report))

c. Update prior report

(if this box is checked, then you must fill out lines 1e-1h (Reporting Company information associated with most recent report))

d. New exempt entity

(if this box is checked, then you must fill out lines 1e-1h (Reporting Company information associated with most recent report) and no other lines in the report)

Reporting Company information associated with most recent report, if any:

(Lines 1e-1h must be filled out when the type of filing is “Correct prior report” (line 1b), “Update prior report” (line 1c), or “Newly exempt entity” (line 1d) in order to link the new filing to the previous filing)

e. Legal name

f. Tax identification type *(select one from list of options)*

EIN

SSN/ITIN

Foreign

g. Tax identification number

h. Country/Jurisdiction (if foreign tax ID only) *(select from list of countries/jurisdictions)*

Recommend the following, for clarity:

- Change the order to prioritize the options that are most likely to be selected.
- Where appropriate, add a requirement to provide the current FinCEN identifier (for b, c, and d).
- Provide guidance on the four options
- Correct typo in d. (replace “New” with “Newly”)

For example:

1. * Type of filing *(check only one box for lines 1a-1d)*

a. Initial report *(reporting for the first time: applies to reporting companies created before January 1, 2024, and reporting companies created on or after January 1, 2024)*
(if this box is checked, proceed to 2)

~~e~~.b. Update prior report *(to reflect a change in required beneficial ownership information)*
(if this box is checked, then you must fill out lines 1e-1~~h~~i (Reporting Company information associated with most recent report))

~~b~~.c. Correct prior report *(to amend information that was inaccurate/incomplete when reported)*
(if this box is checked, then you must fill out lines 1e-1~~h~~i (Reporting Company information associated with most recent report))

- d. Newly exempt entity *(previously reported company that no longer meets the reporting company definition)*
*(if this box is checked, then you must fill out lines 1e-1*hi* (Reporting Company information associated with most recent report) and no other lines in the report)*

Reporting Company information associated with most recent report, if any:

*(Lines 1e-1*hi* must be filled out when the type of filing is “Update prior report” (line 1b), “Correct prior report” (line 1c), or “Newly exempt entity” (line 1d) in order to link the new filing to the previous filing)*

- e. Legal name
- f. Tax identification type (select one from list of options)
- EIN
 - SSN/ITIN
 - Foreign
- g. Tax identification number
- h. Country/Jurisdiction (if foreign tax ID only) *(select from list of countries/jurisdictions)*
- i. FinCEN identifier (FinCEN ID)

Part I. Reporting Company Information

C. #3

Current proposed:

3. Request to receive FinCEN Identifier (FinCEN ID) (check the box to receive a FinCEN ID)

Only those that select 1a would not have a FinCEN identifier. **Recommend** either making this a part of 1.a., or only having this options display if new 1i (proposed above) has not been completed.

Option for consideration:

1. * Type of filing (check only one box for lines 1a-1d)
- a. Initial report *(if this box is checked, a FinCEN Identifier (FinCEN ID) will be provided)*

D. #4

Current proposed – this question is asked prior to determining whether the company is domestic or foreign:

4. Foreign pooled investment vehicle *(check the box if Reporting Company is a foreign pooled investment vehicle)*

This question seems out of place here as it could only apply if the company is a Foreign Reporting Company. **Recommend** including this as question 10h in the Foreign Reporting Company questions instead.

E. #10b - g

None of these questions have an asterisk (*) indicating the information is required. **Recommend** clarifications such as: <does not include new 10h proposed in D above>

Domestic Reporting Company:

(if completing this section, either b, c, or d must be completed, then proceed to question 11)

Foreign Reporting Company:

(if completing this section, either e, f, or g must be completed, then proceed to question 11)

F. Current U.S. address:

Recommend providing additional guidance per 31CFR1010.380(b)(1)(i)(C):

Current U.S. address: *(street address of the principal place of business in the U.S.)*

G. #16. Existing reporting company

The positioning of this question makes it appear to be an element of the Current U.S. address. It seems to be located here because it identifies whether the next section needs to be completed, however, it seems to be more logical for the person completing the report to collect this data element at the beginning of the Reporting Company Information section. **Recommend** moving this question to above the Form of identification section and giving it a separate subsection, for example:

Company Formation:

6. Existing Reporting Company (check if Reporting Company was created or registered before January 1, 2024) *(if this box is checked, then Company Applicant information is not required)*

Also, **recommend** additional guidance at the beginning of Part II., for example:

Part II. Company Applicant Information *(report up to two Company Applicants, lines 18-33 are repeated for each Company Applicant) (if Existing Reporting Company was checked in ##, proceed to Part III.)*

Further, **recommend** those questions in Part II. not be displayed if Existing Reporting Company is selected and the FinCEN identifier is provided.

Part II. Company Applicant Information and Part III. Beneficial Owner Information

H. Identification information

Current proposed in Part II. #30. and Part III # 48:

* Identifying document type *(select one from list of lines 14a-14d)*

- a. State-issued driver's license
- b. State/local/Tribe-issued ID
- c. U.S. passport
- d. Foreign passport

The way this is written incorrectly implies that all four options are equally preferable, which does not align with 31CFR1010.380(b)(1)(ii)(D)(4) <highlight added>:

(4) A non-expired passport issued by a foreign government to the individual, **if the individual does not possess any of the documents described in paragraph (b)(1)(ii)(D)(1), (b)(1)(ii)(D)(2), or (b)(1)(ii)(D)(3) of this section; and**

Recommend additional guidance for the last option:

d. Foreign passport *(can only be provided if individual does not possess document type a., b., or c.)*

I. Certification statement

The current proposed report does not include a certification statement. 31CFR1010.380 (b) states the following <highlight added>

(b) *Content, form, and manner of reports.* Each report or application submitted under this section shall be filed with FinCEN in the form and manner that FinCEN shall prescribe in the forms and instructions for such report or application, and each person filing such report or application shall certify that the report or application is true, correct, and complete.

Recommend including a certification statement similar to the one proposed in the application that will be used to collect information from individuals who seek to obtain a FinCEN identifier (1506-0076, 88 FR 2764, 2023-00708). The language here reflects the changes that I proposed on the other certification statement.

Part IV. Certification

52. * I certify that the information furnished is true, correct, and complete. I understand that the willful provision of false or fraudulent information to FinCEN for purposes of complying with the Beneficial Ownership Information Reporting Requirements may result in civil or criminal penalties.