



UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

Douglas J. McCarron

General President

March 13, 2023

Submitted electronically at www.regulations.gov
Policy Division
Financial Crimes Enforcement Network
P.O. Box 39
Vienna, VA 22183

RE: Agency Information Collection Activities; Proposed Collection; Comment Request; Beneficial Ownership Information Reports (Docket Number FINCEN-2023-0002, OMB 1506-0076)

Dear Sir or Madam:

On January 17, 2023, the Financial Crimes Enforcement Network (“FinCEN”) published in the *Federal Register* an information collection request (“ICR”) regarding the implementation of beneficial ownership information (“BOI”) reporting required by the Corporate Transparency Act (“CTA”), 29 U.S.C. §5336.¹ Public comments must be submitted on or before March 20, 2023. Please consider this submission to be the United Brotherhood of Carpenters and Joiners of America’s (“UBC”) response to the ICR.

I. Introduction and Statement of Interest

With hundreds of thousands of members employed primarily in the construction and wood products industries, the UBC is one of North America’s largest building-trades unions. The UBC has a continent-wide presence composed of its international union headquarters in Washington, D.C., approximately twenty councils, and hundreds of local unions. Since its founding, the UBC has led efforts to curb the abuse of labor in the construction industry.

The UBC has consistently encouraged improvements to make America’s construction markets fairer, safer, more productive, and more favorable for both workers and honest employers.

¹ *Agency Information Collection Activities; Proposed Collection; Comment Request; Beneficial Ownership Information Reports*, 88 Fed. Reg. 2760 (January 17, 2023) (hereinafter “ICR”).

To this end, the UBC and its affiliated councils and local unions frequently engage with construction workers, contractors, lawmakers, community leaders, and federal and state law-enforcement agencies regarding flagrant and increasingly common instances of serious tax fraud, insurance fraud, wage theft, labor trafficking, threats to safety, and other abuses of labor and employment laws occurring in the construction industry. It is this interest in equity, the dignity of labor, and the rule of law that brings us to comment on the proposed report.

FinCEN is issuing a series of rules to implement the CTA. The first rule, finalized in September 2022, addresses the definition of beneficial owners, BOI reporting requirements, and exemptions to reporting.² The second rule, proposed in December 2022, addresses BOI access, disclosure, and non-disclosure requirements.³ The UBC has filed comments in connection with both of these rules, as well on FinCEN's April 2021 advanced notice of proposed rulemaking⁴ that predated them.⁵ Our prior comments are incorporated herein by reference.

The CTA was enacted to "protect interstate and foreign commerce" and "better enable critical national security, intelligence, and law enforcement efforts to counter...illicit activity."⁶ Financial crimes in the construction industry are a very real threat to interstate commerce, and the need to enhance law enforcement capabilities to counter the threat is profound. The UBC therefore supports the CTA, FinCEN's related rulemakings, and the goals of the ICR. That said, we have serious concerns about certain elements of the reporting form and have included recommendations to improve its effectiveness. Our comments are necessarily influenced by the alarming growth of lawlessness in the construction industry facilitated by illicit labor-providers (whom we call "labor brokers") and shell companies.

² *Beneficial Ownership Information Reporting Requirements*, 87 Fed. Reg. 59498 (Sept. 30, 2022).

³ *Beneficial Ownership Information Access and Safeguards, and Use of FinCEN Identifiers for Entities*, 87 Fed. Reg. 77404 (December 16, 2022) (hereinafter "BOI Access Rule").

⁴ *Beneficial Ownership Information Reporting Requirements*, 86 Fed. Reg. 17557 (April 5, 2021).

⁵ Matthew Capece and Brian Quinn, *Beneficial Ownership Information Reporting Requirements* (Docket Number FINCEN-2021-0005 and RIN 1506-AB49), United Brotherhood of Carpenters and Joiners of America (May 5, 2021).

Matthew Capece and Brian Quinn, *Beneficial Ownership Information Reporting Requirements* (Docket Number FINCEN-2021-0005 and RIN 1506-AB49), United Brotherhood of Carpenters and Joiners of America (February 4, 2022).

Matthew Capece and Brian Quinn, *Beneficial Ownership Information Access and Safeguards, and Use of FinCEN Identifiers for Entities* (Docket Number FINCEN-2021-0005 and RIN 1506-AB49/AB59), United Brotherhood of Carpenters and Joiners of America (February 1, 2023).

⁶ BOI Access Rule, *supra* note 3 at 77413.

II. The Report Facilitates the Evasion of Reporting Requirements

The labor brokers and shell company operators relied upon by malign contractors have such a disdain for the rule of law that it is difficult to imagine many of them reporting or reporting truthfully. Unfortunately, the report makes it easy for criminal actors to evade reporting requirements and deceive FinCEN, thus undermining the goals of the CTA.

A. Exempt Status and the Exemption Relied Upon Need to be Disclosed

Entities relying upon a reporting exemption do not have to file the proposed form at all. (Only previous filers who have become exempt need to file, but they are not required to specify the exemption relied upon.⁷) This failure in the rule and the proposed report is a gift to malign contractors and their shell-company-shrouded labor brokers.

Most labor brokers and shell company operators will not file, and, if they are ever investigated, will then claim an exemption. The exemption we can expect them to rely upon is 31 C.F.R. 1010.380(c)(2)(xi) for large operating companies. To qualify for the exemption, an entity must employ in the U.S. more than 20 full-time employees and must have filed a federal income tax return with more than \$5,000,000 in gross receipts. Of course, no such tax filing will exist, and cross referencing the claimed exemption to federal tax filings will reveal the deception, leading to a law enforcement investigation.⁸ As a result, requiring entities relying upon an exemption to file and to specify the exemption is critical to exposing violations of the CTA, tax fraud and related financial crimes in the construction industry.

B. The Report Offers an Escape Hatch from Disclosing Applicants and Beneficial Owners

The report provides in item 17 for applicant information⁹ and item 34 for beneficial owner information¹⁰ a check box for filers to mark to claim that they are “unable to obtain any required information” about one or more company applicants or beneficial owners. This is an invitation for labor brokers and shell company operators to report only what they want FinCEN to see. FinCEN can rely on them only reporting the names of those found on secretary of state paperwork as incorporators, registered agents, and corporate officers. This prevarication-made-easy is not aligned with the goals of the CTA, because the information collected will be nothing more than

⁷ ICR, *supra* note 1 at 2763.

⁸ This mismatching with federal tax filings, or the absence of filings, reinforces the importance of disclosing tax identifiers as proposed in the ICR.

⁹ ICR, *supra* note 1 at 2763.

¹⁰ *Id.* at 2764.

what can be found on a secretary of state's web site. These check boxes should therefore be removed to encourage more robust reporting.

III. The UBC Supports the Inclusion of Tax Identification Numbers

A goal of the CTA is to improve the efficiency and effectiveness of law enforcement. Complications arise when individuals and businesses have similar names. This is where tax identifiers can make a difference. Moreover, having tax identifiers facilitates efficient cross-referencing with tax and other filings. Despite the shortcomings identified above, we note that the proposed report requires the filer to report their Employer Identification Number, Social Security Number, or Individual Tax Identification Number.¹¹ The UBC supports this requirement.

IV. Conclusion

The UBC, in general, supports the goals of the report and applauds the requirement to disclose tax identifiers. We do, however, have concerns about the report not being fully aligned with the CTA. Unfortunately, failing to require disclosure of reporting exemptions and the inclusion of check boxes as a safe harbor for not reporting company applicants and beneficial owners are invitations to deceive FinCEN. Construction-industry scofflaws will be all too eager to accept the invitation.

Respectfully submitted,

Matthew F. Capece

Matthew F. Capece, Esq.

Representative of the General President

United Brotherhood of Carpenters and Joiners of America

/s/ Brian F. Quinn

Brian F. Quinn, Esq.

Shanley, A Professional Corporation

Counsel for the United Brotherhood of Carpenters and Joiners of America

¹¹ ICR, *supra* note 1 at 2763.