



March 20, 2023

Via Electronic Mail

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

Re: Request for Comments Regarding Beneficial Ownership Information Reports (Docket No. FINCEN-2023-0002; OMB Control No. 1506-0076)

To Whom It May Concern:

The Bank Policy Institute¹ appreciates the Financial Crimes Enforcement Network's continued efforts to implement the Corporate Transparency Act (the "CTA"),² which was enacted as part of the Anti-Money Laundering Act of 2020 (the "AML Act"),³ as well as the opportunity to respond to the proposed 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 (the "BO Reporting Rule").⁴ BPI has been and remains a strong supporter of ending the use of anonymous shell companies and continuing ongoing efforts to modernize the U.S. anti-money laundering/countering the financing of terrorism regime. BPI agrees, as recognized by Congress in the CTA, that uniform beneficial ownership information reporting requirements are important to more effectively combat illicit finance and to further the purpose of the AML Act and the Bank Secrecy Act more generally.

We are writing this letter to express concern that the usefulness of the information reported to FinCEN by reporting companies will be greatly limited if the final version of the reporting form to collect beneficial ownership

¹ The Bank Policy Institute is a nonpartisan public policy, research and advocacy group, representing the nation's leading banks and their customers. Our members include universal banks, regional banks, and the major foreign banks doing business in the United States. Collectively, they employ almost two million Americans, make nearly half of the nation's small business loans, and are an engine for financial innovation and economic growth.

² Pub. L. No. 116-283, Div. F, Tit. LXIV, 134 Stat. 4604 (2021).

³ Pub. L. No. 116-283, Div. F, 134 Stat. 4547 (2021).

⁴ 87 Federal Register 59498 (Sept. 30, 2022).

information includes the proposed “unknown” and “unable to identify” response options without necessary clarifications of the extremely limited circumstances where the required information may reasonably be unknowable. In this letter, we begin by providing relevant background. We then offer several suggestions to enhance the usefulness of the information reported to FinCEN to all authorized users of the FinCEN beneficial ownership registry, including by ensuring the reported information is accurate and complete.

Background

Under the BO Reporting Rule, each reporting company is required to certify that its report to FinCEN is true, correct, and complete.⁵ The CTA subjects “any person”—not just a reporting company—to civil and criminal penalties for willfully providing or attempting to provide false or fraudulent beneficial ownership information to FinCEN or willfully failing to report complete or updated beneficial ownership information to FinCEN.⁶ This certification requirement furthers the purposes of the CTA by discouraging the use of opaque corporate structures to facilitate illicit finance and improving the visibility of law enforcement and other designated stakeholders into corporate structures—*i.e.*, that the reported information is “highly useful.”⁷ The certification requirement also is consistent with the CTA’s direction that the procedures and standards prescribed by FinCEN governing reports ensure the beneficial ownership information reported to FinCEN is “accurate, complete and highly useful.”⁸

Consistent with the CTA, the usefulness, accuracy and completeness of the beneficial ownership information reported to FinCEN should be paramount. At the same time, BPI recognizes that there may be situations in which applicant information is legitimately unknown⁹ or a reporting company, despite diligent efforts, is unable to acquire complete beneficial ownership information.¹⁰ BPI believes, however, that these situations should be extremely limited; they should be the exception, not the rule. The form that FinCEN proposes using to collect beneficial ownership information, however, permits a reporting company to report in virtually all instances that it was unable to obtain the information required by the BO Reporting Rule with respect to beneficial owners and applicants by checking various “unknown” boxes,¹¹ and that it was unable to identify all company applicants and beneficial owners, in each case again by checking an “unable to identify” box.¹²

BPI is concerned that the availability in the form of these many “unknown” and “unable to identify” boxes could discourage reporting companies from undertaking a “diligent inquiry” to secure the requisite information and,

⁵ 87 Federal Register 59514. See also 31 C.F.R. § 1010.380(b).

⁶ 87 Federal Register 59515. See 31 U.S.C. § 5336(h); 31 C.F.R. § 1010.380(g). Liability is subject to a carefully circumscribed safe harbor that encompasses good-faith corrections. See 31 U.S.C. 5336(h)(3)(C); 31 C.F.R. § 1010.380(a)(3). Some commenters expressed concern with the certification requirement in light of the scope and availability of civil and criminal penalties.

⁷ Pub. L. No. 116-283, Div. F, Tit. LXIV, §§ 6002 & 6402, 134 Stat. 4604 (2021).

⁸ 31 U.S.C. § 5336(b)(4).

⁹ See, e.g., 87 Federal Register 59522, 59560, 59587.

¹⁰ See, e.g., *id.* at 59512, 59514, 59546.

¹¹ 88 Federal Register 2760, 2763-2764 (Jan. 17, 2023).

¹² *Id.*

further, from “tak[ing] care to verify the information” before reporting it to FinCEN.¹³ If reporting companies perceive that they may check “unknown” or “unable to identify” in lieu of undertaking such efforts, the usefulness of the information reported to FinCEN to all authorized users could be limited, including because both accuracy and completeness could be called into question.¹⁴ BPI believes these to be real risks presented by the proposed form because FinCEN has not articulated criteria governing when a reporting company may legitimately check an “unknown” or “unable to identify” box. Without any additional clarification, at a minimum, the existence of the options are likely to create confusion.

Recommendations

In view of the foregoing and to facilitate the CTA’s mandate that the procedures and standards prescribed by FinCEN governing reports ensure the beneficial ownership information reported to FinCEN is “accurate, complete and highly useful,”¹⁵ BPI encourages FinCEN to adjust the form to require a reporting company, each time it checks:

- an “unknown” box, to explain why it was unable, and the efforts it undertook, to obtain the required information; and
- an “unable to identify” box, to explain why it was unable, and the efforts it undertook, to identify all applicants or beneficial owners.

For the same reasons, BPI encourages FinCEN, in the instructions accompanying the form and in related guidance, to:

- clearly explain, including through the use of examples, the extremely limited situations in which an “unknown” or “unable to identify” box may be checked and what constitutes “diligent inquiry” and “care to verify”;
- reiterate that, if the reporting company checks one or more of these boxes, it is obligated to subsequently update the reported information as needed and correct any incorrectly reported information, within specific timeframes; and
- confirm that the reporting company may be subject to civil or criminal penalties if it checks “unknown” or “unable to identify” without undertaking diligent inquiry or care to verify, or subsequently updating or correcting the information as required.

BPI believes that implementing these recommendations would greatly improve the usefulness of the information reported to FinCEN, including by providing greater confidence in its accuracy and completeness.

¹³ In the BO Reporting Rule, FinCEN voiced its “expect[ation] that reporting companies will take care to verify the information they receive from their beneficial owners and applicants before they report it to FinCEN.” 87 Federal Register 59514. See also *id.* at 59515 (FinCEN “does not expect that an inadvertent mistake by a reporting company acting in good faith after diligent inquiry would constitute a willfully false or fraudulent violation”).

¹⁴ An “unknown” option on the proposed report to be used to collect beneficial ownership information is further evidence of why financial institutions should not be required or expected to access the registry on a “business as usual” basis. For additional information on this general issue, see BPI’s Comment Letter, dated February 14, 2023, in response to FinCEN’s Dec. 16, 2022 Advance Notice of Proposed Rulemaking (the “ANPRM”) regarding beneficial ownership access and safeguards and use of FinCEN identifiers for entities available at: [BPI-Comment-Letter-re-Proposed-FinCEN-BOI-Access-Rule-filed-2-14-23-.pdf](#).


¹⁵ 31 U.S.C. § 5336(b)(4).

Implementation would also reduce the potential for confusion.

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BPI appreciates FinCEN's consideration of its comments on this form. If you have any questions, please contact the undersigned by phone at 917-863-5945 or by email at Gregg.Rozansky@bpi.com.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Gregg Rozansky". The signature is fluid and cursive, with a horizontal line extending from the end.

Gregg Rozansky
Senior Vice President,
Senior Associate General Counsel
Bank Policy Institute