

Congress of the United States

Washington, DC 20515

April 3, 2023

The Honorable Janet Yellen
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue N.W.
Washington, D.C. 20220

Mr. Himamauli Das
Acting Director
Financial Crimes Enforcement Network (FinCEN)
P.O. Box 39
Vienna, Virginia 22183

Re: Department of the Treasury’s Notice of Proposed Rulemaking Titled “Agency Information Collection Activities; Proposed Collection; Comment Request; Beneficial Ownership Information Reports,” Docket Number FINCEN-2023-0002, OMB control number 1506-0076, 88 FR 2760, 2023-00703 (January 17, 2023)

Dear Secretary Yellen and Acting Director Das:

We write to express our concerns about the Department of the Treasury’s Notice and Request for Comments titled “Agency Information Collection Activities; Proposed Collection; Comment Request; Beneficial Ownership Information Reports” (“Notice”), released on January 17, 2023. While we understand that the Department may be altering the form referenced in this Notice and Request for Comment, the following concerns should be at the forefront of any future discussions.

It is disappointing that this Notice deviates significantly from Congress’ intent.¹ The beneficial ownership reporting regime was intended to be a strategic tool to target bad actors and nation-states like Russia and China who are abusing our financial system to engage in illicit activity. At the same time, Congress was clear regarding its intent to enhance the customer due diligence efforts of financial institutions, improve information available to law enforcement and other agencies, and minimize the burdens on small businesses tasked with reporting information to FinCEN. Unfortunately, it is clear that Section 5336(b)(4)(B)(ii) of Title 31, U.S. Code, was not properly factored into this proposed rulemaking.

The agency made the conscious decision to craft the Notice with an “escape hatch.” Specifically, allowing “Unable to identify...unable to obtain” or “Unknown...not able to obtain” determinations undermine the effectiveness of the law. The statute provides straightforward, easy-to-understand reporting parameters that do not allow a reporting company to offer such responses. In fact, the Corporate Transparency Act (“CTA”) states:

In accordance with regulations prescribed by the Secretary of the Treasury, a report delivered under paragraph (1) shall, except as provided in subparagraph (B), identify each beneficial owner of the applicable reporting company and each applicant with respect to that reporting company by— “(i) full legal name; “(ii) date of birth; “(iii) current, as of the date on which the report is delivered, residential or business street address; and “(iv)(I) unique identifying number from an acceptable identification document; or “(II) FinCEN identifier in accordance with requirements in paragraph (3).²

Yet the phrases “Unable to identify...unable to obtain” or “Unknown...not able to obtain” are novel, appearing for the first time in this Notice. Allowing these options in any final rule will degrade the benefits of

¹ Division F of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2020, PL 116-283, January 1, 2021.

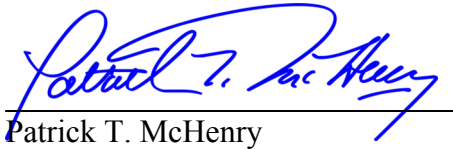
² 31 U.S. Code § 5336. Beneficial ownership information reporting requirements (emphasis added).

the registry to law enforcement and to financial institutions and provide an opportunity for bad actors to obscure the identity of the company applicant or beneficial owner. The result is that the registration form itself will undermine the underlying, bipartisan goals of the CTA.

The CTA was designed, in part, to streamline and improve the process by which financial institutions comply with their customer due diligence requirements. Per the Federal Financial Institutions Examination Council's Bank Secrecy Act/Anti-Money Laundering Examination Manual, "At a minimum, the bank must obtain the following identifying information for each beneficial owner of a legal entity customer: (i) Name (ii) Date of birth, (iii) Address, (iv) Identification number."³ Based on this section of the exam manual alone, a financial institution would be unable to provide services to any customer who indicated "Unable to identify... unable to obtain" or "Unknown...not able to obtain" for any of this information. To that end, the financial institution would be unable to rely on any information housed in the beneficial ownership database if "Unable to identify...unable to obtain" or "Unknown...not able to obtain" were present in a finalized record. The CTA does not allow for reporting companies to avoid transparency. Unfortunately, the form as described in FinCEN's current Notice does allow for that avoidance.

For these reasons, we call on FinCEN to follow through on recent reports that it will amend this proposed rule, including the content of the form. In doing so, FinCEN must craft an updated form consistent with current law, substantially modifying the Notice to strike the form's options for "Unable to identify... unable to attain," and "Unknown...unable to obtain." We continue to make ourselves available to work directly with you on this matter.

Sincerely,



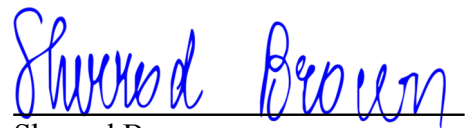
Patrick T. McHenry
Chairman
House Committee on Financial
Services



Sheldon Whitehouse
Chairman
Senate Committee on the Budget

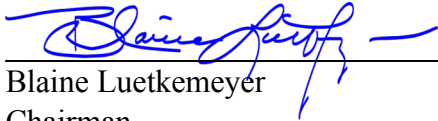


Roger Williams
Chairman
House Committee on Small
Business

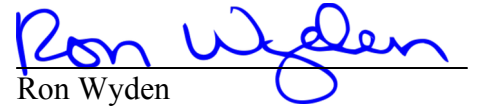


Sherrod Brown
Chairman
Senate Committee on Banking,
Housing, and Urban Affairs

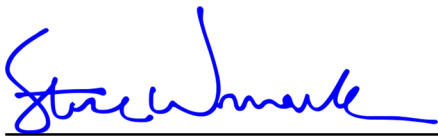
³ Federal Financial Institutions Examination Council Bank Secrecy Act/Anti-Money Laundering Examination Manual, *Assessing Compliance with BSA Regulatory Requirements: Beneficial Ownership Requirements for Legal Entity Customers– Overview*, page 2.



Blaine Luetkemeyer
Chairman
Subcommittee on National
Security, Illicit Finance, and
International Financial Institutions



Ron Wyden
United States Senator
Chairman, Committee on Finance



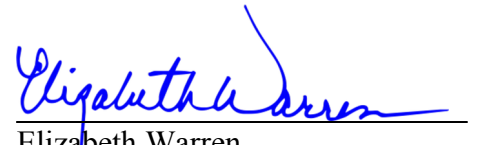
Steve Womack
Chairman
House Appropriations
Subcommittee on Financial
Services and General Government



Michael D. Crapo
United States Senator
Ranking Member, United States
Senate Committee on Finance



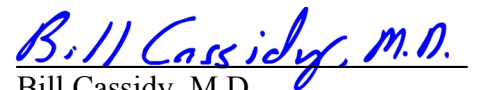
Maxine Waters
Ranking Member, Committee on
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Elizabeth Warren
United States Senator



Joyce Beatty
Member of Congress
Ranking Member, Subcommittee
on National Security, Illicit
Finance, and International
Financial Institutions



Bill Cassidy, M.D.
United States Senator