

October 26, 2023

Financial Crimes Enforcement Network

Re:

Beneficial Ownership Information (BOI) Reporting Requirements

OMB Control Number 1506-0076

ICR Reference Number 202309-1506-001

Thank you for the opportunity to respond to your request for comments.

My professional background is 40+ years providing tax services in public accounting. My clients were a mixture of complicated and simple businesses and individuals. The opinions and recommendations I express below are based on my past experiences collaborating with clients.

Unless Congress acts, BOI reporting is here to stay.

The Burden of BOI Reporting

I believe the hours required of Reporting Companies to file the BOI reports are understated in the estimates due to two main factors: 1) The time (hours) required to solicit the personal information from individuals identified as Beneficial Owners could be extensive and 2) because errors in reporting could result in statutory financial penalties and imprisonment, reporting companies will be cautious when filing BOI reports.

On factor 1): Imagine the reaction the first time an individual receives a request for their full name, their home address, their date of birth, and a copy of their driver's license or passport because it needs to be reported to FinCEN. I think there will be a lot of hesitation. Some might think it is a trick to steal personal information.

On factor 2): If you oversee a Reporting Company, would you be concerned the Reporting Company's actions will show the BOI report was prepared in good faith after diligent inquiry? FinCEN is focused on criminals, and you do not want to be considered one. Diligent people may not ever consider a BOI report a routine filing.

On factor 1), I suggest the following:

I suggest FinCEN prepare information solicitation forms (hereafter referred to as Form or Forms) for use by Reporting Companies to request the BOI information from its Beneficial Owners and Applicants. These Forms would facilitate communication with the Beneficial Owners and Applicants. Completed Forms would be retained by the Reporting Company. Other details of suggested Forms:

- a. The Forms could be headed with a boiler plate statement that starts “The Reporting Company below believes you should be included in the report to FinCEN on Beneficial Ownership of the Reporting Company.” The boiler plate information could also communicate the responsibilities of the Reporting Company, the Beneficial Owners, and others. It is possible that the Form could be contained on a single page. I suggest the Forms be included in the BOI filing instructions. Imagine how helpful this would be to the Reporting Company that struggles to explain the reporting rules.
- b. Completed Forms should require the signature of the person providing the information and require the signer to certify the accuracy of the information. The Form would document the information collected by the Reporting Company. This should help to avoid errors in the use of the collected information. The Forms would support and improve the collection of the personal information included in the BOI report. Hopefully, it will help to validate the Reporting Company requests.
- c. If upper-tier entities are exempt, making the Reporting Company exempt, that communication of exemption could also be documented in a Form.
- d. The Forms for Beneficial Owners would request the FinCEN Identifier or full legal name, address, DOB, unique ID number and an image from ID document. Forms should also be developed to collect Applicant, minors, and nominee information.
- e. Similar Forms could be developed to request ownership information of direct non-individual owners (entities or trusts).

On factor 2): I suggest the BOI report filing instructions address all filing situations, for example:

- a. For initial reports, if there are multiple reporting events occurring before the due date of the initial report, can they be combined in one initial filing?
- b. For updated reports, if there are multiple reporting events occurring before the due date of the initial updated report, can they be combined in one updated filing?
- c. Can corrected reports and updated reports discovered at the same time be combined in the same filing? If not, is there an order that the two reports should be filed?
- d. Because there may be confusion over the applicability of income tax concepts to BOI reporting, including ownership attribution, a clear statement of the applicability is suggested.
- e. For new businesses expecting future operations to qualify for a reporting exemption, will those new companies nevertheless be required to file BOI reports until the necessary licenses, registrations, etc. are obtained in those exempt industries?
- f. Taking options or the right to purchase ownership into consideration, do you consider the dilution that might occur to owners not holding the option or right?
- g. For the identification of individuals with substantial control over the Reporting Company, I suggest the filing instructions include a greater description of the CATCH-ALL indicator mentioned in the Small Entity Compliance Guide.
- h. If a Beneficial Owner of a Reporting Company receives a FinCEN Identifier after the Beneficial Owner was reported in a BOI report without the FinCEN Identifier, is an updated report required or allowed? If not, can the FinCEN Identifier be utilized in a future updated report?

- i. In the determination of an individual's ownership percentage in a Reporting Company, if the interest is jointly owned, will the form of joint ownership (i.e., tenants by the entirety, joint with right of survivorship or joint without right of survivorship) result in different inclusion amounts of ownership? For married individuals, can application of community property laws to ownership interests not jointly titled result in different inclusion amounts of ownership compared to married individuals under non-community property laws?
- j. Regarding updated reports caused by the death of a beneficial owner of a Reporting Company, Regulation 1010.380-(a)(2)(iii) states a change in required information will be deemed to occur when the estate of the deceased is settled. How would this regulation apply to the change in required information of the deceased where the Reporting Company interest was titled to a traditional grantor trust (deceased was the grantor, the trustee and the beneficiary and had unrestricted rights to add or distribute assets of the trust)?

Comments on the Proposed Information Collection

Comments on proposed data fields- Implementation: The proposed implementation data fields are requesting the information required by law. Question: Does FinCEN intend to also collect the date of the event (the creation, registration, correction, or update) triggering the required BOI reporting? If not, how will a Reporting Company represent the report was timely filed?

Comments on proposed data fields-Potential Second Implementation:

- a. I believe the Reporting Company should have enough basic information on direct owners to identify individuals even if the personal information is incomplete and unconfirmed. I suggest a check box be added to indicate the Beneficial Owner's information is incomplete or unconfirmed. This will highlight the omission to the Reporting Company.
- b. The Reporting Company's knowledge of indirect owners through the ownership of an upper tier entity may be limited or uncertain. For consideration, I suggest fields be added to request identity of upper tier entities that have not responded (name, address, contact person, etc.). This could be voluntary information provided by the Reporting Company.
- c. I suggest there be a timeline established to complete a previous incomplete BOI report. The Reporting Company filing an incomplete report might be required to file a report again in 30 days.
- d. Possibly, certain proposed data fields for the alphabetic lines under lines 48 and 49 in the potential second implementation might be missing or duplicated .

Thank you for your consideration of the above.

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