

**By electronic submission (via the Federal E-rulemaking Portal)**

October 30, 2023

Ms. Andrea Gacki  
Director  
Financial Crimes Enforcement Network  
U.S. Department of the Treasury  
P.O. Box 39  
Vienna, VA 22183

**Re: Agency Information Collection Activities; Comment Request; Beneficial Ownership Information Reports, Document No. FINCEN–2023-21293**

Dear Director Gacki,

Transparency International U.S. (“TI-US”) commends the U.S. Department of the Treasury (“Treasury”) and the Financial Crimes Enforcement Network (“FinCEN”) for completing this Notice of Information Collection and Request for Comment (“Draft Form”) to further the implementation of the Corporate Transparency Act (“CTA”).

TI-US is part of the largest global coalition dedicated to fighting corruption. With over 115 national chapters worldwide, Transparency International (“TI”) partners with businesses, governments, and citizens to promote transparency and to develop and implement effective measures to tackle and deter corruption, including by working around the world on the creation and implementation of accurate and effective beneficial ownership databases.<sup>1</sup>

As we noted in our previous comment,<sup>2</sup> the forthcoming beneficial ownership reporting form is the single most consequential document connected to the successful implementation of the CTA, a landmark anticorruption and anti-money laundering law.

**1. Elimination of the “unknown” check box and clarification of reporting obligations**

We greatly appreciate FinCEN’s proposed revisions to the Draft Form eliminating the options in Part II of the previous version of the Draft Form (“Previous Version”) that had provided the following options: “Unable to identify all Company Applicants (check if you are unable to obtain any required information about one or more Company Applicants)” (Part II, Question 17) and “Unknown (check the box if you are not able to obtain this information about the Company Applicant)” (Part II, Question 19).<sup>3</sup> Identical

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<sup>1</sup> For more information, please visit [www.us.transparency.org](http://www.us.transparency.org) (TI-US) and [www.transparency.org](http://www.transparency.org) (TI).

<sup>2</sup> See TI-US, “TI-US Comment on Treasury’s Draft Form for Reporting Beneficial Ownership Information Form,” Mar. 21, 2023, available at <https://us.transparency.org/resource/ti-us-comment-on-treasurys-draft-form-for-reporting-beneficial-ownership-information/>.

<sup>3</sup> See generally FinCEN, “Agency Information Collection Activities; Proposed Collection; Comment Request; Beneficial Ownership Information Reports,” 67444, Jan. 17, 2023, available at

options appeared with regard to the applicant's last name, first name, date of birth, address type, address (number, street, and apartment or suite number), address (city), country/jurisdiction, state, zip/foreign postal code, identifying document, identifying document number, identifying document jurisdiction, and identifying document image.<sup>4</sup> Similar options also appeared in Part III of the Draft Form regarding the reporting company's beneficial owners (e.g., "Unknown (check the box if you are not able to obtain this information about the Beneficial Owner)").<sup>5</sup>

In addition, we appreciate, in the instructions to reporting companies, the clarification that the Draft Form will:

[R]equire every field to be completed (i.e., have responses entered in text boxes), and the BOIR Form can only be submitted once each required field has been filled out. Any field left blank, whether intentionally or accidentally, will prevent the filer from submitting their BOIR Form.<sup>6</sup>

This clear directive is easily understood by covered entities, follows the practice of other government reporting regimes, and furthers congressional intent that our anti-money laundering laws discourage individuals, even unknowingly, from entering into business partnerships or other arrangements with illicit actors seeking to abuse U.S. corporate formation and or our financial system writ large.

Taken together, these changes represent a significant step toward honoring the twin directives in the CTA of generating accurate, complete, and highly useful information for law enforcement and other certified users of the data and minimizing burdens on small business.<sup>7</sup>

## **2. Proposing a drop-down box for incomplete reporting**

Unfortunately, FinCEN's proposed revisions to the Draft Form includes the possible addition of:

[A] mechanism for filers to temporarily indicate if they are unable to provide certain information for certain reasons. Specifically, there would be a drop-down option in the Beneficial Owner(s) section that would allow filers to specify one of a few reasons why they are temporarily unable to provide a piece of information about a beneficial owner. FinCEN is considering several drop-down options, including (but not limited to): "Cannot Contact BO"; "BO Unresponsive"; "BO Refused to Provide"; and "Third Party Refused to Provide."<sup>8</sup>

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<https://www.federalregister.gov/documents/2023/01/17/2023-00703/agency-information-collection-activities-proposed-collection-comment-request-beneficial-ownership>.

<sup>4</sup> *See id.*

<sup>5</sup> *Id.*

<sup>6</sup> FinCEN, "Agency Information Collection Activities; Comment Request; Beneficial Ownership Information Reports, Document No. FINCEN-2023-21293, Sept. 29, 2023, available at <https://www.federalregister.gov/documents/2023/09/29/2023-21293/agency-information-collection-activities-submission-for-omb-review-comment-request-beneficial>.

<sup>7</sup> *See* 31 U.S.C. 5336(b)(1)(F); 31 U.S.C. 5336(b)(4)(B)(ii).

<sup>8</sup> FinCEN, "Agency Information Collection Activities; Comment Request; Beneficial Ownership Information Reports, Document No. FINCEN-2023-21293, 67444, Sept. 29, 2023, available at <https://www.federalregister.gov/documents/2023/09/29/2023-21293/agency-information-collection-activities-submission-for-omb-review-comment-request-beneficial>.

While significantly less harmful to data integrity than the Previous Form’s “unknown” checkbox, such an option still raises significant concerns, including foreseeable delays in collecting accurate, complete, and highly useful information and potential problems for reporting companies.

For instance, if a filer provides incomplete information, and relies on one of the options in the drop-down menu, they may incorrectly, yet reasonably, infer that they can nevertheless access financial services while they gather the remaining information. The filing was in a sense accepted by FinCEN—even if temporarily. During that period, if such an applicant sought to obtain credit, open a bank account, or access other financial services, the financial institution, after performing customer identification and due diligence compliance, would likely deny or delay such services, given the former’s mandate to collect and verify beneficial ownership information. As such, if the financial institution were to check the beneficial ownership database, and the information provided is incomplete or differs from what a reporting company presented at the account opening, this discrepancy would likely trigger the filing of a suspicious activity report (“SAR”) and may result in denied or delayed access to financial services. Such confusion not only wastes time but could harm business operations due to expectations of service, while engendering ill will between the client and the financial institution.

FinCEN explains its rationale for allowing such partial filings as follows:

[Requiring complete information at once] might inadvertently discourage reporting companies from filing in a timely manner (or filing at all) because they do not have sufficient information. It may also incentivize reporting companies to file meaningless or untruthful information in certain fields to make a deadline. These difficulties also have the potential to significantly increase the volume of inquiries to FinCEN’s Contact Center from reporting companies that seek clarification of the filing requirements when they are unable to obtain BOI.<sup>9</sup>

This line of reasoning is unpersuasive. If compiling complete and accurate information is a deterrent to “filing at all,” it is appropriate to question whether such a reporting company is sincere in their intention to comply in the first place. For the same reason that FinCEN may want bad actors to file partial information (e.g., to have a thread for law enforcement to follow), bad actors would want to exploit such an option in order to not file anything. Yet for *honest* businesses, in the decade-long debate over the CTA, no party ever publicly produced a single example of a reporting company for which individuals charged with ensuring compliance did not or could not know the beneficial ownership information for the entity. As we have stated in previous comments to FinCEN, and as FinCEN itself has recognized, most companies have simple structures for which compliance is not difficult. And for those that do hire corporate service providers to create more complex structures, they can in turn ask those same providers to identify who sits at the top of the corporate chain. FinCEN need not create an accommodation for such behavior and must not here knowingly sanction potential attempts to circumvent the CTA through this proposed revision.

FinCEN further explains that “The drop-down options would not excuse reporting companies of their obligation to submit complete and truthful written responses for each field *by the applicable filing deadline[.]*”<sup>10</sup> Thus including a drop-down option for partial filing does not functionally extend the timeline for accurate and complete filing. With the deadline intact, it is unclear, therefore, how such an option is a substantive response to hurried “meaningless” or “untruthful” BOI reporting. As a result, if (or perhaps when) a reporting company or applicant is confused about their obligations, they will likely call

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<sup>9</sup> See *id.*

<sup>10</sup> See *id.* (emphasis added).

the Contact Center whether they wait to file or decide to file partial information. The proposed drop-down option, then, would not appear to lessen the volume of calls to the Contact Center. If anything, the *prima facie* confusion it creates may inadvertently, yet predictably, increase the number of such calls.<sup>11</sup>

Given the above, it is unclear what a partial filing option accomplishes. FinCEN should remove this option from the Draft Form. Yet if such an option is implemented, FinCEN must be clear up front about the implications and dangers of partial filings—including the potential for denied or delayed access to financial services, the filing of SARs, and the potential for penalties for noncompliance, for reporting companies—in order to avoid or mitigate unnecessary confusion and harm to those companies.

If FinCEN is concerned about honest businesses lacking pertinent information (e.g., a scanned version of an identification document) when first attempting to file, the final Draft Form could include a simple “save my progress” button, similar to tax return assistance programs, which is more commonly and widely understood as an incomplete filing. Unclear or facially contradictory options or other complications will serve no purpose other than to sow confusion.

### **3. Consideration of an EZ-type form**

FinCEN estimates that 59 percent of U.S. reporting companies will have one beneficial owner who is also the applicant. For such companies with simple structures (those most likely to have fewer compliance resources), FinCEN should consider a simplified form, analogous to that of the IRS’ since discontinued form 1040 EZ for certain taxpayers.<sup>12</sup>

Such a form could be streamlined to exclude questions regarding foreign ownership or FinCEN identifiers. There could also be a check box for indicating if the beneficial owner and applicant are the same person in order to reduce repetition of data entry. Such a form would not impact the integrity or usefulness of the resulting data but could reduce compliance costs for many businesses.

### **Conclusion**

Anonymous companies present a serious risk to the safety and security of our country. A wealth of data and headline-grabbing stories illustrating such risks were produced during the decade long debate over the CTA.<sup>13</sup> With some notable suggestions, we commend FinCEN for its thoughtful development of the Draft

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<sup>11</sup> At a July 2023 hearing in the House Financial Services Committee, bipartisan concern was expressed over FinCEN’s ability to ensure that the small business community will have access to appropriate information and resources to comply with the CTA. There was particular concern for the ability of the Bureau to communicate effectively with the covered community.<sup>11</sup> FinCEN may better serve this community by making a clear and targeted request to Congress for sufficient resources to staff the Contact Center.

<sup>12</sup> 2017 version of IRS form 1040 EZ: <https://www.irs.gov/pub/irs-prior/f1040ez--2017.pdf>; IRS tax tips differentiating between 1040, 1040A, and 1040 EZ: <https://www.irs.gov/pub/irs-news/at-01-22.pdf>

<sup>13</sup> See, e.g., Emile van der Does de Willebois et al., “The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It,” World Bank, 2011, available at <https://openknowledge.worldbank.org/handle/10986/2363> (discussing how anonymous companies were used in over 70 percent of grand corruption cases reviewed to either carry out the corrupt activity or to hide its proceeds); Transparency International, “Panama Papers Four Years On: Anonymous Companies and Global Wealth,” Apr. 9, 2020, available at <https://www.transparency.org/en/news/panama-papers-four-years-on-anonymous-companies-and-global-wealth>.

Form and the entirety of the implementation rules for this landmark law to combat illicit finance and curb the abuse of our financial system.

We appreciate your consideration of our comments. If you have any questions, or for additional information on TI-US's work in this regard, please contact Gary Kalman, Executive Director of TI-US, at [gkalman@us.transparency.org](mailto:gkalman@us.transparency.org).

Respectfully submitted,

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