

October 30, 2023

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

Submitted electronically via <https://www.regulations.gov>

Re: Agency Information Collection Activities; Submission for OMB Review; Comment Request; Beneficial Ownership Information Reports (Docket No.: 88 FR 67443, OMB Control No.: 1506-0076)

Dear Director Gacki:

This letter responds to a notice and request for comment regarding FinCEN's revised approach to the Beneficial Ownership Information Report (BOIR) Form.

This letter was drafted by the FACT Coalition, a non-partisan alliance of more than 100 state, national, and international organizations promoting policies to build a fair and transparent global tax system that limits abusive tax avoidance and to curb the harmful impacts of corrupt financial practices.¹ This comment was prepared in consultation with 17 organizations both inside and outside of our Coalition, following a comment made by FACT on March 20, 2023 on the prior proposed version of the BOIR Form.²

Proposed Revisions to the BOIR Form

The FACT Coalition applauds the removal of the form field option to declare that certain information is “unknown” or that filers are “unable to obtain” such information. The FACT Coalition thanks FinCEN for responding to our concerns, and the concerns of many others, which were noted to be “uniformly critical” of these options. The previous proposal would have rendered the reporting effectively optional, which has no precedent and no legal basis in the text of the statute, nor a sound policy justification.

The Coalition believes the BOIR form can be improved by including an additional field (“Item 50”) requiring express certification that the form is true, correct, and complete. FinCEN requires this language in its proposed form to apply for a FinCEN Identifier under the statute,³ but this language is lacking in the form included in the appendix for this notice. The language used could be adapted from that proposed in

¹ To learn more about the FACT Coalition and its members, see <https://thefactcoalition.org/about-us/>.

² See FACT's comment on Agency Information Collection Activities; Proposed Collection; Comment Request; Beneficial Ownership Information Reports, March 20, 2023, <https://thefactcoalition.org/wp-content/uploads/2023/03/FACT-Coalition-Comment-BOI-Intake-Form-Final-3.20.22.pdf>.

³ Request for Comment, “Agency Information Collection Activities; Submission for OMB Review; Comment Request; Individual FinCEN Identifier Application,” 88 Federal Register 67449, September 29, 2023, <https://www.federalregister.gov/documents/2023/09/29/2023-21325/agency-information-collection-activities-submission-for-omb-review-comment-request-individual-fincen>.

the FinCEN Identifier Application (“Item 18”). The FACT Coalition suggests the following (suggested amendments to the language in Item 18 are *[italicized and bracketed]* below):

“I certify that the information furnished is true, correct, and complete. I understand that the willful provision to FinCEN of false, fraudulent, *[incomplete, or outdated]* information for purposes of complying with *[Beneficial Ownership Information Reporting Requirements]* may result in civil or criminal penalties.”

Further, the FACT Coalition endorses the suggestion by its member organization, Transparency International-U.S., that FinCEN deliver a positive user experience by allowing filers to “save progress” during the course of their electronic filing, and by offering an “EZ File” option for businesses with simple ownership structures. Doing so would meet the statute’s goal to minimize compliance costs for businesses without compromising the integrity of information filed.

Prospect of an “Alternative” Form

We note that FinCEN refers to an alternative implementation that it may consider, under which it would allow for users to temporarily indicate an inability to provide certain information for a small category of specific reasons. While FinCEN notes that it will “issue guidance well in advance of any change”, the FACT Coalition looks forward to the opportunity to comment in detail on any such proposed changes before they are implemented, as was the case with the prior proposed form, and as required by the Administrative Procedure Act (APA).⁴

In brief, the FACT Coalition notes the uniform criticism of any loopholes which allow a filer to leave beneficial ownership information incomplete, and queries whether the alternative implementation proposal will exceed the intention of and authority provided to FinCEN by the Corporate Transparency Act. The Coalition also shares the concerns posed by member organization Transparency International-U.S. that such a form would instead create confusion and threaten the Corporate Transparency Act’s dual mandate to provide useful information to law enforcement and to minimize costs to small businesses.

We expect that FinCEN will open any future alternative proposed form to public comment, as required by the APA, and look forward to engaging with the Bureau to make sure that the forms meet the letter and the spirit of the statute.

Thank you for the opportunity to comment. If you have questions, you may contact Erica Hanichak (ehanichak@thefactcoalition.org).

Signed,

Ian Gary
Executive Director

Erica Hanichak
Government Affairs Director

⁴ 5 U.S.C. 553.

Comment Prepared in Consultation With:

1. Anti-Corruption Data Collective (ACDC)
2. Citizens for Responsible Ethics in Washington (CREW)
3. Demand Progress Education Fund
4. Environmental Investigation Agency (EIA)
5. Friends of the Earth U.S.
6. Global Financial Integrity (GFI)
7. Government Accountability Project (GAP)
8. Institute for Policy Studies - Inequality Program
9. Joint Baltic American National Committee (JBANC)
10. Jubilee Network USA
11. Natural Resource Governance Institute
12. Never Again Coalition
13. The ONE Campaign
14. Open The Government
15. Project On Government Oversight
16. Sembrando Sentido
17. US-Africa Bridge Building Project