

Beneficial Ownership Information Access and Safeguards, and Use of FinCEN Identifiers for Entities

Official comment on the proposed rule

14 February 2023

Mr Himamauli Das
Acting Director
Financial Crimes Enforcement Network
U.S. Department of the Treasury
P.O. Box 39
Vienna, VA 22183
Submitted electronically via <http://www.regulations.gov>

RE: Docket No.: FINCEN-2021-0005 and RIN 1506-AB49/AB59

Dear Acting Director Das,

Open Ownership (OO) is pleased to contribute to the public consultation on the proposed rule on *Beneficial Ownership Information Access and Safeguards, and Use of FinCEN Identifiers for Entities* through the submission of this official comment.

OO is a global not-for-profit, non-governmental organisation that provides technical assistance to countries implementing beneficial ownership (BO) transparency reforms aimed at helping generate accurate beneficial ownership information (BOI) that complies with international standards, and meets the needs of data users across government, obliged entities and the wider private sector, and civil society.

Since 2017, OO has worked with over 40 countries to advance implementation of beneficial ownership reforms, as well as supporting the creation of over 15 new registers. This work has informed OO's Principles for effective beneficial ownership disclosure, a framework for considering the elements

that influence whether the implementation of reforms will generate **high-quality and reliable data, maximising usability** for users. OO has developed the world's leading [data standard](#) for BOI, co-founded the international [Beneficial Ownership Leadership Group](#), and built the world's first [transnational public beneficial ownership register](#).

OO notes that FinCEN is [required by the Corporate Transparency Act](#) (CTA) to "collect information in a form and manner that is reasonably designed to **generate a database that is highly useful** to national security, intelligence, and law enforcement agencies and Federal functional regulators," as reaffirmed in the [proposed rule](#), which states it is the "core objective of the CTA to establish a comprehensive beneficial ownership database and to ensure that the information it contains is **accurate and highly useful**."

To achieve this, Congress specifically required data best practices in enacting the CTA. For BOI to be usable, it should be easy to access, interpret and check. Given OO's international experience, this comment focuses on these core aims, concentrating on **global data best practices** for BOI in three aspects of implementation that contribute to **data accuracy and usability**, bearing in mind international standards, such as those set by the Financial Action Task Force (FATF):

1. **Verification** of information
2. Organising BOI as **structured and interoperable data** using internationally recognised data standards
3. Business processes around **data access** to maximise usefulness

On subjects not covered by this comment, OO would like to point Treasury to the official comment submitted to this docket by [the FACT Coalition](#), especially on concrete recommendations on how FinCEN can apply international best practice to the United States context within the parameters of the CTA. If FinCEN has any questions in relation to this comment or BO transparency reforms more broadly, please do not hesitate to get in touch.

1. Verification

In order to meet the “core objective of the CTA to establish a comprehensive beneficial ownership database and to ensure that the information it contains is accurate and highly useful,” it is important to holistically consider the range of aspects of implementation that can contribute to improving the accuracy of BOI. In addition to the mechanisms that are often collectively referred to as “verification”, of equal importance are legal requirements to keep information up-to-date, supported by sanctions and their enforcement, and collecting, storing and sharing BOI as well-structured data. The latter will also mean many of the verification checks can be automated, and allow for the use of certain privacy-enhancing technologies (PETs).

OO uses a broad definition of verification: it is the **combination of checks and processes** that a particular disclosure regime opts for to ensure that the BOI in a central government register is of **high quality**, meaning it is **accurate** and **complete** at a given point in time. OO notes that the definition that FinCEN has used for verification in the notice of proposed rulemaking ([NPRM](#)) is narrower:

“Verification,” as that term is used here, means confirming that the reported BOI submitted to FinCEN is actually associated with a particular individual.

While this is a critical part of verification, narrowly conceiving verification as such risks missing a number of mechanisms that can be implemented to improve data accuracy. These mechanisms should aim to detect and resolve accidental errors as well as deliberate falsehoods. They range from very basic checks which can be built into form design (covered in a subsequent section) to more technologically advanced mechanisms. In OO’s experience, many governments focus on the latter, thereby overlooking low-hanging fruit with respect to improving data accuracy.

While FinCEN may be ultimately responsible for the accuracy of the BOI, FinCEN should not bear the full responsibility for all data verification mechanisms implemented. **A whole-of-government approach to verification is most effective**, drawing on the full range of resources and information a government holds to check information against.

Broadly, verification mechanisms should cover all the main components of a BO declaration:

- Information about the **person**: this includes verifying the *identity* of the beneficial owner or whether the person is who they say they are (as required by the FATF), as well as any information associated with them (for example, contact details).
- Information about the **reporting company**.
- Information about the **ownership or control relationship** between them: Generally, this is the most challenging to verify. It is referred to by FATF as someone’s *status* as a beneficial owner, and its verification is a requirement of the FATF Recommendations.

Governments should also verify information about the **individual submitting the information**, including their identity and whether they have the authority to do so.

Mechanisms to verify the information at the point of submission should include:

- Ensuring **values conform to known and expected patterns**: This can be largely automated and built into form design (see following section). For example, checks can ensure that a date of birth is not set in the future. In the Belgian BO register, the system prevents the registration of more than 100% of the shares/voting rights for an individual as this would not technically be

possible. These checks are highly effective at preventing accidental errors in the submission of information.

- Ensuring **values are real and exist by cross-checking information** against existing authoritative systems and other government registers: For example, checks here can include verifying that a ZIP code exists by cross-checking it against a ZIP code database, or checking that the ZIP code associated with the individual in question is in line with other records the government holds. This is done in Latvia, where the registrar verifies addresses by cross-checking them with the State Address register, and in Denmark, where addresses submitted to the Danish Business Register are cross-checked with the Danish Address Register. In Austria, when entities are reporting beneficial owners whose primary residence is in Austria, information is automatically cross-checked with the Central Register of Residents, ensuring that the individuals exist and that their data is accurate.
- Checking **supporting evidence** against original documents: For example, requiring the submission of shareholder certificates as documentation of ownership held through a certain percentage of shares. In Austria, for non-residents, it is mandatory that a copy of an official photo ID is provided. In the United Kingdom's (UK) Register of Overseas Entities,¹ verification is required through checking information against “documents and information in either case obtained from a reliable source which is independent of the person whose identity is being verified.” [Published guidance](#) provides a list of example sources. In Denmark, foreign addresses are verified by sending a confirmation code by post and requiring this code to be reported back to the registrar.

These approaches are not exclusive and are often implemented together as they can be mutually reinforcing.

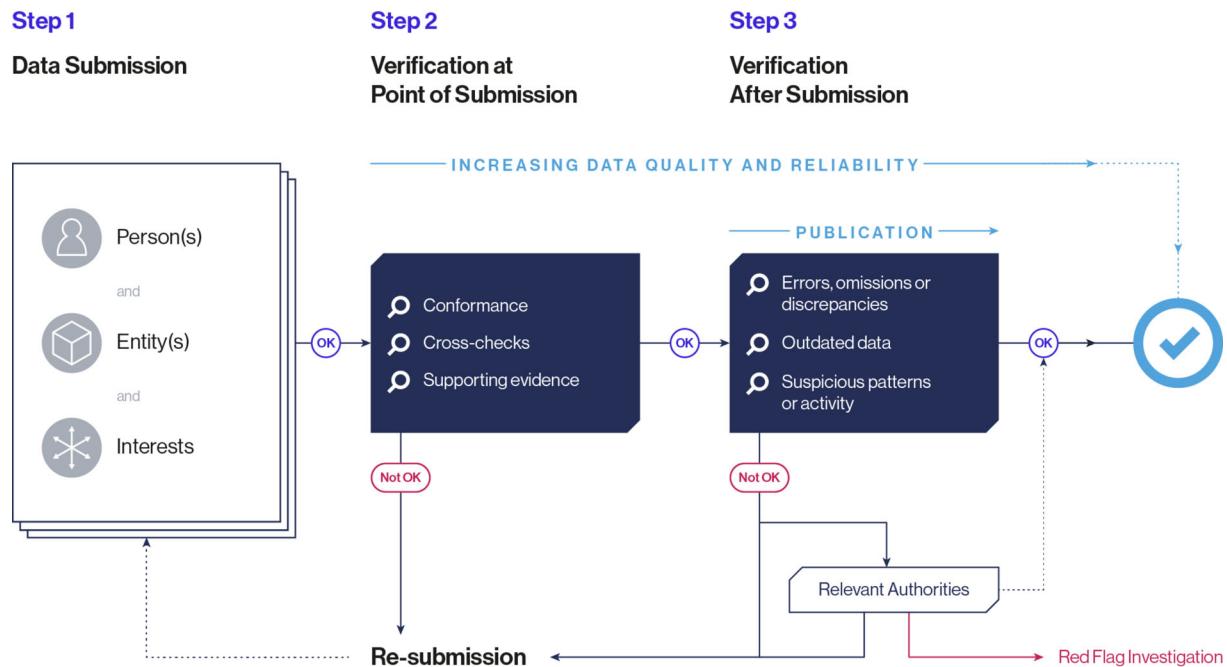
After information has been submitted, a designated responsible agency should proactively check it to identify potential errors, inconsistencies, and outdated entries. It should query, remove, and update the data where necessary. The responsible agency should have the legal responsibility, mandate, and powers to do so. Mechanisms should be in place to raise red flags, both by requiring parties dealing with BOI to report discrepancies and by setting up systems to detect suspicious patterns based on experience and evidence. Different countries take different approaches to this. Denmark, for example, manually scrutinises a random sample of higher-risk entries on an annual basis. Many countries, including all European Union member states and the UK, require parties that fall under anti-money laundering (AML) regulations to report discrepancies between the outcomes of their know-your-customer (KYC) and customer due diligence (CDD) checks and information held on the government register.

Austria takes a similar approach as Denmark does, using its National Risk Assessment to assign risk points to a filing based on both the risk of the reporting company being misused for money laundering/terrorist financing purposes and the risk of the report being incorrect. A monthly sample is generated, using a weighting to select more higher risk than lower risk cases. The review also includes ad hoc cases selected by the registrar, which include discrepancy reports received by regulated parties. The sample is then verified manually by using publicly-available data (for example, the Austrian Business Register) and private databases (for example, Bureau van Dijk's Orbis dataset).²

¹ The Register of Overseas Entities is a register of the beneficial owners of overseas entities owning UK property.

² This case study is based on research Open Ownership conducted as part of the [Network of Experts of Beneficial Ownership Transparency](#) (NEBOT). Its findings are expected to be published in 2023.

To learn more, please refer to OO's policy briefing on the [Verification of Beneficial Ownership Data](#).



Example of a business process to improve data accuracy through verification. Source: [Open Ownership \(2020\)](#)

OO notes that the rule contains a series of strict measures concerning the unauthorised sharing and disclosure of BO information with monetary and non-monetary punishments for violation of these. These restrictions need not necessarily restrict the implementation of some of the best-practice verification mechanisms detailed above. There are a range of PETs that are well established and used in the context of AML and KYC/CDD.³ One example is verification through zero knowledge proofs (ZKPs). ZKPs are a method by which one party can prove to another party that a given statement is true or false, without revealing or exchanging any information except for whether the statement is true or false. As an example, in Ireland, two banks used ZKPs to verify whether the names and addresses submitted by customers during onboarding corresponded to those held by a national utilities company, an authoritative source. The pilot project achieved a 84% success rate in the address verification process taking place between the financial institutions and the authoritative source, and additional measures were identified that would increase the success rate to 96%. The checks, which did not involve sharing the exchange of personal data, were automated and took milliseconds.⁴

³ For more information and examples of PETs in financial intelligence sharing, please see: Future of Financial Intelligence Sharing, “[The PET Project - FFIS Research](#).”

⁴ For the detailed case study, please see: Nick Maxwell, “[Innovation and discussion paper: Case studies of the use of privacy preserving analysis to tackle financial crime](#)”, Future of Financial Intelligence Sharing (FFIS) research programme, Version 1.3, January 2008.

2. Structured and interoperable data

As stated in the [NPRM](#), “[i]n designing the [system], FinCEN should survey other beneficial ownership databases to determine their best features and design.” Emerging good practice, as demonstrated by the [UK Companies House’s register](#), shows that the collection, storage and sharing of **structured and interoperable data is fundamental to facilitating useful access** for authorised users. Useful access should **ensure BOI is easy to obtain, interpret and check**. In addition, [FATF requires](#) access for competent authorities to be rapid and efficient (discussed in more detail below).

Structured data refers to information that is highly organised according to a predefined model. Structuring data creates information that is predictable. Examples of the way structured data can be integrated into both human and machine-led processes to improve the usability of BOI include:

- Obtaining or viewing data through a web interface, application programming interface (API), or in bulk formats;
- Searching and querying BOI based on particular fields or criteria, such as an address;
- Bulk analysis of single or combined data sets, for example to assess data quality;
- Automation of business processes such as cross-checks for data verification;
- The collection of metadata, such as the use of particular company formation agents (collected in the BOI directory) or internal access logs (collected in an access portal created by authorised data users); and
- Converting complex information into user-friendly formats, such as a dashboard.

Structured BO data is also quicker and cheaper to access and use. To illustrate, the cost for law enforcement of accessing and using unstructured information was [noted as a significant motivation behind increasing BO transparency in Canada](#).

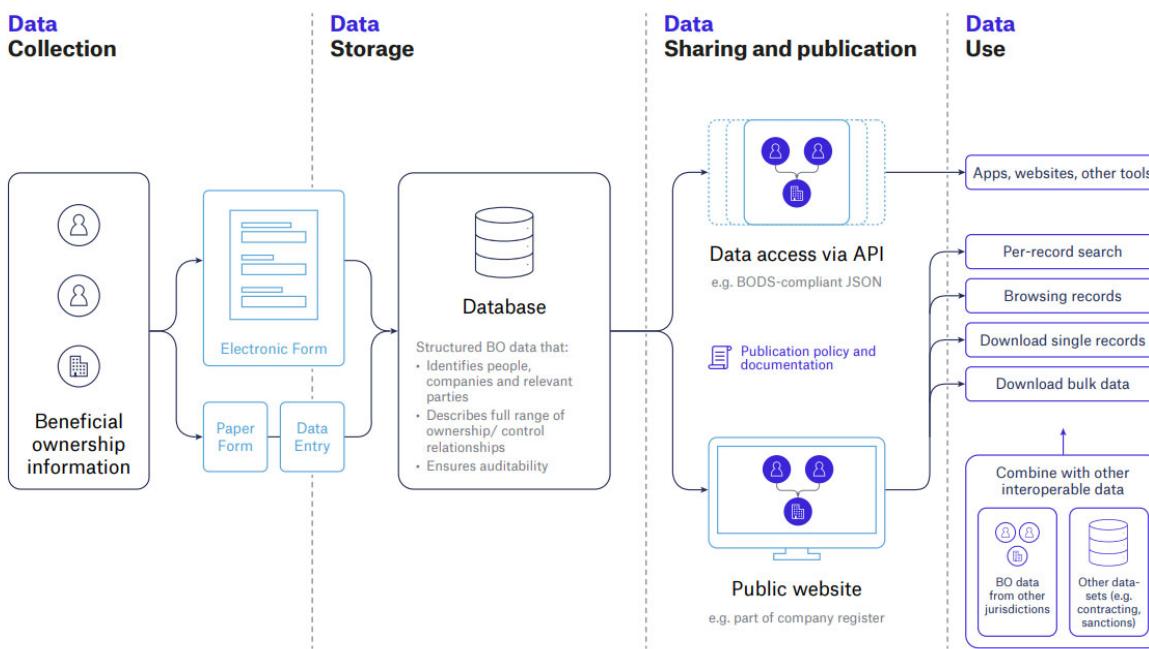
At a minimum, structured BOI should:

- Identify the people, companies, and other relevant parties disclosed in a BO declaration by using unique identifiers and sufficient descriptive fields;
- Describe the full range of relationships that can exist between parties disclosed in a BO declaration; and
- Ensure BOI is easy to access, interpret and check.

Data collection forms play a large role in determining the ultimate structure of BOI. FinCEN [already proposes to collect beneficial ownership information by webform](#), which is best practice and allows better onward handling of the data. Design features that help people provide accurate and unambiguous information as structured data include being clear about the format in which answers are expected (for example: “Provide dates in MM/DD/YYYY format”); stating clearly which fields are required and which are optional; and providing selection lists rather than free-text entry where relevant (for example, when asking for the country of registration of non-domestic entities). Webforms also allow for the integration and automation of checks to ensure values are only submitted if they conform to known and expected patterns and that they are real and exist by cross-checking information against authoritative sources in a privacy-enhanced way, at the point where information is submitted, as discussed above.

In a limited number of cases, the use of free text is appropriate and should be incorporated. For example, in a circumstance in which a company seeking to comply with the disclosure requirements has been unable to uncover the information required of them, a required free text field could be used

to explain why the person is anonymous or their identity is unknown and to provide more detailed information. Allowing for **the submission of declarations saying the reporting entity does not know who its beneficial owners are should not be permitted** outside exceptional circumstances. These reporting entities should be required to submit supporting evidence and should be marked as high-risk in the risk-based verification mechanisms discussed above. Furthermore, it is recommended that regulators and persons designing forms work together and consult with agencies and individuals who will be the end users of the data created through the declaration process. Testing the form with a representative sample of reporting companies will assist with further refining of the document to improve usability, clarity and completeness.



Example showing information flows and business processes which can be supported using structured data machine-readable formats. While the BOI directory will not be made available via a “Public website” per the CTA, the options displayed for data use functionalities (for example, per-record search and downloadable bulk data) may be relevant for authorised BOI data users access protocols in the US context. Source: [Open Ownership \(2022\)](#)

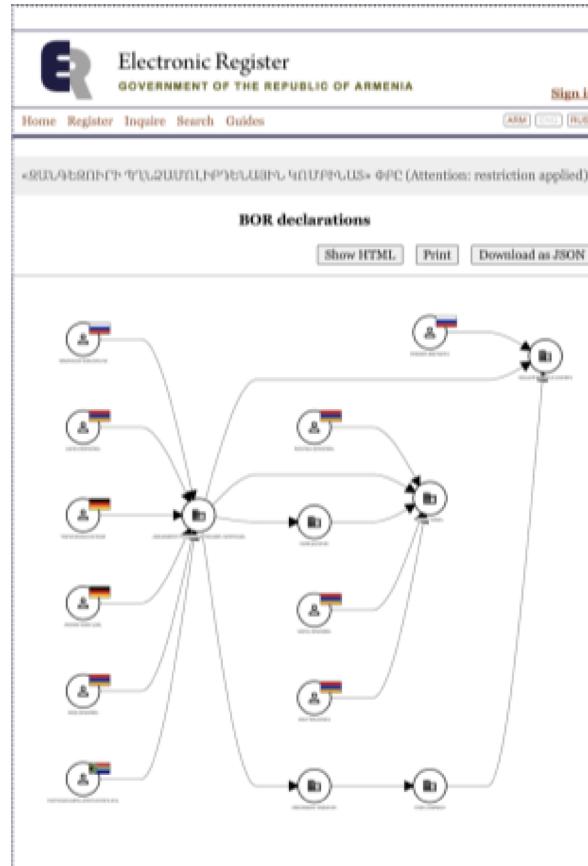
Data standards make it easier to realise the full benefits of the increased functionality of structured data because BO data is predictable regardless of its origin, making collaboration and data use in multiple organisations less challenging. A data standard provides a documented set of rules and agreements for how data is structured, published, and contextualised. It can also cover data format, definition, transmission, manipulation, use, and management. Standards provide a common language for producing and understanding data, regardless of its origin, and embed a high degree of interoperability by design. Considering the number of different agencies that may be accessing BOI in the United States, using a common data standard is particularly important to ensure usability. Structured data that does not adhere to the same data standard can be, but is not necessarily, interoperable, but interoperability requires an extra step of translation to join the data together.

The [Beneficial Ownership Data Standard](#) (BODS) is a data standard which sets rules for high-quality BO data, and its increased adoption will facilitate the rapid and efficient exchange of information between jurisdictions around the world. [BODS has been endorsed by the UK Government's Open](#)

[Standards Board](#) to help deliver the government's commitment to publish beneficial ownership data in a structured, machine-readable format, and for its usefulness in storing, machine-readable BOI to share with other government organisations. It is currently being used by Latvia, Nigeria, and Armenia. Kenya, Liberia, Lithuania and Portugal have all made Open Government Partnership commitments to structure their BOI using BODS. Furthermore, [two of the world's leading company registry software companies are promoting the use of BODS](#) through their registry development services, one of which has put BODS at the centre of the register software they offer to governments. The [FACT Coalition has previously urged FinCEN](#) to review and, to the extent feasible, adopt BODS.

A number of tools have already been developed to use and analyse BOI using BODS. For example, in September 2021, Armenia became one of the first countries to publish BOI using BODS by incorporating the standard into the design of its register software. The adoption of the data standard permits new uses of its BO data and enables the country to incorporate different tools developed for BODS directly into its register. For example, Armenia uses the BODS data visualisation library that automatically produces ownership graphs from the data to allow users to easily understand, interpret and analyse company structures (see diagram). From late 2023, Armenia also plans to draw structured BO data from the State Register into its procurement systems (as required by the FATF) as a means of tackling corruption, collusion, and bid rigging during government tender processes.

To learn more, please refer to OO's policy briefing on [Structured and interoperable beneficial ownership data](#); form design guidance [Beneficial ownership declaration forms: Guide for regulators and designers](#); guidance on [Building an auditable record of beneficial ownership](#); and draft specifications on the [Beneficial Ownership Data Standard](#).



BODS data is automatically visualised on Armenia's beneficial ownership data portal. Source: Open Ownership (2022); www.e-register.am.

3. Data access

In the [NPRM](#), FinCEN sets out proposed regulations regarding access to BOI which aim to ensure that:

- (1) only authorized recipients have access to BOI; (2) authorized recipients use that access only for purposes permitted by the CTA; and (3) authorized recipients only re-disclose BOI in ways that balance protection of the security and confidentiality of the BOI with furtherance of the CTA's objective of making BOI available to a range of users for purposes specified in the CTA.

The proposed rule also notes the importance of efficiency in access, quoting Senator Brown, who encouraged FinCEN to “ensure that [F]ederal, [S]tate, local and tribal law enforcement **can access the beneficial ownership database without excessive delays or red tape [...].**”

As such, the business processes for accessing data should enable BOI to be, “obtained or **accessed rapidly and efficiently** by competent authorities,” as required by the [FATF](#). This requirement applies to “all public authorities with designated responsibilities for combating money laundering and/or terrorist financing,” as well as to authorities at national level and others as appropriate in the course of public procurement. [OO's research on the use of BOI by FIUs and law enforcement agencies](#) in investigations shows BOI is most useful when access is direct and unfiltered. For authorised domestic users, rapid and efficient access to BOI could be impeded by certain requirements currently being contemplated in the proposed rule. The official comment submitted by the FACT Coalition includes a detailed analysis and recommendations for how access can be improved. In addition, FinCEN should consider how to give access to public authorities at both the federal and state level in the course of public procurement as required by the FATF.

Furthermore, the access for financial institutions (FIs) as described in the NPRM risks falling short of the type of access they need to effectively meet their KYC and CDD obligations, [according to OO's research](#). To meaningfully assess risk, FIs will need to access BOI not just from the client company, but also companies and individuals within the broader ownership structure (for example, to comply with sanctions, as discussed below). In addition, CDD is not a one-off event but an ongoing process for FIs. FinCEN should bear this in mind when thinking about the business process for FI access to BOI. The consent from reporting entities as required by the CTA should be obtained in such a way that it minimises tip-off risks when FIs are investigating potential suspicious activity and transactions, for example by exploring the use of ZKPs. Access by regulated parties should also be considered jointly with their KYC and CDD requirements. As noted under the section on verification, requirements for any user of BOI to report errors and discrepancies can contribute to data accuracy. **Discrepancy reporting** allows private sector data users and the range of technologically advanced verification methods they use to play an active role in data verification.

Given the well-documented transnational nature of the illicit activities the CTA intends to curb and of the protection of national security, **foreign authorities require rapid and efficient access to BOI**. BOI has an important role to play in the [enforcement of economic and financial sanctions](#). Given the type of provisions employed by the [United States Office of Foreign Assets Control \(OFAC\)](#) and many other authorities, that sanctions apply not just to the entity itself, but also to all companies owned or controlled by that entity, this effectively makes visibility of full company structures and beneficial

ownership an essential part of sanctions compliance and enforcement. Anonymously owned companies can and are used to evade sanctions.

The proposed rule sets out access requirements for foreign entities seeking BOI for their investigations, who will be able to do so by requesting this information via an authorised US federal entity. However, they fall short of putting in place a legal framework for the access that foreign authorities may require to effectively use the data, such as specific timeframes for processing and responding to requests from foreign jurisdictions to authorised federal agencies. Furthermore, the provision for FinCEN to “directly receive, evaluate, and respond to requests for BOI from foreign financial intelligence units [FIUs],” contrasts with the requirements around access and controls for international requests made via other methods. In practice, the substantial differential in access requirements via these two mechanisms could mean that foreign BOI requests would largely be channelled via FIUs to FinCEN for its evaluation and response, increasing FinCEN’s workload. In addition, this is not a viable alternative to the efficient exchange of information between other authorities, as evidence exchanged through FIUs is not always admissible as evidence in court. This could lead to unnecessary delays that undermine international investigations.

To ensure BOI is most useful and usable, **authorised users should be able to perform searches by a wide range of fields** including name of the beneficial owner, name of the person making a statement, identification numbers (for example, a driver’s licence number), home address, company name, business address of the company, etc. To make BOI useful, **authorised users should also be able to access historical data**. A record of beneficial ownership can be seen as a ledger of information that builds up over time. New information about the ownership and control of a company supersedes older information as shares are sold, company rules are updated, and new companies are incorporated. This forms part of a well-designed BOI declaration and storage system that allows for the sharing of both current and historical BOI. As with an accounting ledger, BOI needs to be recorded and organised in a way that makes accessing and understanding it as easy as possible. It should also enable queries to be made of historical information such as, who beneficial owners were of a particular company at a specific time, and what the company’s name was at that time if this has changed; whether one of those beneficial owners also owned other companies at that point in time; how that beneficial owner’s disclosed interests in the company changed over time; and whether those changes were reported within the legally-required timeframe.

The functionalities above require the collection of and access to structured data by authorised users, and in many cases users would also benefit from being able to **access BOI in bulk**. Bulk formats allow users such as FIUs, procurement agencies, and banks to apply new data analysis techniques to identify suspicious patterns of ownership or beneficial owners that appear on other datasets of interest. Bulk analysis of single or combined data sets will allow authorised users to find patterns or red flags relating to beneficial ownership, or to assess and improve data quality. This type of analysis is critical to employ the proactive verification mechanisms described above, and to use the BOI as a primary source of evidence in investigations.

In summary, rapid and efficient access for authorised domestic and foreign users, and prioritising usability of the data for domestic users, to the extent feasible within the prescribed privacy protections, will help maximise the impact that law enforcement and national security agencies can have in preventing and combat money laundering, terrorist financing, tax fraud, and other illicit activity, and in protecting national security.