

Open Government Partnership Comment on Notice of Proposed Rulemaking for Corporate Transparency Act of 2019, Access to Beneficial Ownership Data

Contact: research@opengovpartnership.org

The Open Government Partnership (OGP) is a multilateral, multistakeholder partnership with 76 national members and nearly 150 local governments. This comment aims to put the proposed rule on access to beneficial ownership data within an international context. The proposed rule would not place the United States outside of the mainstream of emerging global practice, would not create a disadvantage for US interests, and would confer many benefits to the US and its overseas partners.

I. Background

The United States was a founding member of OGP in 2011 with seven other governments and eight civil society organizations. The founding Open Government Declaration, written and signed by the United States states:

We accept responsibility for seizing this moment to strengthen our commitments to promote transparency, fight corruption, empower citizens, and harness the power of new technologies to make government more effective and accountable.

As a member of OGP, nations are expected to do more than commit to action. They are expected to enact reforms to make governments more democratic and less prone to corruption. OGP members undertake concrete, nationally defined actions to strengthen government practice through enhanced transparency, civic participation, and public accountability. This is done through time-bound action plans.

OGP members lead by example and have used their OGP action plans to develop consensus around “international best practice,” including around corporate beneficial ownership. OGP has been one of several key international institutions that has helped to move corporate beneficial ownership into the mainstream of policy, beginning with the announcement by United Kingdom Prime Minister David Cameron to establish the first *public* beneficial ownership registry, Companies House, at London OGP Summit in 2014.

Since then, OGP members have worked to develop consensus around best practices with regard to corporate beneficial ownership. In particular, the Beneficial Ownership Leaders Group (BOLG) of OGP (convened by eight member states) has put forth the following best practice *Principles*:

Publishing company beneficial ownership data that is freely downloadable, searchable, and reusable by the public, without a fee, proprietary software, or the need for registration.

Implementing progressively ambitious best practice in beneficial ownership transparency, across technical, legislative, regulatory, and administrative parameters.

Committing resources to enable improvements and iterations to data quality and standardization.

Contributing to the building of best practice, including by recognizing the evolving illicit finance threat and considering implementing beneficial ownership transparency beyond companies to a wider group of asset classes.

Working in partnership with civil society and enabling their role as watchdogs and users of the data.

Engaging other partners, including governments and international institutions, to advance the objective of making beneficial ownership transparency a global norm; and

Contributing to evaluation and impact assessment of our shared approach.

Current US code would not necessarily allow for company beneficial ownership data to be “freely downloadable, searchable, and reusable by the public, without a fee, proprietary software, or the need for registration.” Nonetheless, given the growing international consensus to have such systems, the US Beneficial Ownership disclosure regime can be built in such a way that it (1) maximizes access to those entitled to accessing such data and (2) allows maximal disclosure going forward should the law provide for such disclosure.

As an organization working to promote transparency and reduce corruption, we would welcome a maximal approach to disclosure of corporate beneficial ownership data consistent with US Code. Such an approach would be consistent with the values of US membership in OGP as well as the values expressed in the country’s multiple action plans to date.

II. Toward “Maximal Disclosure”

Current US law may not provide for public access to corporate ownership data in open data formats. Nonetheless, these requirements are an unequivocal step forward in terms of corporate transparency for those entities covered by the *Corporate Transparency Act*.

53 USC (31) § 5333 (2019) 5(B) establishes requirements for disclosure of beneficial ownership data:

(B) DISCLOSURE OF INFORMATION.—Beneficial ownership information reported to FinCEN pursuant to this section shall be provided by FinCEN only upon receipt of—

- (i) subject to subparagraph (C), a request, through appropriate protocols, by a local, Tribal, State, or Federal law enforcement agency;*
- (ii) a request made by a Federal agency on behalf of a law enforcement agency of another country under an international treaty, agreement, or convention, or an order under section 3512 of title 18 or section 1782 of title 28; or*
- (iii) a request made by a financial institution, with customer consent, as part of the institution’s compliance with due diligence requirements imposed under the Bank Secrecy Act, the USA PATRIOT Act, or other applicable Federal, State, or Tribal law.*

Notably, the Act does not require public-facing access to the register. It follows as a consequence that any regulation promulgating disclosure cannot guarantee full, unfettered public access.

Nonetheless, within the bounds provided by statute, FinCEN can seek a maximal approach to disclosure. Ideally any regulation defining the “access” components of the CTA would lay the groundwork for future publication, pending legislation, consistent with the *Open, Public, Electronic, and Necessary Government Data Act (OPEN Government Data Act 35 USC 44 2017 §3561)*. Aspects would include:

- Freely downloadable bulk data;
- Searchable, machine-readable text and documentation;
- Minimally restrictive licensing and reuse rules consistent with privacy provisions in the CTA; and
- A platform built without proprietary software.

Building the current request-based system on top of such a future-proofed architecture will have immediate benefits for law enforcement, international partners, state and tribal governments, and financial institutions executing existing law. This will facilitate law enforcement and financial institutions to help reduce the risk of terrorism, combat organized crime, control corruption, and reduce tax evasion among other benefits.

While it remains uncertain whether full public disclosure will be mandated by some future law, any system currently built should assume that expansion to new legal vehicles and actors will be likely.

A. Maximal disclosure of beneficial ownership is consistent with US precedent in OGP

As part of its membership in OGP, the United States has developed and implemented four action plans and is in the process of developing a fifth. Each of these action plans have demonstrated a concerted effort to curb abuses of power and reduce corruption at home and abroad, including through corporate ownership disclosure.

US commitments have regularly included issues of corporate ownership transparency even before the passage of the 2019 NDAA. [“[Increase Transparency of Legal Entities Formed in the United States](#)” (2013) and “[Transparency of Legal Entities](#)” (2015)]. While these initial efforts did not immediately result in new legislation, they did help to build awareness among legislative allies and signaled to the international community that key actors in the United States would promote corporate transparency.

In addition, numerous commitments in US OGP action plans have sought to curb foreign money laundering [“[Consolidate Import and Export Systems to Curb Corruption](#)” (2013)] and rein in waste, fraud and abuse [“[Strengthen and Expand Whistleblower Protections for Government Personnel](#)” (2013) and “[Strengthening Whistleblower Protection](#)” (2015)].

B. Maximal disclosure is consistent with the Partnership’s stated aims and practice

As a founding member of OGP, regulators should note that maximal disclosure is well within the boundaries of current practice among many OGP members.

Such maximal disclosure is exemplified in several ways:

- **Beneficial Ownership Leadership Group (BOLG):** Eight pivotal countries convened the adoption of standards. As stated above, the group exists to promote, “beneficial ownership data that is freely downloadable, searchable, and reusable by the public, without a fee, proprietary software, or the need for registration.” The US is not currently a member of the BOLG. The US is, however, making similar commitments to Summit for Democracy both [domestically](#) (“Reducing the Ability of Corrupt Actors to Launder their Ill-gotten Gains via Shell Companies” and “Supporting Enforcement”) and [internationally](#) (“Strengthening Anti-Corruption Ecosystems”).
- **Summit for Democracy leadership and support:** Ending corruption in the financial system is a key part of the US leadership in the Summit for Democracy “Year of Action.” The Open Government Partnership is a key means of implementation for the Summit for Democracy both through OGP action plans and in its co-leadership with the Brookings Institutions and the UK Government of the Democracy Financial Transparency and Integrity Cohort. This

work is further bolstered by USG action through the “United States Strategy on Countering Corruption” and the ‘Combating Transnational Corruption Grand Challenge.’

- **Partnerships:** As part of its core strategy, OGP connects members to technical support. Corporate beneficial ownership partnerships are a core membership activity in OGP. In the case of corporate beneficial ownership, OGP maintains formal partnerships with Open Ownership, a standard-setting body, as well as the Financial Action Task Force, whose members fight money laundering through financial transparency measures including beneficial ownership.

C. Maximal disclosure is in the US interest and is part of an emerging international mainstream

Inside and outside of OGP membership, corporate beneficial ownership broadly, and maximal disclosure more specifically, are becoming mainstream. Most of the United States’ major trading partners and democratic allies are undertaking reforms through OGP and other international bodies such as the Financial Action Task Force to rein in anonymous ownership of companies.

According to the [Global Data Barometer](#), nearly three-quarters (73%) of OGP countries have an operational legal framework that requires the collection of company beneficial ownership data. About half of these legal frameworks also require that the data be made available to the public.

In practice, over one-third of OGP countries currently publish company beneficial ownership data online. Many of these countries are working to strengthen data quality so that the public is better able to re-use the data for monitoring and analysis purposes. Most of the United States’ major trading partners and democratic allies have made moves to establish corporate beneficial ownership registers.

- **Canada** [committed to strengthening corporate transparency](#) through their 2018-2021 OGP action plan, which included the continued implementation of the Agreement to Strengthen Beneficial Ownership Transparency. The Government of Canada made a similar commitment in its [2022–2024 OGP action plan](#). Since then, Canada has committed to establishing a public beneficial ownership register by 2023 in their [2022 federal budget](#). The Canadian rules are likely to cover numerous legal vehicles, including real estate as well as various corporate forms.

- **European Union:** Due to a series of EU anti money-laundering directives¹, nearly all OGP countries in the European Union have an operational law requiring the collection of company beneficial ownership data. Over half of these countries also require the publication of beneficial ownership data in national law. As of mid-2022, 13 OGP member countries in the European Union make beneficial ownership data available online, including France, Germany, and Italy. Following a [recent ruling by the European Court of Justice](#), a number of countries have limited public access to beneficial ownership data. While some (such as Slovakia) have continued to post this data publicly, others have taken the data down. The fact that the complainant was from [famed secrecy jurisdiction, Luxembourg](#), and had ties to [suspicious Russian business activity](#) raises concerns about the interests behind limiting access to beneficial ownership information. In addition, the ECJ confirmed that there remains a public interest for civil society watchdog organizations and investigative journalists to continue to access the data.
- **United Kingdom:** Following a series of commitments through their OGP action plans [[Company Beneficial Ownership Information](#)] (2013) and [[Beneficial Ownership – UK](#)] (2016)] the United Kingdom was one of the first countries to create a public beneficial ownership registry in 2016. They now [aim to be](#) an international champion of beneficial ownership transparency, including through [OGP's Beneficial Ownership Leadership Group](#).
- **Latin America:** The largest US trading partners and allies in Latin America are committed to or are actively publishing beneficial ownership data. For example, Brazil requires all legal entities to register with their National Registry of Legal Entities and identify their beneficial owners. As a member of both the [Extractives Industry Transparency Initiative](#) and OGP's Beneficial Ownership Leadership Group, Mexico is currently [committed](#) to establishing a national beneficial ownership registry by 2023. Chile has also proposed the creation of a public beneficial ownership registry as a result of [a commitment](#) from their 2018-2020 OGP action plan.
- **Asia Pacific:** Following a 2018 presidential regulation regarding the collection and publication of beneficial ownership data, Indonesia was one of the first countries in the Asia Pacific region to create a centralized registry. Now, Indonesia is implementing a [commitment](#) to disclose the data publicly through their 2020-2022 OGP action plan.
- **Africa:** Nigeria has served as a leader in beneficial ownership transparency among OGP countries. The country passed a law in 2020 establishing a central registry following their [commitment](#) to collect and publish beneficial ownership information in their 2019 OGP

¹ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ 2015 L 141, p. 73), as amended by Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 (OJ 2018 L 156, p. 43)

action plan. Other OGP countries in Africa, including [Kenya](#) and [South Africa](#), are using their current action plans to make progress in beneficial ownership transparency.

D. Maximal disclosure is consistent with US interests at home and abroad

Corporate beneficial ownership transparency is essential for any number of public goods, including reducing terrorism finance, uncovering organized crime and money laundering, increasing tax compliance, mobilizing the tax base of our development partners, and limiting the influence of foreign illiberal actors in our political system and our communities.

Law enforcement and financial institutions alone cannot meet the scale of the challenge. Emerging evidence from other countries shows that government-centered corporate transparency monitoring is made more effective by bringing in greater numbers of people. (The forthcoming Open Government Partnership Global Report shows the importance of journalists and non-governmental organizations in uncovering almost every major case of fraud over the past several years.) Wider scrutiny of corporate ownership records supports law enforcement in its aims. Current evidence suggests that FinCEN, by itself, is unable to analyze all Suspicious Activity Reports filed by financial institutions that are worthy of further scrutiny. As a consequence, building an architecture which could allow for greater access to documentation and enhance re-use would bolster enforcement activities.

Maximal disclosure in the United States will have positive effects abroad. Leading by example through maximal disclosure is in the US foreign policy interest. Last year the Tax Justice Network identified the US as the top financial secrecy jurisdiction and Treasury Secretary Yellen has said the U.S. is perhaps the easiest place to hide dirty money. Maximal access to corporate beneficial ownership data would help cripple foreign autocrats and criminals' ability to launder ill-gotten gains and stolen assets from their countries into the US. But more than this, maximal access will signal to international partners that the United States is not a haven for secret money and will give the US greater credibility to crack down on tax and illicit finance havens abroad, which are often the destination for aggressive tax avoidance schemes by American persons.

III. How the access rule can better embody the spirit of the law and why this will not put the US interests at a disadvantage

Because most major markets are moving toward corporate beneficial ownership disclosure (see prior section), this would not create a competitive disadvantage for US-based firms at home or

abroad. Likewise, this can help empower law enforcement at the state, local, and tribal levels, as well as cooperation between allies.

Even under a more expansive access rule than the proposed access rule to implement the current draft of the *Corporate Transparency Act*, the US would still, likely, be less open than other jurisdictions and major markets. Nonetheless, beneficial ownership disclosure in the largest market globally would further shift competitive advantage from those markets which are secretive, manipulated, or captured by state interests. As the US moves toward maximal disclosure (or lays the groundwork for it), this can help persuade financial destinations like the United Arab Emirates, Switzerland, and the Cayman Islands to adapt data collection, know-your-customer requirements, and disclosure practices more harmonious with emerging global practice.

A. Recognized issues with the current draft

Our colleagues at Transparency International–US have already noted [four key issues](#) with the second of three rules proposed by the US Department of Treasury to implement the Corporate Transparency Act. These are:

- Significant barriers to access by state, local, and tribal law enforcement
- The need for standardized, templated forms and processes to streamline user access
- Lack of clarity around automatic verification of information provided by companies
- The need for explanation of how certain foreign requesters and financial institutions will be able to access information

As a multilateral, multistakeholder partnership with 75 national members and more than 100 local members, the Open Government Partnership (OGP) can put the four issues above in comparative perspective with other major markets that are participating members.

B. An international perspective on access and verification

Public access

The current draft regulation could result in significant barriers to access that are inconsistent with the legal intent of making money laundering easier for law enforcement to detect. One possible argument is that these barriers are necessary to ensure competitiveness and efficiency for American businesses. We would like to put that in comparative perspective, as the evidence from the international context does not support this.

Even in other contexts where restrictions exist (e.g. Germany), journalists and non-governmental organizations have a recognized right to access the data for the purposes of researching money

laundering and other issues related to the suspicious use of shell companies and holding companies.

Data verification

Verification should include validation at the point of data submission, cross-checking information with other government registers and further investigation of suspicious cases, [among other steps](#). Our [research](#) shows that 24 OGP countries already require verification as part of their beneficial ownership legal frameworks. Some are introducing automatic cross-verification of data with other government datasets. For example, in Denmark, submitted information is automatically cross-checked with other government-held data, such as that found in the civil register and the address register (see more [here](#)). In addition, the UK has acknowledged the need for a more rigorous verification system in a 2022 [white paper](#) evaluating its beneficial ownership register, and has included revisions to the current system in a pending law (see below for details).

C. International examples of access, verification, and open data

Major markets

Australia

- **Public data access:** Following a [2016 commitment](#) in its 2016–2018 OGP action plan to improve transparency of beneficial ownership information, the Government of Australia in August 2022 committed to “implement a public registry of beneficial ownership to improve transparency on corporate structures, to show who ultimately owns (or controls) a company or legal vehicle.”
- **Data verification:** Remains to be seen.
- **Data openness:** Remains to be seen.

Canada

- **Public data access:** The Government of Canada has committed to establish a public beneficial ownership register. The [2022 Federal Budget](#) includes a commitment to establish the public register by 2023. The Government of Canada made a similar [commitment](#) in its 2022–2024 OGP action plan. According to the commitment, the register will be “accessible to the public by the end of 2023” and “will cover federally regulated corporations and will be scalable to allow access to the beneficial ownership data held by provinces and territories that agree to participate in a national registry.”

- **Implementation update:** Recent reports from [December 2022](#) and [January 2023](#) suggest that Canada's register, when implemented, may only be accessible by "law enforcement, regulatory agents, and shareholders who can attest that they have a valid reason for accessing it." A possible exception may be the province of [Quebec](#).
- **Data verification:** The 2022 Federal Budget mentions that "the government will also examine approaches that support the validation and verification of the information in the registry." What this will look like in practice remains unclear.
- **Data openness:** Remains to be seen (see "implementation update" above).

France

- **Public data access:** Since 2017, French companies and entities mentioned in the article L. 561-45-1 of the Monetary and Financial Code have the legal obligation to declare beneficial ownership. To date, over [12.5 million](#) companies and entities have filed a mandatory beneficial ownership declaration. However, the public can only access a limited subset of information on the register (see "Data Openness" for details). In spite of the recent [ECJ ruling](#) on privacy and beneficial ownership, France has said it is [committed](#) to keeping its register at least partially available to the public, even though it is not required to do so.
- **Data verification:** The register requires a verification process, in line with the requirements of the [EU 5th Anti-Money Laundering Directive](#). According to Article L.561-47 of the French Monetary and Financial Code, "The clerk of the commercial court verifies that the information relating to the beneficial owner mentioned in the first paragraph of L. 561-46 is complete and in accordance with the legislative and regulatory provisions, corresponds to the supporting documents and documents filed in the appendix and is compatible, in the case a request for modification or cancellation, with the status of the file."
- **Data openness:** Data is partially open for France's register. While limited data is free to access and this data is timely and updated, the remaining open data characteristics are only partially met (machine-readable, open licensed, and bulk downloadable). Specifically, the publication of this data doesn't follow any open data standards, and the data are only available in French. Only authorized entities identified by [Ordinance No. 2020-115 of February 12, 2020](#) can access the full records free of charge and in a [machine-readable](#) format.

Germany

- **Data access until December 2022:** Beneficial ownership information on the [Transparency Register](#) was publicly available until 2023. It required users to 1) register in

advance (providing personal information including address, phone number, full name, email, and copy of ID) and 2) pay a fee to access individual records.

- **Data access since recent ECJ ruling:** In November 2023, the [European Court of Justice ruled](#) that public beneficial ownership registers would need to limit access to beneficial ownership data. Today, “certain authorities” still have “full access to the database of the transparency register” ([Transparency Register](#)). However, companies “are only permitted access on a case-by-case basis.” Members of the public are granted limited access if they demonstrate a “legitimate interest.” According to the Register, and in line with the ECJ ruling, this legitimate interest exists in particular for companies that want to check their own information (self-disclosure), and importantly, in the case of “journalists and non-governmental organizations (NGOs) when researching money laundering or terrorist financing.
- **Data verification:** According to the Global Data Barometer, the beneficial ownership information is not subject to a verification process.
- **Data openness:** Beneficial ownership data is available upon request and payment (see data access above for details about who is entitled to access).

United Kingdom

- **Public data access for the original BOT register:** The data has been publicly available on the Persons with Significant Control (PSC) register since its creation in 2016 under the [Small Business, Enterprise and Employment Act of 2015](#) (Schedule 3). [Currently](#), stakeholders such as law enforcement, Companies House, civil society organizations, and journalists can analyze the data and review it for mistakes and suspicious activity.
- **Expanded access under a new public register:** The UK continues to expand its collection and publication of data in this regard. For example, the 2022 [Economic Crime Transparency and Enforcement](#) Act created a register for overseas entities and their beneficial owners, which has already been used to [uncover](#) scores of properties that are owned through offshore shell companies. As *The Guardian* explains, “17,754 overseas entities, with thousands more expected to register before the 31 January deadline” had registered by January 27, 2023.
- **Data verification:** Verification remains a challenge, as described in a 2018 analysis by [Global Witness](#). The PSC does not validate or verify the data entered into the system, with verification posing the biggest challenge to ensuring the effectiveness of the register—at present, the information is self-reported. Safeguards such as requiring proof of identity and implementing customer due diligence and reporting requirements for non-financial enablers of money laundering (accountants, real estate agents, etc.) would address these issues, as the UK government itself has acknowledged and planned for in its final [2022](#)

[white paper](#) on the subject. The UK is planning a second [Economic Crime and Corporate Transparency Bill](#) to address these issues, which is currently at the “report stage.”

- **Data openness:** The PSC register meets all open data requirements: it is free, timely and updated, machine-readable, open licensed, and is available for bulk download.

Emerging markets

Kenya

While Kenya has a law calling for the creation of a beneficial ownership register, it has not yet created one. The analysis below therefore refers to Kenya’s pending legislation related to this register.

- **Public data access:** Kenya passed the [Companies Act](#), which came into force in August 2017. It requires companies to keep a register of their members, including beneficial owners (name and address only), and to submit this information to the national Registrar of Companies. Although the data is currently only available for internal use by certain public authorities, this marked a significant milestone as it is the first time government authorities have ever collected any beneficial ownership information in Kenya. In their 2020-2022 OGP action plan, Kenya [committed](#) to making beneficial ownership information accessible on a public register.
- **Data verification:** Verification is required. The Section 987(1) of the Companies Act requires that "Subject to this section, a registered foreign company shall, at least once in every calendar year and at intervals of not more than fifteen months, lodge a copy of its financial statement made up to the end of its last financial year, in such form and containing such particulars, and including copies of such documents, as the company is required to prepare by the law for the time being applicable to that company in its place of origin, together with a statement in writing, supported by a statutory declaration, verifying that the copies are true copies of the documents so required." Additionally, Section 1022 states, "Without limiting subsection (1), the general companies regulations may do all or any of the following: (a) prescribe a body or bodies that are recognised for the purposes of issuing standards of accounting practice for the preparation of financial documents and reports required under or for the purposes of this Act; (h) prescribe forms for the purposes of this Act and the method of verifying any information required by or in those forms."
- **Data openness:** The data is not available to the public at present, though this is a stated future goal of the current administration, including in its commitments for the Summit for Democracy.

Nigeria

Nigeria's BOT register is specifically focused on three extractive industries (oil, gas and solid minerals). Nigeria has made significant progress in implementing its extractives register and its plans to open the register to all businesses in a phased approach..

- **Public data access:** The public can fully access the extractives register of beneficial owners.
- **Data verification:** The current legal framework ([Companies and Allied Matters Act, 2020](#)) does not require the verification of data.
- **Data openness:** Nigeria's BOT extractives register is free to access, has timely and updated data, and is available in machine-readable formats.

Indonesia

To cut down on illegal palm oil plantations on virgin land to prevent climate change, Indonesia passed a law to create a beneficial ownership registry in the extractive, forestry, and plantation sectors by working with the private sector. This law was the first of its kind in Southeast Asia. The country has since [taken steps](#) to make this registry public in its 2020-2022 action plan, and will continue to improve the accessibility, verification and corporate compliance of beneficial ownership data in its 2022-2024 [action plan](#).