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February 14, 2023

Acting Director Himamuli Das
Financial Crimes Enforcement Network (FinCEN)
U.S. Department of Treasury
P.O. Box 39
Vienna, VA 22183

Re: Notice of Proposed Rulemaking on Beneficial Ownership Information Access and Safeguards, and Use of FinCEN Identifiers for Entities (RIN 1506-AB49/AB59 / Docket Number FINCEN-2021-0005)

Jubilee USA Network appreciates the opportunity to comment on the notice of proposed rulemaking, “Beneficial Ownership Information Access and Safeguards, and Use of FinCEN Identifiers for Entities.”

We are an alliance of more than 75 US organizations and 750 faith communities working with 50 Jubilee global partners to build an economy that serves, protects and promotes the participation of the most vulnerable. We are concerned with how financial secrecy, corruption and tax evasion are connected to poverty in the United States and abroad. In particular, we have witnessed how anonymous shell companies have facilitated exploitation of vulnerable communities and supported corrupt regimes in the developing world.

The Corporate Transparency Act introduces transparency into otherwise anonymous corporate structures by requiring companies to report their true, “beneficial” owners to a secure directory housed at FinCEN.

We promoted and worked towards passage of this legislation for more than 10 years. During that time we built support with members of Congress, senators and Administrations from both parties. We made this investment because our members¹ consider this legislation essential to: 1) stop ways that human traffickers hide and make profits, 2) prevent the exploitation of vulnerable communities in the United States through Medicaid and Medicare fraud, 3) curb the theft of development and

¹ Reflection of this broad support is a letter we organized in 2020 with more than a 100 religious organizations, congregations, faith-based communities and others urging U.S. Senators to support the Corporate Transparency Act (available at https://www.jubileeusa.org/jubilee_usa_anti_money_laundering_act_of_2020_letter).

debt relief aid, 4) reveal theft from corrupt foreign governments of public monies, and 5) help raise revenue in the developing world.

Our members have an interest in seeing strong, effective rules that maximize the law's potential to contribute to such purposes. We commented in the FinCEN rulemaking process leading to the final rule on Beneficial Ownership Information Reporting Requirements and appreciate that many of our comments were considered and reflected.

The same spirit informs our formulation of responses to the current call for comments.

The CTA includes a mandate that the database provide "highly useful" information to law enforcement. We believe that law enforcement – federal, state, local, tribal, and, in appropriate cases, foreign – and financial institutions with anti-money laundering obligations, database auditors, and other authorized users should have simple, comprehensive, and timely access to this information. Only this level of access to the directorate of beneficial ownership information will meet the standard of "highly useful" set in the legislation.

State, Local, and Tribal Law Enforcement Access

In particular, regarding state, local, or tribal law enforcement agencies, the CTA has very straightforward language: FinCEN should disclose beneficial ownership information upon receipt of a request from a state, local, or tribal law enforcement agency "if a court of competent jurisdiction, including any officer of such a court, has authorized the law enforcement agency to seek the information in a criminal or civil investigation."

Contrary to this plain language and intent of the law, the proposed rule increases – with no foundation – the standard that state, local, and tribal law enforcement must meet to access the database in two key ways. First, the proposed rule requires that a requesting agency submit to FinCEN "copy of a court order from a court of competent jurisdiction authorizing the agency to seek the information in a criminal or civil investigation" as well as a "written justification that sets forth specific reasons why the requested information is relevant to the criminal or civil investigation." A "court order" is a term of art more stringent than the CTA's statutory language of "court authorization." Requiring a court order increases the burden on investigators to justify their use of the database in investigations, as well as on courts themselves, by requiring most likely a judge to complete the order.

This leads to the second issue: the practical impact of a court order requirement contradicts the statutory language that "any" officer of competent court of jurisdiction can approve a request, and increases the risks of clogging up courts with administrative burdens. Moreover, Congress considered and rejected more restrictive requirements such as obtaining a court order or subpoena or ascertaining that a requesting agency's request be reasonably relevant and material to an investigation. Legislators settled on the "authorization from a court officer" deliberately, and to lower barriers to usage and formalism in the request.

We encourage FinCEN to stay within the confines of the law and drop artificial new requirements that will limit effective access.

Access by Foreign Competent Authorities

In regards to foreign requesters, the CTA allows U.S. government agencies to make requests of the database on behalf of foreign law enforcement officials for countries that have existing information sharing agreements or that are “trusted foreign countries.” The proposed rule seeks feedback on whether FinCEN should define the term “trusted foreign countries.” We believe that the agency has appropriate flexibility to determine this list in accordance with potential shifting realities within other governments or in U.S. foreign relations, but we encourage FinCEN to define and follow some principles, in the interest of fostering multilateral law enforcement collaboration.

FinCEN is correct that the CTA has left the Bureau discretion in the determination of “trusted foreign countries.” But the approach and metrics to make such a determination, and motivation for changes to it over time, should be understandable and accessible. For instance, once a country X is deemed as “trusted” for the purposes of a request, denying other requests from the same country could fuel a sense that certain companies are less deserving of scrutiny than others. The determination that country X is “trusted” could, of course, change over time, but there should be clarity on the change and what justifies it. As currently drafted, the rule seems to leave too much room for case-by-case assessments. Failure to observe some consistency would ultimately harm US interests in maintaining bilateral arrangements for information sharing with the countries in question.

Access by Financial Institutions

In terms of financial institutions access, we believe they should have full, uncomplicated access to ownership records in the database following appropriate protocols. Further, we believe FinCEN has too narrow of a read on how financial institutions can use this information. While FinCEN’s proposed rule states that financial institutions can only use this information to carry out their anti-money laundering obligations under the 2016 Customer Due Diligence Rule (CDD Rule), it instead should allow financial institutions to use this information pursuant to all their customer due diligence obligations – e.g. anti-fraud or sanctions screening – required by applicable law.

The proposed rule suggests financial institutions information-retrieval process will be on more limited basis than that granted to law enforcement, which we find may render the registry less useful in combating illicit activity and create restrictions that have dubious grounds in the CTA and consistency with its spirit and purpose.

Verification of Data

Finally, we find the proposed rule fails to go far enough into the specifics of database design that will ensure its searchability and data quality yield the “highly useful” results for law enforcement the CTA intended. We proposed that FinCEN adds steps to verify data, but the proposed rule merely states the agency is considering options to do this “within the legal constraints in the CTA.”

There are multiple ways FinCEN can resort to existing information to verify beneficial ownership information reported by companies, and it should take advantage of as many of them as possible. Partnerships with the U.S. State Department, National Law Enforcement Telecommunications

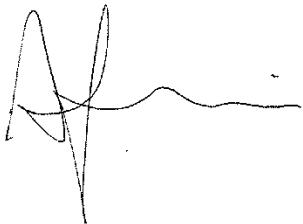
System or the U.S. Postal Service, among others, are viable options. Verifying the data is the best way to ensure the efficacy of the CTA database, and to make the information in the database highly useful to law enforcement and national security officials.

Conclusion

Corporate transparency will have a major impact in reducing international corruption, thereby providing vulnerable populations with the means to access resources for building schools, hospitals, and the infrastructure necessary for development. Additionally, the collection of beneficial ownership information will make it harder for those stealing from the most vulnerable to use the United States financial system as a safe haven to hide their money. Jubilee USA Network looks forward to working with FinCEN during its rulemaking on the Corporate Transparency Act to ensure this mission is achieved.

In closing, we thank you again for your consideration of these comments. For any questions or clarifications on our comments please feel free to contact Aldo Caliari at aldo@jubileeusa.org.

Sincerely,

A handwritten signature consisting of several loops and lines, appearing to be the name "Aldo Caliari".

Aldo Caliari
Senior Director of Policy and Strategy