



**Statement of Joanna Derman, Policy Analyst
Project On Government Oversight
Before the House Financial Services Committee
On “Oversight of the Financial Crimes Enforcement Network”
April 28, 2022**

Chairwoman Waters, Ranking Member McHenry, and members of the committee, thank you for the opportunity to submit a statement for the record regarding the critical role that the Financial Crimes Enforcement Network (FinCEN) plays in protecting the U.S. economy from financial crimes, and the importance of FinCEN’s swift implementation of the Corporate Transparency Act (CTA).

I am Joanna Derman, policy analyst at the Project On Government Oversight (POGO). POGO is a nonpartisan independent watchdog that investigates and exposes waste, corruption, abuse of power, and when the government fails to serve the public or silences those who report wrongdoing. We champion reforms to achieve a more effective, ethical, and accountable federal government that safeguards constitutional principles.

FinCEN is the bureau of the Treasury Department specifically tasked with the enormous responsibility “to safeguard the financial system from illicit use, combat money laundering and its related crimes including terrorism, and promote national security through the strategic use of financial authorities and the collection, analysis, and dissemination of financial intelligence.”¹

FinCEN plays a crucial role in protecting the U.S. economy from foreign malign influence. To that end, it is a leading financial intelligence unit and coordinates widely with international partners to share and exchange financial information in support of U.S. and foreign financial crime investigations.² FinCEN is also a lead implementing agency for the reforms listed in President Joseph Biden’s December 2021 inaugural strategy on countering corruption.³

Recently, FinCEN has been widely discussed within the context of combatting Russian aggression against Ukraine, as the bureau endeavors to remain vigilant against potential efforts to evade the robust sanctions regime that the U.S. and our allies recently expanded with respect to both the Russian Federation and individual Russian oligarchs.⁴ As you, Chairwoman Waters,

¹ Financial Crimes Enforcement Network, “Mission,” accessed April 25, 2022, <https://www.fincen.gov/about/mission>.

² Financial Crimes Enforcement Network, “What We Do,” accessed April 25, 2022, <https://www.fincen.gov/what-we-do>.

³ The White House, *United States Strategy on Countering Corruption* (December 2021), 19, <https://www.whitehouse.gov/wp-content/uploads/2021/12/United-States-Strategy-on-Countering-Corruption.pdf>.

⁴ The FACT Coalition, “Now is the Time to Modernize FinCEN: Just the FACTS: April 8,” April 8, 2022, <https://thefactcoalition.org/now-is-the-time-to-modernize-fincen-just-the-facts-april-8/>; Mengqi Sun, “Russian Kleptocrats of Particular Concern to U.S. Treasury,” *Wall Street Journal*, April 14, 2022,

recently noted, bad actors in Russia “are using shell companies and other money laundering techniques to hide their money, avoid scrutiny, and evade our sanctions.”⁵ These actions shine a spotlight on what financial regulators have known for a long time: that kleptocrats and criminals have consistently taken advantage of gaps in the framework protecting western financial economies in order to hide their wealth from prying eyes.⁶ For example, last month Russian oligarch Roman Abramovich, who is subject to international sanctions, docked his two super yachts in Turkey. With each yacht worth an estimated \$600 million or more, he is literally moving his money around the world while he seeks to outrun their capture.⁷ As another example, Russian oligarch Oleg Deripaska, who has been sanctioned by the U.S. since 2018, has reportedly used anonymous shell companies and proxies to secretly own real estate in the U.S. to this day, without fear of seizure.⁸ In another instance, in 2016, Russian oligarch Igor Makarov established an unregulated private trust company in Wyoming to anonymously grow and hide his wealth in the U.S financial system.⁹ FinCEN must continue to work with our international allies to close these loopholes in our financial system and finally bring these individuals to account.

Ensuring Increased FinCEN Fundings

Given the critical role that FinCEN plays in protecting the security of our nation’s financial systems, Congress should not hesitate to significantly increase FinCEN’s funding and fulfill President Biden’s fiscal year 2023 budget request of \$210 million for FinCEN.¹⁰ With all eyes on anti-corruption efforts targeting Russian oligarchs, lawmakers must recognize that in order for FinCEN to produce meaningful enforcement efforts, they must be afforded at least the minimum amount of resources they need for staffing, technology, licensing, travel, and other operational necessities.

In fiscal year 2022, Congress unfortunately fell \$30 million short of President Biden’s request of \$191 million for FinCEN.¹¹ While the resultant \$161 million for FinCEN that fiscal year

<https://www.wsj.com/articles/russian-kleptocrats-of-particular-concern-to-u-s-treasury-11649974520>; Katy O’Donnell, “Oligarchs’ big loophole for stashing money,” *Politico*, April 11, 2022,

<https://www.politico.com/news/2022/04/11/washington-poised-to-clamp-down-on-oligarchs-real-estate-00023347>.

⁵ House Financial Services Committee, “Waters Opening Statement at March Full Committee Markup on Bipartisan Bills to Punish Russia and Support Ukraine,” Press Release, March 17, 2022,

<https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=409203>.

⁶ Katy O’Donnell, “Oligarchs’ big loophole for stashing money,” *Politico*, April 11, 2022,

<https://www.politico.com/news/2022/04/11/washington-poised-to-clamp-down-on-oligarchs-real-estate-00023347>.

⁷ Karen Gilchrist, “Russian oligarch Abramovich’s two superyachts worth a combined \$1 billion are escaping sanctions – for now,” CNBC, March 24, 2022, <https://www.cnbc.com/2022/03/24/russia-oligarch-abramovichs-superyachts-evade-sanctions.html>.

⁸ Roman Goncharenko, “The Russian oligarchs of the FinCEN Files,” *Deutsche Welle*, September 26, 2020, <https://www.dw.com/en/the-russian-oligarchs-of-the-fincen-files/a-55062675>.

⁹ Will Fitzgibbon and Debbie Cenziper, “The ‘cowboy cocktail’: How Wyoming became one of the world’s top tax havens,” International Consortium of Investigative Journalists, December 20, 2021, <https://www.icij.org/investigations/pandora-papers/the-cowboy-cocktail-how-wyoming-became-one-of-the-worlds-top-tax-havens/>.

¹⁰ Office of Management and Budget, *Budget of the U.S. Government, Fiscal Year 2023* (March 2022), 98, https://www.whitehouse.gov/wp-content/uploads/2022/03/budget_fy2023.pdf.

¹¹ House Committee on Appropriations, “H.R. 2471, Funding for the People, Division-by-Division Summary of Appropriations Provisions,” 16 [page in PDF], <https://appropriations.house.gov/sites/democrats.appropriations.house.gov/files/Appropriations%20Division-by->

constituted an increase from the prior fiscal year, it is clear that FinCEN is still in need of additional resources in order to fulfill its mission.

Congress must do better. Lawmakers should fully and consistently fund FinCEN, especially as Congress continues to expand FinCEN's mandate, most recently in 2021 through the Anti-Money Laundering Act of 2020. The act added substantial responsibilities to FinCEN's plate and highlighted certain factors that FinCEN needs to consider when prescribing the compliance framework for combatting money laundering and financial terrorism.¹²

FinCEN Must Swiftly Implement the Corporate Transparency Act

Signed into law on January 1, 2021, the Corporate Transparency Act (CTA) requires corporations, limited liability companies, and similar entities to report their true beneficial owners to FinCEN, and directs FinCEN to house and maintain this information in a central registry so authorized law enforcement and financial institutions can use it to crack down on criminal and illicit financial exchanges and money laundering.¹³

FinCEN should fully and expeditiously implement the CTA. Currently, the Treasury Department is beyond its statutory timeframe of one year to implement the law. It has been in the process of implementing the CTA for the past year, issuing the first of what will be three Notices of Proposed Rulemaking in December 2021.¹⁴ Treasury Secretary Janet Yellen said before this committee on April 6, 2022, that the Treasury Department expects a second rule “this year, within the coming months.”¹⁵

POGO encourages the Treasury Department to see through its commitment to this schedule, and urges the department to ensure that CTA implementation be finalized and take effect no later than January 1, 2023. The administration should move to quickly issue the second and third proposed rulemakings for the CTA, and to make effective final regulations.

POGO recently submitted an appropriations request to that effect to Congress, requesting reporting language that encourages the Treasury Department to swiftly implement the CTA.

[Division%20Summary.pdf](#); Consolidated Appropriations Act, 2022, H.R. 2471, 117th Cong. (2021), <https://www.congress.gov/bill/117th-congress/house-bill/2471/text>.

¹² Himamauli Das, “Prepared Remarks of FinCEN Acting Director Himamauli Das During NYU Law’s Program on Corporate Compliance and Enforcement,” (speech, New York University School of Law, March 25, 2022), <https://www.fincen.gov/news/speeches/prepared-remarks-fincen-acting-director-himamauli-das-during-nyu-laws-program>.

¹³ 31 U.S.C. § 5336(b)(4)(B)(ii).

¹⁴ Beneficial Ownership Information Reporting Requirements, 86 Fed. Reg. 69,920-69,974 (proposed December 8, 2021), <https://www.federalregister.gov/documents/2021/12/08/2021-26548/beneficial-ownership-information-reporting-requirements>; Beneficial Ownership Reporting Requirements, 86 Fed. Reg. 17,557-17,565 (proposed April 5, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-04-05/pdf/2021-06922.pdf>.

¹⁵ *The Annual Testimony of the Secretary of the Treasury on the State of the International Financial System: Hearing before House Financial Services Committee*, 117th Cong. (April 6, 2022) (testimony of Treasury Secretary Janet Yellen), 2:52:37, <https://www.youtube.com/watch?v=dOrFjpl4qt8>.

Priorities in CTA Rulemaking

In response to the Treasury Department's CTA rulemaking process, POGO submitted two comments, both of which are enclosed in this document and include recommendations on how to implement the law most effectively.

First, POGO submitted a comment to the Treasury Department's Advanced Notice of Proposed Rulemaking published in the federal register on April 5, 2021.¹⁶ We recommended that FinCEN adhere closely to the statutory language in the CTA, paying close attention to how accessible the beneficial ownership database is to law enforcement. For the database to be as "accurate, complete, and highly useful" as possible, FinCEN must craft the database in a manner that allows for timely access to information and push for the use of unique, non-proprietary identifiers for each company in the database to make it easier to monitor and track illicit transactions.

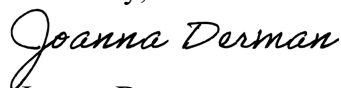
Second, POGO submitted a comment to the Treasury Department's Notice of Proposed Rulemaking published in the federal register on December 8, 2021.¹⁷ We recommended that FinCEN retain its strong definitions of both a reporting company and a beneficial owner, retain its proposed reporting requirements, and retain its efforts to minimize cost of compliance. Additionally, we recommended that FinCEN clarify the exemption policy for subsidiaries of reporting companies, require mandatory Legal Entity Identifier numbers, and take additional steps to strengthen the accuracy and usefulness of reported information.

We look forward to reviewing FinCEN's forthcoming rule regarding the CTA.

Conclusion

POGO is grateful to the committee for holding this important hearing, and we urge you to act to increase FinCEN funding, swiftly implement the CTA, and continue to take concrete steps that ensure bad actors are unable to make illicit financial transactions that harm our national security.

Sincerely,



Joanna Derman
Policy Analyst

Enclosures: 2

¹⁶ Tim Stretton, "POGO Submits Comment on Creation of New Federal Beneficial Ownership Database," Project On Government Oversight, May 5, 2021, <https://www.pogo.org/letter/2021/05/pogo-submits-comment-on-creation-of-new-federal-beneficial-ownership-database/>.

¹⁷ Joanna Derman, "POGO Submits Second Comment on Creation of New Beneficial Ownership Database," Project On Government Oversight, February 7, 2022, <https://www.pogo.org/letter/2022/02/pogo-submits-second-comment-on-creation-of-new-federal-beneficial-ownership-database/>.



May 5, 2021

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

Submitted via the Federal E-rulemaking Portal at <http://www.regulations.gov>

Subject: Comment in response to Proposed Rulemaking: Beneficial Ownership Information Reporting Requirements, Docket Number FINCEN-2021-0005; RIN 1506-AB49

Dear Deputy Director Tirol:

The Project On Government Oversight (POGO) submits the following comment in response to the request by the Financial Crimes Enforcement Network (FinCEN) for comment on an advance notice of proposed rulemaking, published in the Federal Register on Monday, April 5, 2021.¹ The final rule that results will implement the beneficial ownership reporting requirements mandated by the Corporate Transparency Act. We appreciate the opportunity to weigh in on this important rulemaking.

POGO is a nonpartisan independent watchdog that investigates and exposes waste, corruption, abuse of power, and when the government fails to serve the public or silences those who report wrongdoing. We champion reforms to achieve a more effective, ethical, and accountable federal government that safeguards constitutional principles.

Good government reform must include the collection of accurate information on the individuals who really own, and benefit financially from, companies—known as beneficial ownership information. Investigations into waste, fraud, and abuse in government spending have routinely found companies with anonymous or opaque ownership structures to be dangerous facilitators of corruption and misconduct. The language in the Corporate Transparency Act makes monumental progress in increasing transparency in corporate structures in the United States.

Beneficial Ownership Database

The Corporate Transparency Act requires companies formed in the U.S., with some exceptions, to disclose information about their beneficial owners to law enforcement and financial institutions such as banks. The law's definition of beneficial ownership is strong. The Treasury

¹ Beneficial Ownership Information Reporting Requirements, 86 Fed. Reg. 17,557-17,565 (proposed April 5, 2021). <https://www.govinfo.gov/content/pkg/FR-2021-04-05/pdf/2021-06922.pdf>

Department's Financial Crimes Enforcement Network, or FinCEN, will collect and house companies' beneficial ownership information in a secure nonpublic database.² The agency is uniquely qualified to oversee beneficial ownership information, as its stated mission is to "safeguard the financial system from illicit use and combat money laundering and promote national security through the collection, analysis, and dissemination of financial intelligence and strategic use of financial authorities."³

When creating the database and the rules governing its use, FinCEN should adhere closely to legislative intent. Congress carefully crafted the Corporate Transparency Act in a way that would be useful to law enforcement and financial institutions in the effort to combat illicit financial transactions and to protect national security. For the database to be a valuable resource, FinCEN must ensure law enforcement entities have timely access to information in the database and must use unique, non-proprietary identifiers for each company to make it easier to track illicit transactions.

Timely Access to Information

While the law has ensured that the business information in FinCEN's database will not be publicly available, local, state, federal, and in some cases international law enforcement entities will be able to access it to support ongoing investigations. Allies overseas should be able to access the information through appropriate protocols such as mutual legal assistance treaties and other agreements. In order for the database to be as useful as intended, the rule should ensure that all law enforcement entities have timely access to the database.

The rule should define law enforcement activities as broadly as possible to include criminal, civil, and administrative enforcement duties. Doing so will make it easier for law enforcement entities to quickly access information that may be helpful to ongoing investigations. On the other side of the coin, creating a narrow definition risks preventing law enforcement entities from accessing information in the database, which could harm those investigations.

In addition, the rule should make clear who has the authority to approve and deny requests for database information. This will improve efficiency and protect the integrity of the database by reducing the risk of unauthorized approval. The rule should also make clear what positions at law enforcement entities have the authority to request information.

Another issue the rule should address is the likelihood that law enforcement entities will need information about multiple individuals in a case. FinCEN should adopt certification procedures for law enforcement investigations and, once that investigation is approved for access to information, the certification should remain valid for the duration of the investigation. A process that would require an entity to obtain certification for each information request in an investigation would severely increase the time it takes law enforcement to get the information they need. The system should also permit the entity to submit their certification materials at the

² National Defense Authorization Act for Fiscal Year 2021, H.R. 6395, 116th Cong., § 6401(7)(A) (2021). <https://www.congress.gov/bill/116th-congress/house-bill/6395/text>

³ "What We Do," Financial Crimes Enforcement Network. <https://www.fincen.gov/what-we-do> (accessed on April 22, 2021)

same time they submit the information request, which will reduce transaction time. In addition, once a law enforcement entity is approved to access the database for a particular investigation, FinCEN should allow that organization to submit one request for multiple people related to the investigation if needed, rather than requiring them to submit separate requests for each person of interest. This fast-tracked approach will reduce administrative burden and facilitate the timely sharing of information that is necessary to help protect national security, intelligence gathering, and law enforcement.

Finally, foreign law enforcement entities should be able to access certain information when appropriate. The illicit flow of money is a global problem that has serious implications for U.S. national security. Anonymous companies facilitate a wide variety of illicit activities that directly harm U.S. foreign policy interests, finance terrorism, and enable sanctions evasion. In situations where there are existing mutual legal assistance treaties and other law enforcement cooperation agreements between a country and the United States, law enforcement entities in those countries should be able to quickly access needed information. FinCEN should also work with federal agencies at various attaché offices abroad so they are familiar with the database in case it could help in their investigations. Opaque corporate ownership is an international problem, and swift international cooperation will be key to making the United States and the world safer.

Unique Identifiers

The Corporate Transparency Act requires that FinCEN issue a “FinCEN identifier” to an individual or entity that has submitted the required beneficial ownership information.⁴ When deciding what identifier to use, FinCEN should ensure it is a non-proprietary system, such as the global Legal Entity Identifier (LEI) system. The LEI is a 20-character, alpha-numeric code that enables clear and unique identification of legal entities participating in financial transactions.⁵ Given resource constraints, FinCEN could even consider contracting with the Global Legal Entity Identifier Foundation to provide the unique identifiers. The foundation assigns a number to any type of legal entity requesting one. Regardless of whether FinCEN chooses to create its own identifier system or to use an existing one, the unique entity identifier should be non-proprietary and should link all domestic and foreign relationships, including parents, subsidiaries, joint ventures, partnering arrangements, and mentor programs.

In order for the FinCEN database to be as useful as possible in combating illicit money flows, it needs to be complete and accurate. For that to happen, companies need to be able to enter required information with ease, and in a way that prevents errors or incorrect information from being introduced into the system. To that end, the new identifier system must have instant verification mechanisms built in to ensure the use of a company’s correct identifier. Such mechanisms need to be triggered immediately so that entities submitting information cannot submit out-of-date identifiers or be issued new and unnecessary identifiers. This is a process that’s widely used in the private sector, such as when a credit card company declines a consumer’s transaction if the billing information the customer enters doesn’t match what the

⁴ National Defense Authorization Act for Fiscal Year 2021, H.R. 6395, 116th Cong., § 6403(a) (2021).
<https://www.congress.gov/bill/116th-congress/house-bill/6395/text>

⁵ “Introducing the Legal Entity Identifier (LEI),” Global Legal Entity Identifier Foundation
<https://www.gleif.org/en/about-lei/introducing-the-legal-entity-identifier-lei> (accessed on April 25, 2021).

company has on file. Similarly, if someone enrolled in the Transportation Security Administration's PreCheck program tries to book a flight but enters a different Known Traveler Number than what the agency has on file, the flight cannot be booked. Imagine if you found out days or weeks later that your online order was declined or your flight wasn't booked because you entered the wrong information, rather than being informed immediately? It would be beyond frustrating and not just a minor inconvenience. For businesses this extra time it takes to go through the whole process again is time lost—which is money lost.

As companies try to comply with the law and register their beneficial owners, it is imperative that the process be as minimally burdensome as possible. This is especially important for small businesses. Creating instant verification mechanisms will help these companies register correctly the first time, rather than being forced to come back and do it all over again because of a typo or other registration error. If the process is easy for businesses, especially small businesses, they will be much more likely to comply.

Conclusion

Companies with hidden anonymous ownership structures are a serious global problem, and in many instances those entities are involved in international corruption that doesn't stop at the U.S. border. These anonymous shell companies facilitate a wide variety of illicit activities that directly harm U.S. foreign policy interests and national security. The Corporate Transparency Act mandated a beneficial ownership database that will enable law enforcement and bank officials to learn more about the true owners of companies. This information will help the officials root out corruption, fraud, and illicit financial transactions, and ensure that taxpayer dollars are going to law-abiding contractors and grantees rather than to companies engaging in fraud or posing national security risks. FinCEN's database will be key to the success of this effort.

Thank you for your consideration of this comment. Should you have any questions, please contact me at tstretton@pogo.org.

Sincerely,

Tim Stretton
Policy Analyst



February 4, 2022

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

Submitted via the Federal E-Rulemaking Portal at <http://www.regulations.gov>

Subject: Proposed Rulemaking: Beneficial Ownership Information Reporting Requirements, Docket Number FINCEN-20210-0005, RIN 1506-AB49

Dear Acting Director Das:

This comment responds to the Financial Crimes Enforcement Network's (FinCEN) notice of proposed rulemaking on beneficial ownership information reporting requirements, published in the Federal Register on December 8, 2021,¹ to implement the Corporate Transparency Act (CTA). We appreciate the opportunity to weigh in on this important rulemaking.

The Project On Government Oversight (POGO) is a nonpartisan independent watchdog that investigates and exposes waste, corruption, abuse of power, and when the government fails to serve the public or silences those who report wrongdoing. We champion reforms to achieve a more effective, ethical, and accountable federal government that safeguards constitutional principles.

Good government reform must include the collection of certain information regarding the ownership of anonymous shell companies — known as beneficial ownership information — including the identity of companies' true, natural owners. Right now, to the detriment of the American taxpayer, it is all too easy for corrupt actors who own and profit from companies to hide their true identities behind layers of anonymous ownership structures for the purpose of facilitating illicit financial transactions.

With some exceptions, the Corporate Transparency Act requires companies that are formed in or registered to do business in the U.S. to disclose and keep up to date such beneficial ownership information to the federal government in an “accurate, complete, and highly useful” manner.² According to the Corporate Transparency Act, this beneficial ownership information shall then

¹ Beneficial Ownership Information Reporting Requirements, 86 Fed. Reg. 69,920-69,974 (proposed December 8, 2021), <https://www.federalregister.gov/documents/2021/12/08/2021-26548/beneficial-ownership-information-reporting-requirements>.

² 31 U.S.C. § 5336(b)(4)(B)(ii).

be housed in a secure database and made available to national security, intelligence, and law enforcement agencies; foreign law enforcement via request with a U.S. agency; and certain financial institutions, such as banks, that have customer due diligence obligations for the purposes of combatting financial corruption, misconduct, and a wide variety of illicit activities that harm U.S. national security.³

POGO applauds this draft rule and sees it as important progress toward modernizing the U.S. anti-money laundering framework, as well as a key opportunity to protect the U.S. financial system from abuse by criminal and corrupt actors.

Consistent with POGO's May 5, 2021, recommendations submitted in response to FinCEN's Advanced Notice of Proposed Rulemaking, the Department of the Treasury crafted this rule in a way that adheres closely to the statutory language in the Corporate Transparency Act, implements key aspects of the statute, and offers meaningful transparency into the real, natural owners behind a range of legal entities operating in the U.S.⁴

In order to make this beneficial ownership database as "accurate, complete, and highly useful" as possible, POGO recommends retaining this rule's faithful definition of a reporting company, its strong definition of a beneficial owner (absent the language surrounding senior officers, clarified below), its timely reporting requirements, and its efforts to minimize cost of compliance for covered entities. POGO also recommends clarifying the exemption for subsidiaries of reporting companies (known as exemption 22), requiring mandatory Legal Entity Identifier (LEI) numbers, and imposing additional verification mechanisms on the database.

Faithful Definition of a "Reporting Company"

With respect to the definition of a "reporting company," the Corporate Transparency Act requires corporations, limited liability companies, and "other similar entities" to disclose beneficial ownership information to the federal government. In FinCEN's proposed rule, the Treasury Department defines the term "other similar entities" as any entity that was either created under the laws of the state or Indian tribe, or that registered to do business in the state or tribal jurisdiction, by filing a document with a secretary of state or similar office.⁵ The draft rule states that its definition would "likely include limited liability partnerships, limited liability limited partnerships, business trusts ... and most limited partnerships, in addition to corporations and limited liability companies (LLCs)," as they also typically file with a state secretary or other similar office.⁶

This process-oriented definition of a reporting company provides flexibility that accounts for the filing practices unique to each state. For example, as noted by Transparency International's U.S. office, if a particular state determines that a trust not otherwise exempted by the Corporate

³ National Defense Authorization Act for Fiscal Year 2021, H.R. 6395, 116th Cong., § 6401(7)(A) (2021), <https://www.congress.gov/bill/116th-congress/house-bill/6395/text>.

⁴ Project On Government Oversight, Comment Letter on Proposed Rule on Creation of New Federal Beneficial Ownership Database (May 5, 2021), <https://www.pogo.org/letter/2021/05/pogo-submits-comment-on-creation-of-new-federal-beneficial-ownership-database/>.

⁵ Beneficial Ownership Information Reporting Requirements (proposed December 8, 2021) [see note 1].

⁶ Beneficial Ownership Information Reporting Requirements (proposed December 8, 2021) [see note 1].

Transparency Act must be formed through filing documents with its secretary of state, that trust will be covered under the definition of a reporting company and be required to report its beneficial ownership information to the secure directory.⁷

The definition of a reporting company in FinCEN's draft rule will help meet the Corporate Transparency Act's mandate that information provided to the directory be "highly useful,"⁸ as it will help law enforcement identify the true natural owner behind a variety of U.S. legal entities, which are often interchanged in complex ownership structures. While risks still exist, the process-oriented approach reduces certain risks of driving demand for other, more opaque methods of obscuring beneficial ownership information.⁹ FinCEN should work with states to ensure new vulnerabilities are not created in the wake of the Corporate Transparency Act's implementation.

Strong Definition of "Beneficial Owner"

As POGO has previously noted, the Corporate Transparency Act's definition of a "beneficial owner" is strong.¹⁰ According to the law, a beneficial owner of an entity, subject to certain exceptions, is an individual who either owns no less than 25% of the ownership interests of the entity or who exercises "substantial control over the entity."¹¹ The term "substantial control" was not further defined in the Corporate Transparency Act. Leading up to its call for comments for the May 2021 Advanced Notice of Proposed Rulemaking, the Treasury Department even considered whether or not to interpret the term "substantial control" to mean that no entity could have more than one beneficial owner who is listed as exercising "substantial control" of an entity, which would have severely limited the utility of the database.¹²

In contrast, FinCEN's draft rule requires the naming of one or multiple owners that meet the proposed definition of a beneficial owner and identifies several types of individuals who shall be considered to exercise substantial control. This list is non-exhaustive, and includes but is not limited to: individuals who serve as a senior officer of the reporting company, individuals who have authority over the appointment or removal authority within the entity, and "any other form of substantial control over the reporting company."¹³

One place where FinCEN can improve upon its proposed list is its usage of the term "senior officer." Senior officers are often simply higher-ranking employees in a company who do not

⁷ Transparency International, "Four Initial Takeaways from the Draft CTA Rule,"

<https://us.transparency.org/resource/four-initial-takeaways-from-the-draft-corporate-transparency-act-rule/>.

⁸ 31 U.S.C. § 5336(b)(4)(B)(ii).

⁹ Studies of the implementation of the U.K.'s beneficial ownership registry showed that the incorporation of a relatively unpopular corporate entity — the Scottish limited partnership — jumped between 2015 and 2016. Their numbers dwindled shortly after the U.K. included them in the definition of reporting entity. Nienke Palstra, "Three Ways in Which the U.K.'s Register of the Real Owners of Companies is Already Proving its Worth," Global Witness, July 24, 2018, <https://www.globalwitness.org/en/blog/three-ways-uks-register-real-owners-companies-already-proving-its-worth/>.

¹⁰ Project On Government Oversight, Comment Letter on Proposed Rule [see note 4].

¹¹ 31 U.S.C. § 5336(b)(4)(B)(ii).

¹² Transparency International, "Four Initial Takeaways from the Draft CTA Rule" [see note 7].

¹³ Transparency International, "Four Initial Takeaways from the Draft CTA Rule" [see note 7]; Beneficial Ownership Information Reporting Requirements (proposed December 8, 2021) [see note 1].

exercise any authority over the operations of the entity. As such, senior officers should be more carefully defined such that the term only describes those senior officers who hold substantive control over a company. Separately, this catch-all language related to “any other form of substantial control” is important, because it would capture a wide spectrum of illicit actors, including those who exert control through illicit methods, such as instances of bribery or threats.

With the minor exception of the language concerning senior officers, FinCEN’s draft rule should retain the proposed definition of substantive control. This would ensure that all relevant information is appropriately collected and housed in the beneficial ownership database and made accessible to law enforcement and appropriate financial institutions.

Timely Reporting Requirements

The Corporate Transparency Act requires the Treasury Department to define two central terms with respect to when reporting entities must submit beneficial ownership information to the federal government. First, the law states that a covered entity must report its beneficial ownership information “at the time of formation or registration,” but does not further specify what timeframe this must entail. Second, the law stipulates that if an entity must update its beneficial ownership information, it must do so in a timely manner that does not exceed a year after the date on which the change occurs, but it does not further specify what a “timely manner” means.¹⁴

In FinCEN’s proposed rule, the Treasury Department interpreted the terms “at the time of” and “in a timely manner” to mean within 14 days and within 30 days, respectively. As stated by Transparency International’s U.S. office, this is in line with beneficial ownership directories in France and Luxembourg.¹⁵ Aligning this registry with international standards could potentially make it easier to work with allies in cross-border efforts to combat money laundering and corruption. Furthermore, this rule specifies that if an exempted entity loses its exempted status, it has 30 days to report its beneficial ownership information to the proper authorities.¹⁶ These timeframes for reporting are extremely reasonable, and balance what can be practicably expected of an entity with rational expectations surrounding the utility of the beneficial ownership database.

Low Cost of Compliance

In compliance with the statute, the draft rule minimizes the costs to businesses by keeping the cost of compliance for reporting companies low. According to Deputy Secretary Wally Adeyemo, the Treasury Department estimates that the cost of compliance, on average, will be less than \$50 per company.¹⁷

¹⁴ National Defense Authorization Act for Fiscal Year 2021, § 6401(7)(A) [see note 3].

¹⁵ Transparency International, “Four Initial Takeaways from the Draft CTA Rule” [see note 7].

¹⁶ Transparency International, “Four Initial Takeaways from the Draft CTA Rule” [see note 7].

¹⁷ U.S. Department of the Treasury, “Remarks by Deputy Secretary of the Treasury Wally Adeyemo on Anti-Corruption at the Brookings Institution,” December 6, 2021, <https://home.treasury.gov/news/press-releases/jy0516>.

After implementing its own directory, the government of the U.K. surveyed covered companies and found that companies with fewer than 50 employees reported ongoing costs of just over \$5 on average.¹⁸ It is reasonable to expect similar outcomes in the U.S., where small firms (“mom and pop” style enterprises, for example) have simple ownership structures that are easy to identify and update at the time of any changes. On the other hand, small firms with enough resources to set up more costly, complex ownership structures would almost certainly have the resources necessary to identify and name to FinCEN their true, natural owner. In light of the data from the U.K.’s own directory, FinCEN’s draft rule should reassess the cost-benefit analysis to account for the minimal anticipated costs to keep current with disclosures after the initial implementation of the Corporate Transparency Act rule.

Clarifying the Exemption for Subsidiaries of Reporting Companies (Exemption 22)

The Corporate Transparency Act exempts nearly two dozen different types of entities from the definition of a reporting company, including but not limited to: securities issuers, domestic governmental authorities, banks, domestic credit unions, depository institution holding companies, and money transmitting businesses. Aside from a select number of proposed clarifications, FinCEN’s proposed rule declines to add exemptions, and instead adopts the statutory language granting these 23 exemptions verbatim from the Corporate Transparency Act, which is in line with POGO’s preference to adhere as closely as possible to legislative intent.

One area for improvement in the proposed rule is exemption 22, which states that companies are exempt from reporting their beneficial ownership information if “the[ir] ownership interests are controlled or wholly owned, directly or indirectly” by one or more exempt entities.¹⁹

As written in the rule, exemption 22 presents a major oversight loophole for these subsidiary companies. By exempting subsidiaries that are simply “controlled,” as opposed to “wholly controlled,” by exempted entities, the rule would incentivize bad actors to seek out exempted companies to serve as a majority owner or partner in a joint venture in order to evade detection. This approach would also expand the universe of entities exempted from submitting their beneficial ownership information. Taken together, this exemption would fail to capture potentially illicit actors and allow them to continue concealing their identity behind anonymous shell companies.

The Treasury Department should revise the rule by narrowing the proposed exemption 22 language of “controlled or wholly owned” to “*wholly* controlled or wholly owned,” which would explicitly articulate that only entities whose entire ownership interests are owned or controlled by an exempt entity may be exempted from disclosing beneficial ownership information.

Improving Efficiency Through Mandatory Legal Entity Identifiers

¹⁸ U.K. Department for Business, Energy & Industrial Strategy, *Review of the implementation of the PSC Register*, BEIS Research Paper Number 2019/005 (March 2019), 23, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/822823/review-implementation-psc-register.pdf.

¹⁹ Beneficial Ownership Information Reporting Requirements (proposed December 8, 2021) [see note 1].

FinCEN's rule should require covered entities to submit mandatory Legal Entity Identifier (LEI) numbers. LEI is a 20-character alpha-numeric code that is intended to enable law enforcement and financial institutions to clearly see "who is who" and "who owns whom."²⁰ LEIs are commonly used in the U.S. and are being adopted as a global standard in business transactions. According to FinCEN's proposed rule, over 244,000 entities in the U.S. already use LEIs to identify and distinguish themselves from other entities.²¹

LEI numbers would not only provide an additional way to verify the information submitted to the registry, but would also simplify information collection, storage, and access across international lines, since LEIs can be assigned internationally. Also, the LEI system is nonproprietary, and therefore is not limited by restrictions placed on it by its parent company, and is subject to transparency requirements such as the Freedom of Information Act. This would mitigate concerns expressed by nonprofit organization OMB Watch that proprietary systems are not subject to such transparency, and could pose oversight challenges for auditors or groups seeking to independently determine the accuracy or comprehensiveness of the information collected.²² Additionally, LEIs must be renewed annually, which adds another layer of security.

With respect to registering entities with the beneficial ownership database, obtaining a unique identifier should be simple, comprehensive, and as minimally burdensome as possible, especially for small businesses.

Separately, according to the Corporate Transparency Act, FinCEN may issue a unique identifier upon request, referred to as a FinCEN identifier, to an individual or entity that submits the required beneficial ownership information.²³ We propose that the rule should make it mandatory for FinCEN to issue a FinCEN identifier — so long as direct and indirect beneficial ownership information behind an identifier be made available to authorized users of the database — as this would allow law enforcement to track and verify the beneficial owners of covered entities more easily.

Improving Data Quality via Verification

FinCEN's draft rule rightly requires entities to submit a scanned image of an identifying document, such as a passport or driver's license, of an entity's beneficial owner(s). The decision to require a digital copy of the document will help ensure that information in the database is "accurate, complete, and highly useful" for law enforcement and authorized users. The image can be used to corroborate the identity of the owner, verify the reported data, and could help mitigate inaccurate or fraudulent submissions of data to the directory.

²⁰ "Introducing the Legal Entity Identifier (LEI)," Global Legal Entity Identifier Foundation, <https://www.gleif.org/en/about-lei/introducing-the-legal-entity-identifier-lei> (accessed January 5, 2022).

²¹ "LEI Statistics," Global Legal Entity Identifier Foundation, last modified February 1, 2022, <https://www.gleif.org/en/lei-data/global-lei-index/lei-statistics>.

²² Government Accountability Office, *Government is Analyzing Alternatives for Contractor Identification Numbers*, GAO-12-715R (June 12, 2012), 9-10, <https://www.gao.gov/assets/gao-12-715r.pdf>.

²³ National Defense Authorization Act for Fiscal Year 2021, § 6401(7)(A) [see note 3].

To help ensure the accuracy and completeness of the data as it is entered into the database, FinCEN should undertake additional verification measures. Much like in the private sector, such as when a credit card company declines a consumer's transaction because it does not match the company's internal files, entities registering for a FinCEN number should be notified immediately if they input incorrect information. This could save small businesses the effort of having to resubmit forms due to a typo weeks or even months after they initially register. Such verification mechanisms would be a commonsense practice that would encourage swift and comprehensive compliance with beneficial ownership information requirements, saving reporting companies time and money. These measures also ensure the accuracy and completeness of the data as it is submitted to the database, increasing the likelihood that this data is highly useful to law enforcement officers and other authorized users.

Conclusion

The Corporate Transparency Act was a significant victory for the financial transparency community. It requires FinCEN to establish a beneficial ownership database that will enable law enforcement and bank officials to identify the true owner of companies operating in the U.S., protect the integrity of the U.S. financial system, and expose shell companies engaging in illicit financial activities that undermine U.S. national security and foreign policy interests. The database will cut through the layers of anonymity often built into financial transactions, and protect U.S. taxpayer dollars by helping investigators identify and prevent fraud in U.S. public contracting.

In order to make this database as "accurate, complete, and highly useful" as possible, FinCEN should retain this rule's faithful definition of a reporting company, retain this rule's strong definition of a beneficial owner (absent the language surrounding senior officers), retain this rule's timely reporting requirements, and retain this rule's efforts to minimize cost of compliance for covered entities. FinCEN should also clarify the exemption for subsidiaries of reporting companies (exemption 22), require mandatory LEI numbers, and impose additional verification mechanisms in order to strengthen this rule and improve the accuracy and usefulness of reported information.

Thank you for your consideration of this comment. Should you have any questions, please contact me at joanna.berman@pogo.org.

Sincerely,

Joanna Derman
Policy Analyst