

Coalition for Integrity

February 7, 2022

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>

Dear Acting Director Das:

RE: **Beneficial Ownership Information Reporting Requirements**
Docket #: FINCEN-2021-0005; RIN: 1506-AB49

This letter responds to Financial Crimes Enforcement Network's (FinCEN) request for comment on the notice of proposed rulemaking (NPRM) to implement the beneficial ownership reporting requirements in the Corporate Transparency Act (CTA). Coalition for Integrity (C4I) appreciates the opportunity to comment on the proposed rulemaking.

Coalition for Integrity is a non-partisan 501(c)(3) organization. We work with a broad network of individuals and organizations to combat corruption and promote integrity in the public and private sectors both in the United States and internationally.

We welcome Financial Crimes Enforcement Network's (FinCEN) Notice of a Proposed Rulemaking on beneficial ownership reporting requirements.¹ We support the efforts of the U.S. Treasury and specifically FinCEN's efforts to address the need to collect beneficial owner information on the natural persons behind legal entities.

Requiring beneficial ownership information on legal entities is critical to keep the proceeds of corruption and other crimes from being laundered through the U.S. financial system. It is common for money launderers and others seeking financial secrecy vehicles to conceal their involvement in bribery and other forms of corruption to hide their identities behind complex

¹ Beneficial Ownership Information Reporting Requirements, Federal Register, 86 FR 69920-74 (Docket Number: FINCEN-2021-0005, RIN: 1506-AB49), Dec. 8, 2021

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webs of shell companies. According to the World Economic Forum, the global cost of corruption is at least \$2.6 trillion, or 5 percent of the global gross domestic product (GDP)², and according to the World Bank, businesses and individuals pay more than \$1 trillion in bribes every year.³ Another World Bank report analyzing 150 grand corruption cases over the past few decades found that anonymous companies were a frequent tool for corrupt officials to launder illicit funds, with U.S. companies being the most common.⁴ Often shell companies are used to steal these public funds and the culprits mask their true identities such that the beneficial owner is not known.

Overall, we are pleased that the proposed rule follows closely from the Corporate Transparency Act, and we commend FinCEN for their hard work and are pleased that our previous comments⁵ have been considered by FinCEN under this NPRM.

We offer our support for certain provisions and offer recommendations to FinCEN to strengthen the rule below. These follow:

1. **Defining “Substantial control”:** According to the Proposed Rule, "substantial control" includes: (1) service as a senior officer of the reporting company; (2) authority over the appointment or removal of any senior officer or a majority or dominant minority of the board of directors (or similar body); (3) direction, determination or decision of, or substantial influence over, important matters affecting the reporting company; or (4) any other form of substantial control over the reporting company. FinCEN notes that this final category "recognizes that control exercised in novel and unorthodox ways can still be substantial."

² Stephen Johnson, *The Global Economy Loses \$3.6 Trillion to Corruption Each Year, Says U.N.*, BIG THINK (Dec. 10, 2018), <https://bigthink.com/the-present/corruption-costs-world-3-6-trillion/#rebellitem3>.

³ Daniel Kaufmann, *Corruption: The Facts*, 107 FOREIGN POLICY 114 (1997), (http://www1.worldbank.org/publicsector/anticorrupt/fp_summer97.pdf). See also, Mario Marcel, *Illicit Financial Flows: A Wake-Up Call to Action*, WORLD BANK BLOG, (Oct. 27, 2014), <https://blogs.worldbank.org/governance/illicit-financial-flows-wake-call-action>.

⁴Emile van der Does de Willebois Et Al., *The Puppet Masters : How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It*. World Bank(2011), <https://star.worldbank.org/sites/star/files/puppetmastersv1.pdf>.

⁵ Submission from Coalition for Integrity to FinCEN, (May 3, 2021) <https://www.coalitionforintegrity.org/wp-content/uploads/2021/05/Updated-FinCEN-Comments-Signed.pdf>.

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Every person who exercises "substantial control" under any of these four categories is considered a "beneficial owner" under the Proposed Rule, creating a flexible definition that appropriately captures different kinds of substantial control. FinCEN expects that the definition of "substantial control" is tailored to ensure that a reporting company would identify at least one beneficial owner, regardless of whether (1) any individual satisfies the ownership prong, or (2) exclusions to the definition of beneficial owner apply.

We support both the definition of "beneficial owner," and of "substantial control" under the NPRM. We also support FinCEN employing a definition of "substantial control" that is tailored to ensure that each reporting company would identify at least one beneficial owner, regardless of whether (1) any individual satisfies the ownership prong, or (2) exclusions to the definition of beneficial owner apply.

2. **Exemptions:** We appreciate that FinCEN has not expanded exemptions from the definition of "reporting company" beyond the 23 exemptions expressly identified in the legislation, and likewise, FinCEN has appropriately interpreted these exemptions in a way that faithfully reflects the statute and congressional intent. The exemptions should be narrowly interpreted because the congressional intent for these exemptions was that several of the entities that fall under the categories already report ownership information to the Government.

Nevertheless, FinCEN's language on one exemption – exemption 22, dealing with subsidiaries of exempted entities – presents risks, at best, of confusion in how it is applied, and at worst, of exploitation for secrecy purposes. The rule states that entities "controlled or wholly owned" by an exempted parent entity may then be considered for exemptions but fails to define "controlled". The proposed rule should clarify that an entity must also be "wholly" controlled for the subsidiary exemption to apply. The current language – "owned or wholly controlled" – could allow subsidiary to qualify for the exemption if the specified exempt entities together hold only a minority stake in the entity.

3. **Timeliness of reporting:** Under the Proposed Rule, reporting companies in existence before the effective date of the final rule must file their initial report with FinCEN no later than one year after the effective date of the final rule. Reporting companies created or registered to do business in the U.S., for the first time, on or after the effective date would be required to file their initial report with FinCEN within 14 calendar days of the date on which they are created or registered, respectively. If there is a change in the information previously reported to FinCEN, reporting companies would have 30 calendar days to file an updated report.

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We support these filing deadlines as a helpful way to make certain the information in the database is “accurate, complete, and highly useful” to authorized database users, as has been required by the statute. FinCEN did not propose an effective date for the final version of the Proposed Rule and therefore we recommend that FinCEN consider January 1, 2023 as the effective date for final regulations assuming that FinCEN has the resources to build the database into which the information will be submitted. In any case, the effective date should not be later than one year following the enactment of the final rule.

4. **FinCEN Identifiers:** The Proposed Rule allows entities and beneficial owners to request a FinCEN identifier – a unique identifying number assigned by FinCEN – to use when submitting additional filings to the database. FinCEN notes that, in certain cases, the FinCEN identifier may provide a substitute to individuals who do not wish to provide their names, birth dates or addresses to a reporting company.

FinCEN should revise this language and reflect the intent of the FinCEN identifier language, which was to promote efficiency and data quality of filings in the database. As written, FinCEN’s language could be interpreted as authorizing a level of secrecy that is not included in the CTA. The rule should also clarify that entities that want to obtain a FinCEN identifier must first disclose their beneficial owners. The current phrasing also raises important questions regarding which authorized database users will be able to access the information behind a FinCEN identifier number, once submitted to the database. Access to this information for authorized users is paramount and should be preserved; any other interpretation would otherwise render the database meaningless for investigative and other purposes.

5. While not directly addressed in this rulemaking, FinCEN has indicated that it plans to issue a second proposed rule which is focused on the accessibility provisions of the CTA. Therefore, we reiterate our comments included in our earlier letter on the ANPRM process as they pertain to access and database protocols.

Timely Access: Investigating cases of corrupt officials requires law enforcement to have timely access to beneficial ownership information. Therefore, FinCEN’s implementing rules should ensure timely and effective access. This is also required by FATF standards.⁶

⁶ FATF, *Int’l Standards on Combating Money Laundering and the Fin. of Terrorism & Proliferation*, 93 (2021), [https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF Recommendations 2012.pdf](https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations_2012.pdf)

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Multiple Purposes: The access rules should make clear that the CTA provides access to a wide cross-section of federal agency personnel engaged in civil, criminal, tax, administrative, national security, or intelligence activities to enforce federal law. The rules should also make clear that federal, state, local, and tribal agency personnel engaged in law enforcement activities may access registry information when they have an official case as well as when they are conducting initial inquiries, preliminary investigations, analyses, and where relevant intelligence reviews, and national security inquiries.

Uncomplicated Access by Law Enforcement: The CTA already includes extensive protocols that state, local, and tribal agencies must follow to access any registry information. Imposing additional, extensive authentication processes would inevitably slow down access to the registry and thereby impede the important investigations, prosecutions, and civil enforcement proceedings conducted by those agencies. FinCEN should draft a rule in a way that limits unnecessary burdens on law enforcement to access information.

Court of Competent Jurisdiction: The rules should clarify that a “court of competent jurisdiction” includes any federal, regional, state, local, municipal, tribal, or territorial court that has actual or potential jurisdiction over the matter being examined by the agency seeking authorization to obtain information from the registry.

Officer of the Court: The rules should make clear that “any officer” includes any person involved with court administration, including a judge, magistrate, clerk, bailiff, sheriff, or other full or part-time court personnel.

Financial Institution Access: The rules should ensure that financial institutions once they have received customer consent, have timely and appropriate access to the registry to be able to support their customer due diligence and AML obligations. The access should include the beneficial ownership information for the relevant reporting entity, all of the applicant information for the reporting entity, information about any other entity with which each beneficial owner is associated, information about any other entity with which the applicant is associated, and information about any other entity (including affiliates and subsidiaries) with which the reporting company is associated.

Database Construction: The database should also be searchable in various ways including by beneficial owner, by applicant, by entity, by address, by FinCEN identifier, and more. Further, the registry should be designed to have machine-readable data that can

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be easily searched and analyzed. This would be useful to law enforcement and regulators to apply data analytics to identify suspicious patterns.

Over the years, the United States has committed to implementing beneficial ownership transparency in several different fora. The establishment of a beneficial ownership registry FinCEN would be a strong signal that the U.S. is taking the necessary steps to uphold its commitments, and we thank you in advance for your continued action to ensure strong and effective implementation of the Corporate Transparency Act.

Please do not hesitate to contact me at sshah@coalitionforintegrity.org if you have any questions.

Sincerely,

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