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 https://www.regulations.gov

RE: Comments on the Notice of Proposed Rulemaking for Beneficial Ownership Information Reporting Requirements (Docket Number FINCEN-2021-0005; RIN 1506-AB49)

Dear Acting Director Das:

Small Business Majority welcomes the opportunity to comment on the notice of proposed rulemaking (NPRM) issued by the Treasury Department's Financial Crimes Enforcement Network (FinCEN), titled "Beneficial Ownership Information Reporting Requirements" (RIN 1506-AB49), regarding the implementation of the recently enacted Corporate Transparency Act of 2020 (CTA). An anti-money laundering measure, the CTA requires FinCEN to establish a secure database to which U.S. companies submit basic identifying information of their true, "beneficial" owners.

Small Business Majority is a national small business organization that empowers America's diverse entrepreneurs to build a thriving and equitable economy. We engage our network of more than 85,000 small businesses and 1,500 business and other partner organizations to advocate for public policy solutions and deliver resources to entrepreneurs that promote equitable small business growth.

We appreciate FinCEN's interest in working with our members to make sure that the implementation of the Corporate Transparency Act both fulfills its purpose as an anti-money laundering measure and meets its mandate to keep the compliance costs for businesses low.[1]

We commend FinCEN for drafting the proposed rule in a way that accounts for the needs of small businesses and minimizes costs to implement the new law, and we recommend a few key revisions to ensure the rule is both strong and practicable for American small businesses.

Background

Our research finds that small business owners support the types of disclosure measures required by the Corporate Transparency Act, meant to give law enforcement better tools for investigations: not only to combat corrupt and criminal behavior, but also to protect legitimate businesses against the adverse impacts of anonymous structures. In two scientific, nationwide polls conducted by Small Business Majority and Main Street Alliance, most small business owners surveyed –77 and 81 percent respectively backed legislative efforts to require businesses to list their true identity when forming. Respondents viewed transparency to prevent fraud and abuse, level the playing field, and protect small businesses.[2]

The forthcoming rule will play a significant role in protecting our members from the myriad ways in which anonymous companies undermine legitimate small businesses. Shell companies with hidden owners put small businesses at a disadvantage by unfairly competing for contracts, undermining our

[1] 31 U.S.C. 5336(b)(1)(F)(iii). The law stipulates that in promulgating the regulation, the Administration must, to the extent practicable, "...mitigate the costs relating to compliance with the collection of information."

supply chains, creating difficulties in finding responsible subcontractors, and providing cover for fraudsters.[2] Some entities often hide behind anonymous front companies that disproportionately target small and medium sized businesses, and cost businesses upwards of $29 billion in 2011 alone.[3] Introducing transparency into corporate ownership will give small businesses increased confidence in new business partners and access to more competitive markets.

Clear Beneficial Ownership Reporting Requirements

In keeping with the Corporate Transparency Act's mandate to keep affiliated costs for businesses low,[4] FinCEN included several provisions that will make it easier and less costly for small businesses to comply with the law. We encourage FinCEN to keep these provisions when finalizing the rule.

Such provisions that protect small business interests include the following:

1. **Definition of "reporting company":** FinCEN defined a "reporting company" required to file with the registry not by the type of entity, but rather by the process through which it forms or registers to do business with a state (i.e. filing a piece of paper with a state secretary of state's office, or other similar office). By taking this approach, FinCEN has developed a metric that is easy to test whether or not an entity not otherwise expressly exempt by law needs to file with FinCEN. This clear standard will be simple for small business owners with uncomplicated corporate structures to determine on their own, keeping the cost of compliance low.
2. **Reporting the residential tax resident address of the beneficial owner(s)**: FinCEN should keep measures that require that the address of beneficial owner(s) reported to the database be the residential address used for tax purposes. This provision removes the potential for confusion for small business owners that may otherwise have to guess or otherwise choose what to list. Further, there is no question that small business owners know their tax resident address.
3. **Verification of identity through a copy of photo identification**: FinCEN requires a scanned copy of a photo ID such as a driver's license or passport of the beneficial owner to be submitted to the database. While this is an extra step for small businesses, we support this provision as a verification measure that can help ensure law enforcement does not mistakenly contact the wrong business or owners in the course of their investigations or other activities.

Nevertheless, there are two areas we would recommend to FinCEN to review more closely to ensure that use of the database helps serve to protect small business owners from fraud, and that its use does not unnecessarily interfere with honest small business operations. These include:

4. **Use of FinCEN identifiers for efficiency purposes:** FinCEN allows entities and beneficial owners to apply for an identifying number after providing their beneficial ownership data as a way to make subsequent filings more efficient. We support FinCEN's efforts to make filing more efficient, reduce errors, and simplify the process for anyone with more than one business. Nevertheless, we also encourage FinCEN to review and tighten the draft provisions on FinCEN identifiers to ensure they cannot be exploited by fraudsters to obscure beneficial ownership.
5. **Unique identifying information provided by the reporting entity:** Like the use of a scanned photo ID for beneficial owners, we support measures to reduce instances of confusion and mistaken law enforcement outreach to honest small businesses. As such, we recommend that FinCEN require reporting entities to list their full legal name to prevent confusing entities with

---

[2] FACT Coalition, "FACT Sheet: Small Businesses Are Harmed by Anonymous Companies," 2019, https://thefactcoalition.org/fact-sheet-small-businesses-are-harmed-by-anonymous-companies.

[3] Bessen, James E. and Meurer, Michael J., The Direct Costs from NPE Disputes (June 28, 2012). 99 Cornell L. Rev. 387 (2014), Boston Univ. School of Law, Law and Economics Research Paper No. 12-34, https://ssrn.com/abstract=2091210.

[4] 31 U.S.C. 5336(b)(1)(F)(iii). The law stipulates that in promulgating the regulation, the Administration must, to the extent practicable, "…mitigate the costs relating to compliance with the collection of information."

similar operating names. Further, FinCEN may consider requiring the reporting entity to submit its taxpayer identification number (TIN) to provide further clarity.

Reflecting Business Interests in CTA Cost Analysis

The draft rulemaking provides incomplete cost estimates both for the cost to small businesses and for the federal cost of implementing the rule. We encourage FinCEN to revise its cost estimates to reflect the needs of small businesses. This includes:

1. **Project the ongoing costs of compliance for reporting businesses**: The Treasury Department has estimated that the initial cost to businesses for complying with the CTA will be on average $50 per company.[5] In the final rule, FinCEN could provide additional clarity by including an estimate of the ongoing costs to small businesses. In the United Kingdom, which has similar beneficial ownership reporting requirements, government surveys of reporting entities with fewer than 50 employees demonstrate low ongoing costs, averaging around $3 per year.[6] A FinCEN projection would help our members plan accordingly and may help to reassure small businesses of the low cost of compliance.
2. **Estimates for federal implementation costs should include funding to partner with states**: As we noted in our ANPRM comment, the primary area of concern for our members lies in the rollout at the state-level incorporation stage once a rule is promulgated. The statute repeats its mandate to "mitigate the costs relating to compliance with the collection of information."[7] FinCEN's best opportunity to minimize small business compliance costs is to integrate the FinCEN filing as seamlessly as possible into existing state-level incorporation processes. Doing so will require materials and personnel to disseminate information on filing and help states quickly answer questions from filers. FinCEN should reflect these projected costs in its estimates for the federal cost of implementation.

Minimizing Business Cost through Data Collection Procedures

Either in this draft rulemaking or in a subsequent rulemaking on database construction, FinCEN should explain its plans to incorporate modern technology for data collection that can ensure the consistency and accuracy of information as it is entered into the database. Ensuring real-time accuracy will save businesses from later having to rectify inconsistencies when opening a bank account or applying for a loan or other financing. These steps would be:

1. Use software to capture and standardize address information: Leveraging technology to standardize addresses for beneficial owners and reporting entities as they are entered into the database will help mitigate costs of having to revise filings later on, in the event of an error or misreporting.
2. Verify information in real-time as it is entered into the database: As we mentioned in our ANPRM comment, FinCEN should take steps to pre-verify information that applicants and owners enter into the system (e.g. a government ID number) and prevent the filer from completing registration until such information is verified. Passport or driver's license information should be automatically checked against the appropriate government databases and errors should be noted for correction – much like a credit card verification for an online purchase. Along with clear links to FinCEN on state business registration websites, this is perhaps the best way to ease business compliance.

---

[5] U.S. Treasury Department, "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.

[6] U.K. Department for Business, Energy & Industrial Strategy, "People of Significant Control (PSC) Register: review of implementation," March 2019, https://www.gov.uk/government/publications/people-of-significant-control-psc-register-reviewof-implementation.

[7] 31 U.S.C. 5336(b)(1)(F)(iii).

Conclusion

Thank you for your consideration of our views, and we look forward to working with you on this important rule. For any questions or additional information, please contact Government Affairs Director, Awesta Sarkash at asarkash@smallbusinessmajority.org.

Sincerely,

John Arensmeyer
Founder & CEO
Small Business Majority