

VIA ELECTRONIC SUBMISSION

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

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

Dear Acting Director Mosier:

Small Business Majority welcomes the opportunity to comment on the advanced notice of proposed rulemaking (ANPRM) 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, private 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 inclusive economy. We engage our network of more than 85,000 small businesses and 1,000 business and community 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.<sup>1</sup> As a leading representative of the 30 million small businesses in America,<sup>2</sup> Small Business Majority weighed in with Congress during its deliberations on the bipartisan legislation<sup>3</sup> to ensure it meets the needs of America’s small businesses.

Our research finds that small business owners support these proposed disclosure measures, 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, the majority of small business owners surveyed – 77 and 81 percent respectively – backed legislative efforts to require

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<sup>1</sup> 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.”

<sup>2</sup> Learn more about us at <https://smallbusinessmajority.org/about-us>

<sup>3</sup> Small Business Majority letters to Congress: 2020: <https://thefactcoalition.org/small-business-majority-voices-support-for-the-anti-money-laundering-act-of-2020-s-amdt-2198-to-s-4049>; 2019: <https://thefactcoalition.org/small-business-majority-sent-a-letter-to-congress-in-support-of-the-corporate-transparency-act>; 2017: <https://thefactcoalition.org/letter-from-small-business-majority-in-support-of-the-corporate-transparency-act>

businesses to list their true identity when forming. Respondents viewed transparency as a way to prevent fraud and abuse, level the playing field, and protect small businesses.<sup>4</sup>

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 supply chains, creating difficulties in finding responsible subcontractors, and providing cover for fraudsters.<sup>5</sup> Patent trolls often hide behind anonymous front companies that disproportionately target small and medium sized businesses, and cost businesses upwards of \$29 billion in 2011 alone.<sup>6</sup> Introducing transparency into corporate ownership will give small businesses increased confidence in new business partners and access to more competitive markets.

To serve the needs of U.S. small businesses, FinCEN should prioritize a smooth rollout of the rule that both integrates the new federal reporting requirements with state corporate registration processes and leverages technology for timely, accurate reporting. Optimizing the implementation process, in partnership with the small business community, is the most important step that FinCEN can take to reduce compliance costs for small business owners.

### **1. Maintain a robust definition of “beneficial owner” and clarify the “control” prong.**

The two-pronged definition of “beneficial owner” in the statute is clear, easy to follow, and workable for small businesses that have no need to hide their true owner’s identity. According to the Small Business Administration, more than 80 percent of businesses in the United States – totaling more than 25 million entities – are sole proprietorships, meaning there is little question as to who owns, controls, or benefits from their operations.<sup>7</sup> Even so, most small employer firms have uncomplicated structures, and therefore would have few questions about who they should name on a reporting form. Honest businesses have no need to hide their ownership: 97 percent of participants in a scientific, nationwide poll responded that they already disclose their true owner when setting up a business.<sup>8</sup> Where the new provision will reap the most reward is in the remaining 3 percent of cases where entities do not reveal their true ownership for one reason or another. While the benefits are significant, the costs of providing basic information are minimal and immediately known to our members. The definition would not impose any additional cost or cause undue confusion for the vast majority of legitimate small business owners.

FinCEN could provide additional direction around the definition of “beneficial owner.” While there is little question about the “ownership” prong, which identifies someone with a 25 percent ownership interest as a beneficial owner, there is less firmness around the notion of “substantial control.” For the sake of simplicity, FinCEN should consider offering a concrete, comprehensive list of test metrics regarding an owner’s “control” – for instance, the right to vote or direct votes, the authority to dissolve the company, or the ability to appoint or remove board members. The metrics listed should be comprehensive in nature, to ensure in every case that at least one person meets either the “own” or “control” aspect to the definition.

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<sup>4</sup> <https://smallbusinessmajority.org/our-research/government-accountability/small-business-owners-support-legislation-requiring-transparency-business-formation>

<sup>5</sup> <https://thefactcoalition.org/fact-sheet-small-businesses-are-harmed-by-anonymous-companies>

<sup>6</sup> 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>

<sup>7</sup> <https://cdn.advocacy.sba.gov/wp-content/uploads/2020/11/05122043/Small-Business-FAQ-2020.pdf>

<sup>8</sup> <https://smallbusinessmajority.org/our-research/government-accountability/small-business-owners-support-legislation-requiring-transparency-business-formation>

FinCEN can provide further clarity and predictability for businesses in identifying whether they need to report by being inclusive in its definition of “reporting company,” to include “other similar entities” like business trusts, limited liability partnerships, sole proprietorships filing “Doing Business As” forms, and any other entity that files or registers with a state for business purposes with the exception of the 23 categories expressly exempted by law. Even-handling of various corporate entities will remove unnecessary confusion about whether an entity needs to file. It will likewise prevent bad actors from favoring entities not covered as vehicles for illicit purposes.

**2. Prevent exploitation of existing exemptions to the reporting requirements and evaluate the status quo before creating further exemptions.**

Honest small business owners should not be the only entities reporting: to ensure that the rule fulfills its anti-money laundering purpose, we urge FinCEN to be broad in its interpretation of which entities are considered “reporting companies” and to narrowly tailor any exemptions. While there is no need to demand duplicative reporting from highly regulated corporations whose owners are already known to the public or to the government (e.g. publicly traded corporations), Small Business Majority requests that FinCEN conduct a thorough review of the exemptions as part of the initial rulemaking to make sure language is crafted to minimize any opportunity for abuse. We likewise discourage FinCEN from opening further exemptions until the first set of exemptions can be appropriately evaluated in practice.

**3. Give comprehensive database access to law enforcement entities with properly trained staff using appropriate protocols.**

The Corporate Transparency Act requires small business owners to report basic identifying information to FinCEN for use in authorized investigations; FinCEN must now ensure this information is “highly useful”<sup>9</sup> to law enforcement to investigate criminal and corrupt behavior. As such, we encourage FinCEN to take steps to ensure that state, local, tribal, and federal law enforcement agencies have timely and comprehensive access to beneficial ownership information useful in their investigations. Officials of these agencies should be given appropriate training and use proper protocols when accessing the information. Granting meaningful access gives investigators the tools to go after fraud and abuse and to protect small businesses.

**4. Minimize compliance costs by preparing an efficient, collaborative rollout.**

The costs to business of reporting four pieces of readily available information – the name, date of birth, address, and government ID number – of a company’s owner are incredibly low. There are comparable studies on the compliance costs to business from other countries with beneficial ownership registries. Take, for instance, the United Kingdom. A UK government study on beneficial ownership reporting showed that the average business paid about \$2.50 per year in compliance costs.<sup>10</sup> A concurrent analysis showed that the average size of a reporting company in the UK was between 1-2 people (1.13).<sup>11</sup> As mentioned previously, more than 80 percent of U.S. businesses are sole proprietorships and non-employer firms.<sup>12</sup> As such, we anticipate that the United States will have a similar experience, assuming appropriate measures are taken to ensure small businesses understand their new reporting requirements.

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<sup>9</sup> 31 U.S.C. 5336(b)(1)(F)(iv).

<sup>10</sup> U.K. Department for Business, Energy & Industrial Strategy, “Review of the implementation of the PSC Register” (August 2, 2019). BEIS Research Paper Number 2019/005, <https://www.gov.uk/government/publications/people-of-significant-control-psc-register-review-of-implementation>, p. 28.

<sup>11</sup> <https://thefactcoalition.org/wp-content/uploads/2019/06/GW.Fact-Sheet-on-UK-Register-Data-for-US.May302019-1.pdf>

<sup>12</sup> <https://cdn.advocacy.sba.gov/wp-content/uploads/2020/11/05122043/Small-Business-FAQ-2020.pdf>

Nevertheless, there are important steps that FinCEN can take to make sure the filing process is modern, efficient, and integrated with state and tribal incorporation practices. Taking these steps would ensure that the beneficial ownership reporting regime would have a negligible compliance cost for businesses.

## **5. Give ample notice to businesses regarding new reporting requirements**

Small business owners should be given plenty of opportunities through FinCEN, state and local governments, and business associations partnering with FinCEN to learn about new disclosure requirements. FinCEN should create a searchable, central hub of information on the CTA requirements providing small business owners and other reporting companies the necessary details on the purpose, requirement, qualifications for exemptions, and consequences for not filing.

FinCEN should ensure that businesses receive written and electronic communications notifying them of their new reporting requirements. This could happen both at the federal level and in collaboration with state incorporation entities. FinCEN could work with federal entities – the Internal Revenue Service, Small Business Administration, and others – to post reporting notices on those agencies’ websites and send all corporations on record electronic and written communications that they may be required to file, while also providing accompanying resources to help them determine whether they are a covered entity. Likewise, FinCEN should work closely with state and tribal incorporation authorities to provide ample notice of filing requirements.

Finally, FinCEN should partner with business trade associations and organizations, like Small Business Majority, as well as with state bar associations, incorporation agent associations, and others to conduct education and outreach campaigns to relevant parties about the upcoming requirements.

## **6. Collaborate with state incorporation authorities to integrate filing procedures**

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.”<sup>13</sup> FinCEN’s best opportunity to minimize small business compliance cost is to integrate the FinCEN filing as seamlessly as possible into existing state-level incorporation processes. Small Business Majority urges FinCEN to begin outreach promptly with all the secretaries of state and other analogous incorporation authorities to plan easy integration at the state level, such that small businesses do not have to look beyond their usual state processes to complete reporting required by FinCEN.

Upon completion, FinCEN should also issue small businesses an electronic receipt of their filing for record-keeping. That receipt may include a reminder regarding the steps an owner would need to take to update the information on a future filing.

## **7. Leverage technology to minimize business costs during filing**

Further, 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. Verification of information pre-filing can save businesses from later having to rectify inconsistencies when opening a bank account or applying for a loan or other financing. 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 the perhaps the best way to ease business compliance.

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<sup>13</sup> 31 U.S.C. 5336(b)(1)(F)(iii).

Likewise, FinCEN should require all filings to be electronic, the benefits of which are two-fold. First, business owners would be able to access their records online whenever they want, making it simple to reference a past filing or update the current one. Second, electronic filings are easier for FinCEN to process into the database compared to paper forms, ensuring greater accuracy and timeliness of data. FinCEN should further consider working with state and tribal authorities to move incorporation and registration processes to online platforms. Moving states like Maine<sup>14</sup> from paper-based systems to electronic systems both serves to improve business ease and aids FinCEN in its ultimate anti-money laundering objective.

## **Conclusion**

Thank you for 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 Manager, Awesta Sarkash at [asarkash@smallbusinessmajority.org](mailto:asarkash@smallbusinessmajority.org).

Sincerely,

John Arensmeyer, Founder & CEO

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<sup>14</sup><https://www.maine.gov/sos/cec/corp/corp.html>